

12 November 2009

AmCham EU Statement on the Council of Europe consultation on the draft Recommendation on Profiling

AmCham EU welcomes the opportunity to comment upon the Council of Europe's draft Recommendation on the Protection of Individuals with regard to Automatic Processing of Personal Data in the Framework of Profiling ('The Recommendation')¹.

We are pleased to see the Recommendation recognises the consumer benefits from profiling. However, while our members agree with some of the privacy concerns addressed in the Recommendations, we feel that other concerns are not accurate.

We question whether another regulatory layer is an effective way to address those concerns, particularly given regulatory oversight that already exists in this area, and the substantial self-regulatory initiatives that have been taken by the industry.

Since the draft Recommendation raises a number of significant problems for companies and society that could have a chilling effect on innovation in many industry sectors, AmCham EU recommends that a multi-stakeholder dialogue with the Council of Europe take place before the recommendation is finalised, to discuss the function, purposes and outcomes of so-called "profiling techniques".

Furthermore, AmCham EU calls upon the Council of Europe to undertake an impact assessment of the draft Recommendation, providing estimates of the potential cost to business as well as of the effects on innovation and economic growth. Considering that a large number of businesses would be adversely impacted by the proposed rules, AmCham EU is disappointed that no impact assessment has been undertaken so far.

¹ The draft Recommendation (version T-PD-BUR (2009) 02 rev 4 dated 2 October 2009) is available at http://www.coe.int/t/e/legal_affairs/legal_co-operation/data_protection/events/t-pd_and_t-pd-bur_meetings/2T-PD-BUR_2009_02rev4_en.pdf.

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POSITION STATEMENT



AmCham EU believes that technology neutrality is essential in ensuring that the benefits of profiling are properly assessed. Data analysis for profiling purposes depends on the data it is applied to. Therefore, it is not the technology that needs to be assessed, but the methods by which data is collected (transparently or not) and used (e.g. for legitimate purposes often involving demonstrable benefits to the customer or user, and the organisation). Industry is making great strides in educating its customers, and regulators on how these technologies are used and applied and what their effects might be.

AmCham EU therefore welcomes additional dialogue with the Council of Europe on the uses and practices of data analysis, before introducing an additional layer of regulation that would entail many unintended and potentially severe consequences. We believe that the draft Recommendation must include the public sector in its scope.

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €1.2 trillion in 2008 and currently supports 4.8 million direct jobs in Europe.

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