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Legal Regulation & Education: Doing the Right Thing?

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Solving the Puzzle. Comparing data protection definitions and its consequences for the data processing in Cloud Computing environment.

The definition of personal data, that constitutes a foundation for the European Data Protection framework, has been capturing attention during the last years. The first definition provided in the Directive 95/46/EC was later on supplemented by the interpretation done by the Article 29 Working Party. Recently, due to the major advancements in the ICT (especially Grid, Mobile, Cloud Computing and Big Data), world of data processing has significantly changed. European Union decided to act in order to have their data protection framework prepared for the existing and upcoming changes. The reform, bringing to life the General Data Protection Regulation, has come up with the new definitions, among others with the definition of personal data. Furthermore, during the discussions, interesting evolution of the definition was presented, showing the concurrent aspirations of different involved parties.

This paper examines and tests the ability of the EU's definition of personal data to mirror the current situations of data processing. It takes Cloud Computing as an example of highly advanced technology (or the paradigm combining the currently available developments in computing) that brings new opportunities, but also the new challenges for its users and providers. The Cloud enables faster and less expensive processing of greater amounts of data. It works thanks to the numerous connected data centers that share between themselves data according to their automatic policies. Due to the fact that data travel in Cloud back and forth between different locations – there is a need for applying anonymization techniques at different stages of processing in order to assure the safety of data. Different industries are currently considering Cloud as a new possibility on a way towards better ICT usage. They have to assess what kinds of data they process and how they may be classified. Therefore clarifying the concept of protected personal data is crucial in order to differentiate between data that require protection and those that do not have to be handled with such care (because they originally do not constitute personal data or because they were rendered unidentifiable).

The paper focuses on the differences between the definition of personal data as represented in Directive 95/46/EC as and those proposed during the data protection reform process. It examines the "building blocks" added and taken away from the definition during the legislative process by the European Commission and European Parliament. It also follows closely the outcomes of Public Consultations both on the Cloud Computing and on the reform of Data Protection Framework. Finally it looks into the lobbying documents in order to identify the sources of respective trends.

The concepts of anonymization, pseudoanonymization, data aggregation, types of identifiers and notions of directly and indirectly identifiable data are the main "building blocks" of the definition of personal data. Bearing in mind the state of the art, the paper discusses the problem of balance between a definition that includes reference to the mentioned above concepts and a more abstract one. It poses the question if the current definition will be future-proof and if it will make a step towards clarifying the blurred picture of the personal data.