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COMMITTEE ON POLITICAL AND JURIDICAL AFFAIRS

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QUESTIONNAIRE REGARDING
PRIVACY AND DATA PROTECTION LEGISLATION AND PRACTICES

[AG/RES. 2661 (XLI-O/11)]

(Document presented pursuant to the agreement reached at the meeting of the Committee on Juridical
and Political Affairs held on October 6, 2011)

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As agreed in the ordinary session of the CAJP held on October 6, 2011, pursuant to AG/RES. 2661 (XLI-O/11), which requires: 1) that the Department of International Law prepare a comparative study of different existing legal regimes, policies, and enforcement mechanisms for the protection of personal data, including domestic legislation, regulation, and self-regulation, with a view to exploring the possibility of a regional framework in the area; and 2) that the Inter-American Juridical Committee present, prior to the forty-second regular session, a document of principles for privacy and personal data protection in the Americas, enclosed please find a copy of the Questionnaire Regarding Privacy and Data Protection Legislation and Practices.

Pursuant to resolution AG/RES. 2661 (XLI-O/11) and in order to complete its mandates, responses^{2/} to the questionnaire should be submitted by January 15, 2012 to the CAJP secretariat (aaristizabal@oas.org) and to the Department of International Law (jwilson@oas.org). Please address the letter with responses to the questionnaire the Chair of the Committee on Political and Juridical Affairs.

QUESTIONNAIRE

I. LEGISLATION

- A. Does your country's domestic legal system include (comprehensive or sectoral) privacy/data protection laws or regulations at the national/federal level? If so, please describe the laws or regulations briefly, including whether they apply to the private and/or public sector contexts, and attach copies of the provisions and the documents containing them.
- B. Does your country's domestic legal system include (comprehensive or sectoral) privacy/data protection laws or regulations at the state/municipal/local level? If so, please describe the laws or regulations briefly and attach copies of the provisions and the documents containing them.

1. Prepared by the Department of International Law.

2. In addition to the formal submission of the answers by Member States, the Secretariat kindly requests delegations to also send your responses in "Word" format or within the body of an e-mail, to facilitate the translations.

- C. Does your country have constitutional provisions that address or implicate privacy/data protection, such as, for example, specific data protection provisions, freedom of expression provisions or habeas data? If so, please describe these provisions and attach copies of the relevant texts.
- D. Does your country include self-regulatory codes of conduct or similar accountability systems for privacy/data protection? If so, please describe these systems briefly and attach copies of any relevant provisions and documents which describe their operation.

II. REGULATION/ENFORCEMENT

- A. What is/are the enforcement mechanism(s) for the above privacy/data protection laws, regulations or procedures and what are the available remedies? Please describe any existing mechanism(s), and attach copies of relevant texts or documentation.
- B. Does your country's domestic legal system provide individuals with recourse in the national court system for harm caused by privacy/data protection violations? Does it provide government authorities with the authority to enforce relevant privacy/data protection laws and regulations? If so, please describe and attach copies of relevant texts or documentation..
- C. Who are the government authorities in your country primarily responsible for enforcing privacy/data protection laws and regulations? Please describe its relation to (or independence from) the government, describe its size in terms of staff and budget and attach copies of relevant texts or documentation.
- D. What volume of complaints relating to privacy/data protection violations do your relevant government authorities receive? Do your authorities address each individual complaint or do they have discretion in which matters to investigate or pursue?
- E. Are the investigations and privacy/data protection enforcement actions undertaken by your authorities exclusively complaint-driven or do these authorities have other bases or criteria for selecting and initiating an investigation or enforcement action (ie. proactive audits or filing requirements)? Please explain.
- F. Are complaints relating to commercial data privacy issues subject to potential criminal prosecution? If so, explain the relationship, if any, between privacy regulators and public prosecutors in such cases and the general volume and nature of criminal proceedings.

III. CASE LAW

- A. What is the role of case law in the protection of individuals' privacy in your country? Please attach any high court or appellate cases in your country.

IV. CROSS-BORDER COOPERATION

- A. Does your country's domestic legal system limit or condition the transfer of any personal data to other countries? If so, please explain.
- B. Has your country received a privacy/data protection certification by the European Union?
- C. Is your country a party to any international instruments or arrangements regarding general privacy principles and the cross-border flow of information (e.g., the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data; the APEC Privacy Guidelines and Cross Border Privacy Rules; the Council of Europe's Convention ETS No. 108). If so, please list these instruments or arrangements to which your country is a party, the date on which they became enforceable in your jurisdiction and what actions have your country has taken, if any, pursuant thereto.
- D. Do the laws in your country permit the relevant enforcement authorities to share investigation and enforcement information and evidence with their counterpart authority in foreign jurisdictions? If so, please explain.
- E. Does your government or its enforcement authorities cooperate with other governments or counterpart authorities on investigations and enforcement matters relating to privacy/data protection, for example to address the fraudulent use, transfer or mishandling of personal data?
- F. If cross-border collaboration exists, is this collaboration informal, does it take place via privacy/data protection regulators, or does it take place via cross-border cooperation networks (ie. Global Privacy Enforcement Network (GPEN), APEC's Cross Border Privacy Enforcement Arrangement, or Iberoamerican Network of Data Protection)? If so, please describe this collaboration and/or your countries participation in said networks.
- G. If does not exist, could some form of cross-border collaboration among OAS member states assist with the enforcement or implementation of your country's privacy/data protection laws? If so, provide suggestions for what would be most useful.

V. HABEAS DATA

- A. Does your country's domestic legal system include laws providing for access to information about oneself, including habeas data? If so, please characterize what rights individuals may exercise under habeas data, describe the source of the right briefly, describe whether said right apply to the private and/or public sector contexts and attach copies of the provisions and the documents containing them.

VI. TECHNOLOGY AND BUSINESS CHALLENGES

- A. Are there any technologies or business practices that pose particular challenges for the enforcement or implementation of privacy/data protection laws and/or other consumer protection laws in your country? If so, describe.