

RFID Expert Group Joint Comments Regarding a European Commission Recommendation on Privacy and Security

07 August 2007

Members of the EU Commission's RFID Expert Group were asked to provide input regarding the scope and key issues of the planned draft recommendation on privacy and security. Deutsche Post World Net, Carrefour group, EPCglobal, and Informationsforum RFID as members of the RFID Expert Group jointly submit the following comments; they refer to RFID Expert Group Document Number 0031, Rev 2.

RECITALS

- The most important sectors for the application of RFID are:
 - Retail and consumer goods
 - Manufacturing and production (e.g. the automotive industry)
 - Transport and logistics
 - Public transport
 - Health care
 - Anti-counterfeiting
 - Ticketing
 - Recycling

The Recommendation should acknowledge that RFID technology is a significant tool for optimizing processes in these sectors. It improves reliability, offers new services and helps to rationalize processes. In the medium term, new production processes and business models will create new jobs that will probably demand higher qualifications and offer higher incomes. Radio Frequency Identification will at term transform retail and consumer goods' sectors. These technologies will make it possible to present more consumer oriented services to improve production and distribution chain efficacy and to support companies' competitiveness.

Over the last decades, a large number of technological evolutions resulted in improving European citizens' way of life. This is all the more sensitive as society gets older and is always in search of customized services.

In the future, RFID technology applications would bring benefit to different categories of users, especially:

- Companies will be able to improve their efficacy, cut costs and develop their competitiveness. RFIDs will make it possible to better product availability, better manage stock levels and prevent theft. In all sectors, RFIDs will make product supply easier, limit the introduction of counterfeit or illegal products in the market and allow the implementation of a more efficient product traceability system in the event of recalls, return, warranties, etc.

- Consumers will have available a proliferation of applications making their purchasing acts easier, giving them richer data about products, enhancing consumer safety and offering them a whole line of new services.
- Patients will also see increased levels of patient safety, resulting from RFID applications that aim at reducing current levels of medical errors and enabling more efficient fight against counterfeit medicines.
- Employees will benefit from the use of RFID technologies because of the resulting improved work conditions: reduced physical efforts, increased comfort and ergonomics, quicker and more reliable information and a better efficacy. Particularly hard and repetitive tasks will be relieved and limited thanks to the use of a number of RFID applications.

RFID technology will increase productivity, and aim at a more sustainable trade. In sum, it helps the European Union to meet the objectives of the Lisbon Agenda.

- The Recommendation should recognize that RFID technology is in continuous evolution and that a broad implementation of RFID applications will take probably a decade or more. Therefore, the Recommendation should provide that the European Commission will closely monitor the technological developments and the applications in this field in close cooperation with all interested parties and, in particular, the members of the RFID Expert Group. If necessary, the Recommendation could, at a later stage, be revised according to the evolution of RFID technology and its applications to provide further guidance for specific applications.
- It is of particular importance to clearly outline the state of RFID deployment in Europe. In light of the focus on privacy and security, the Recommendation should state clearly that
 - the vast majority of RFID applications today do not collect or store personal data,
 - applications in the retail sector will not be expected to use RFID on the item level for several years to come,
 - applications in a variety of sectors (including consumer goods) will use the Electronic Product Code, i.e. information relating merely to the product itself, not the buyer or owner of the product.
- When referring to related legislation, it is important that the Recommendation states that existing data protection law applies to RFID technology.
- The existing European data protection rules and especially the principles of information, self-determination and consent of individuals as laid down in Directive 95/46 of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 21, 23 November 1995) should be recognized as an adequate, reliable and balanced privacy regime.
- Finally, the Recommendation should address the fact that many consumer concerns stem from lack of information rather than real threats. Many of the often-quoted abuse scenarios are technically not feasible. Others represent criminal offenses punishable under the existing legal framework. Such concerns should not be the basis for regulation but rather emphasize the need for increased consumer education and strict enforcement of existing laws.

SCOPE & DEFINITIONS

- The Recommendation should focus on general aspects of privacy and security in RFID implementations. Given the early stage of RFID implementations in the consumer sphere it would be premature to develop requirements for specific sectors such as retail or health care. Rather, the Commission should monitor developments in specific sectors in close cooperation with the users of the technology and, where necessary, provide support for

the development of application- or sector-specific guidelines in accordance with the development of the technology and its applications.

- Given the satisfactory existing data protection legal regime, the Recommendation should address mechanisms to create acceptance that are beyond the scope of data protection legislation. Better information for consumers and an ongoing dialogue with all stakeholders can serve to increase awareness and, thus, acceptance.
- The Recommendation should provide definitions consistent with the terminology already developed by standards bodies such as ISO, CEN, and EPCglobal. The Commission should avoid duplicating work on developing definitions undertaken in other contexts such as BRIDGE or the CE RFID.

DATA PROTECTION

- The Recommendation should recall that RFID applications involving the processing of personal data must comply with existing data protection principles, including in particular data quality, legitimacy of data processing, information to the data subject and data subject's right of access and right of object.
- A general assessment of privacy risks is in the interest of any organization collecting data that is potentially subject to data protection rules. Therefore, the use of RFID technology may not require any additional risk assessments.
- The Recommendation should advocate codes of conduct as an appropriate mechanism to address consumer concerns, together with labeling and proper information to consumers. Guidelines have been established e.g. by EPCglobal or the International Chamber of Commerce. For retail scenarios stakeholders agreed on the following key elements for a code of conduct: (1) Information and awareness, (2) labeling of tags and readers, (3) no secret profiling, (4) tags should be easily disengageable (no consensus, if deactivation should happen by default or at customer's request), (5) no discrimination if consumers wish not to use RFID-based services, and (6) anonymous shopping. This agreement was the result of intensive discussions in the context of the Societal Concerns Chapter of the *European Policy Outlook RFID* and should be referred to by the Recommendation.
- The use of images or icons is a good way to alert consumers to the presence of RFID tags and, thus, create the necessary transparency. EPCglobal in its Guidelines on EPC for Consumer Products requests the use of the EPCglobal logo or an identifier for this purpose; transparency is then assured by coupling the provision of a logo or identifier with additional information about the logo and the RFID use it represents. However, it should be debated whether the use of icons should cover all potential applications of RFID in the consumer sphere or should be restricted to scenarios of particular concern from a consumer protection perspective. Otherwise, there is a risk that consumers will cease to notice the logo or icon.

SECURITY

- The Recommendation should encourage the development of security guidelines for specific applications as this is the only way to provide the necessary level of technological understanding and detail. In particular, the Recommendation should recognize that it is impossible to impose one IT-security solution for all RFID applications and any RFID security certification.
- With regards to the safety of the networks, there is a need to standardize the security in order to allow interoperability. The Commission should give a mandate to standardization bodies such as CEN to undertake this work.

- The Recommendation should recognize that PETs and IT-security technology solutions in general are essential to prevent alteration and damage of the data used by RFID technology. Research and development in these areas should be especially promoted by the Commission.
- The Recommendation should acknowledge that IT-security solutions should, to the largest extent, be left to the market. As there will be a multitude of technically different RFID applications adapted to the needs of the various economic sectors, the companies/sectors concerned should be free to develop PETs in a most flexible way. The Recommendation should encourage industry guidelines for IT-security solutions based on two principles: Use of state-of-the-art technology and use of security solutions adequate to the risk level linked to the specific RFID application.
- The Recommendation should acknowledge that there are currently several on-going studies to identify adequate IT-security solutions for different sectors or applications. The conclusions of these studies should help the industry to develop its guidelines.

MONITORING AND ENFORCEMENT

- As far as the processing of personal data is concerned, the EU Data Protection Directive and the corresponding data protection laws in the Member States provide for sufficient instruments of monitoring and enforcement. In particular, according to Art. 18 to 20 of the Data Protection Directive RFID applications must, in principle and subject to any national simplification and exemption provisions, be notified to the supervisory authority before any wholly or partly automatic processing of personal data can be carried out.
- For codes of conduct, enforcement mechanisms should reflect the likelihood of violations. Currently, the number of RFID applications in the consumer sphere is still very small. Therefore, simple solutions such as complaint hotlines or review boards may be sufficient to ensure compliance with existing codes of conduct. In the future, more thorough instruments using e.g. unfair trade legislation may turn out to be necessary to deal with a growing number of applications. EPCglobal membership requires the acceptance of all existing EPCglobal policies, including the Guidelines for Consumer Products. Practical accountability principles and mechanisms will be part of the evolving nature of the Guidelines and their implementation.
- The Recommendation should not make the development of a specific RFID application subject to the granting of a formal prior authorization. A system of ex-post monitoring and enforcement is sufficient to ensure compliance with both data protection laws and codes of conducts. A concept of prior authorization by which an application would only be adopted in practice after specific ex ante approval would unnecessarily delay new applications of the technology and would create a significant burden for European users of RFID technology. Ultimately, it might erode the good position of EU RFID technology in comparison to its U.S. and Asian competitors.