



The Future of Data Protection in the EU

Four major European Trade Associations (CableEurope, ECTA, ETNO and GSMA Europe), as **major industry stakeholders** in the provision of electronic communication networks and services to EU citizens, welcome the European Commission's public consultation on the EU Framework for Data Protection and wish to bring to your attention a high level summary of our main considerations in this area.

We are of the opinion that the Framework Data Protection Directive (Directive 95/46/EC) has been a very important piece of legislation and its basic principles should remain unchanged. However, in the light of new technological developments and globalisation, some adjustments might be necessary, especially with a view to reducing administrative burdens and overcoming divergent interpretations of the Directive.

Lack of Harmonisation

The Framework Data Protection Directive has failed in its objective of bringing about harmonisation. Member States have implemented the Directive in divergent and, sometimes, contradictory ways. This lack of harmonisation consequently has an impact on competition at the European level and by implication on the completion of the Internal Market.

The Commission should focus on ensuring harmonisation amongst Member States' national rules and effective implementation of the Directive.

Level Playing Field

Besides the general data protection rules (Framework Data Protection Directive), some economic sectors are subject to additional strict data protection obligations. In our view, data protection rules should instead apply to processing activities following a risk-based approach. They should be triggered by the harm or potential harm caused by the processing to data subjects, irrespective of the economic sector in which the data controller/processor is active. A level playing field is of utmost importance to EU citizens and companies in order to build uniform expectations and experiences online and therefore also confidence in using more online services.

International Transfer of Data

In today's globalised economy and society, cross-border data flows are more and more frequent and the current rigid EU rules applying to the transfer of data to third countries do not seem adequate anymore. In complex situations with multiple data controllers involved (e.g. cloud computing), the current provisions of the Directive may severely impede the international transfer of personal data and, thus, the activities of EU-based companies worldwide.

Furthermore, it is necessary to simplify international data transfers within the same "group of companies". The Commission should recognise the concept of "group companies" facilitating the transfer of data between its members. This would reduce administrative overhead of EU businesses.

Role of Data Controller and Data Processor

The distinction between data controller and data processor is more and more blurred, especially in the complex online environment, for instance, in the case of companies outsourcing the processing of data or in a cloud computing scenario. Telecoms companies' comments are provided from a dual perspective: on the one hand in their role as processors/controllers of personal data relating to their own customers and employees; and on the other hand in the provision of data transmission and storage services to EU businesses in other sectors. In more and more cases there are several parties that can be defined as "joint data controller" as they determine "the purposes and means of the processing" (Article 2 of the Directive). Therefore, rules of liability of the data controller should be made more flexible and clearer.

Further Reduction of Administrative Duties

The Directive imposes on data controllers the obligation to notify National Data Protection Authorities (NDPAs) of the processing of personal data. This increases the administrative burden on industry without adding any value for the security of the processing neither for the NDPAs nor for the data subjects. For the sake of efficiency, notification duties should be reduced. Instead of fulfilling/monitoring long and resource-consuming notifications processes, industry and NDPAs should focus on real compliance rather than being obliged to devote important resources for such notifications.

Applicable law and jurisdiction

The wording of the existing Directive fails to reflect current technological market realities, thereby adding complexity to contract negotiations and, in some cases impeding the development of otherwise efficient arrangements. Cloud computing services will add even more to these difficulties since, in many cases, buyers of such services will be unaware where processing is taking place. Clarification of this point therefore needs to be made in conjunction with the settlement of the data controller/data processor issue.

Education and Awareness raising initiatives

Data subjects are more and more aware of the impact of their online behaviour on their privacy. In this context education and information campaigns- jointly organised by the private and public sector- are key to raising awareness amongst data subjects and making data protection rules more effective.

Promoting dialogue with the industry

The Article 29 Working Party has devoted considerable efforts to achieving increased harmonisation and coordination in the application of the Directive. However, further involvement of the private sector in its activities is not only possible but also necessary. We support a participatory privacy and security dialogue with industry, civil society, regulators and other key stakeholders to develop and agree appropriate interoperable privacy standards, trust levels and mechanisms.

Need for Global Privacy Standards

The Commission should develop international agreements (the Madrid Resolution could be taken as a basis for further initiatives) in which the basic principles of the Fundamental Right to Privacy and Data Protection would be shared worldwide, contributing to a better protection of individuals and legal certainty for business. Protecting the interests of individuals regardless of where and how data processing occurs should be a primary objective rather than the development and application of rigid geographically bound laws that are at odds with the commercial and cultural realities of the global information society and the needs of citizens. What is required is a legal framework that can be applied across borders, which is based on the concept of accountability and harm, and which draws on technological controls and self regulatory codes and mechanisms. “Accountability” is based less on prescriptive legislation and regulation and more on the adoption, commitment to and practice of core internationally recognised privacy principles and information governance standards.

The contributors to this joint statement are:

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|  | <p>ECTA (The European Competitive Telecommunications Association - www.ectaportal.com) represents more than 100 of the telecoms leading challengers across Europe. Our members have been the leading innovators in Internet services, broadband, business communications, entertainment and mobile. We were the first - investors in high speed fibre-to-the-home infrastructure in the EU.</p> |
| <p>For further details, please contact Delphine Bernet-Travert: dbernet@ectaportal.com</p> | |
|  | <p>ETNO (the European Telecommunications Network Operators' Association - www.etno.be) is the voice of the European telecommunications network operators with over a decade of experience in shaping EU telecoms policy. The association represents 43 companies located in 36 European countries. They account for an aggregate annual turnover of more than 270 billion € and employ over one million people across Europe.</p> |
| <p>For further details, please contact Fiona Taylor: taylor@etno.be</p> | |
|  | <p>The GSMA represents the interests of the worldwide mobile communications industry. Spanning 219 countries, the GSMA unites nearly 800 of the world's mobile operators, as well as more than 200 companies in the broader mobile ecosystem, including handset makers, software companies, equipment providers, Internet companies, and media and entertainment organisations. The GSMA is focused on innovating, incubating and creating new opportunities for its membership, all with the end goal of driving the growth of the mobile communications industry. In Europe the GSMA represents over 170 operators serving around 600 million customers across 51 European countries/areas. For more information on GSMA, please visit: www.gsmworld.com and www.gsmeurope.org.</p> |
| <p>For further details, please contact Martin Whitehead: mwhitehead@gsm.org</p> | |
|  | <p>Cable Europe (www.cable-europe.eu) is a trade association that groups all leading broadband cable TV operators and their national associations throughout Europe. The European cable TV industry provides digital TV, broadband Internet and telephony services to more than 73 million customers</p> |
| <p>For further details, please contact Gilone d'Udekem: gilone.dudekem@cable-europe.eu</p> | |