

Open statement ahead of expected final trilogue on General Data Protection Regulation

BRUSSELS (December 14th 2015) — On 25 January 2012, the European Commission published its ambitious draft General Data Protection Regulation (GDPR), which sets out to harmonise Europe’s fragmented approach to data privacy. As the voice of the digital technology sector in Europe, **DIGITALEUROPE has supported this vision**. We believe that a harmonised EU law has the potential to stimulate economic growth and create new jobs, while providing citizens with effective control over their personal information. However, we have stressed that the goal of harmonisation must not come at any cost and that the right balance between boosting business competitiveness and safeguarding citizens’ privacy must be found.

The importance of reaching this balance has increased following the publication of the European Commission’s strategy for a Digital Single Market, which identifies the GDPR as a core pillar for its overall success. With Europe’s future Digital Single Market set to rely heavily on the use of data to generate an anticipated €415bn¹ of additional economic gain, it is difficult to overstate the importance of the GDPR to Europe’s ambitions to secure its digital future. It has become clear to all that if Europe wants to continue to grow its economy and remain competitive on a global stage, it must adopt a law which will allow for this.

However, as the EU institutions enter the final stages of negotiations on the draft Regulation, the question over whether a proper balance has been reached between supporting privacy rights and enhancing economic competitiveness still remains. Following almost four years of negotiations, it is troubling that this question must still be asked.

Against this backdrop, DIGITALEUROPE wishes to voice our deep concern that the original objectives of the European Commission’s proposal have been overshadowed by disproportionate and unbalanced rules. We fear that the expected agreement set to be reached during the trilogue discussions on 15 December 2015 will severely undermine the ability of European businesses to invest, innovate and create jobs. Such an agreement would mean that the much sought after balance would be lost.

Recent statements² from the European Commission seem to fail to recognise this risk. As early as November 2012 a UK Government study³ estimated an unbalanced Regulation would result in UK companies alone facing up to £360m net compliance costs per year. A study⁴ in May 2013 for the Dutch Government estimated a €1.1bn additional cost for Dutch businesses. Negotiations since will likely further inflate these costs.

DIGITALEUROPE wishes to reiterate that **our member companies take the fundamental right to privacy very seriously**. This right must be ensured and is non-negotiable. However, as spelled out in the European Commission’s 2012 Communication ‘the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced with other rights...’⁵ **It is the duty of negotiators to balance this fundamental right with other fundamental rights**, which ensure job creation, growth, competitiveness and investment.

1 COM(2015) 192 final

2 Opening speech at 6th Annual European Data Protection and Privacy Conference – 10 December 2015

3 UK Ministry of Justice Impact Assessment on Proposal for an EU Data Protection Regulation – 22 November 2012

4 CRC/CPR 13-14a Toetsing Europese Dataprotectieverordening – 31 May 2013

5 COM(2012) 9 final

We therefore call once more on the trilogue negotiators to consider the following recommendations ahead of the final trilogue discussions:

- Ensure a **truly harmonised Regulation** by rejecting the inclusion of language which allows Member States to determine more precisely the conditions under which personal data processing is lawful.
- Avoid the introduction of unworkable provisions on **consent**, including raising the age of parental consent to 16, which deviates from industry best practices and makes it unnecessarily burdensome for parents and children of appropriate age and maturity to access offline and online services.
- Refrain from adopting provisions which will severely limit the creation of a true **‘data driven’ European economy**, such as an overly constraining interpretation of purpose limitation and limits to the use of profiling.
- Avoid the creation of a ‘one-size-fits-all’ **liability scheme**, which will stifle the European data processing market and blur the lines of the data value chain.
- Reject the inclusion of provisions into the **international data transfer framework**, which would place companies in a conflict of law situation with third country administrative authorities.
- Avoid the introduction of a **sanctions regime** which is disproportionate, rigid and sets penalties based on global turnover, including revenue that are entirely unrelated to data processing activities.
- Refrain from assembling a **one-stop-shop mechanism**, which drastically departs from the stated aim of the reform by failing to reduce administrative burdens for entities operating in the Internal Market.

These points are of serious and existential importance. We urge legislators to take into account these final important points so that Europe’s future privacy regime enhances the development of the Digital Single Market, rather than hampering it.

--

For more information please contact:

Paul Meller, DIGITALEUROPE’s Communications Director
+32 497 322 966 or paul.meller@digitaleurope.org

ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 60 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

DIGITALEUROPE MEMBERSHIP

Corporate Members

Alcatel-Lucent, AMD, Apple, BlackBerry, Bose, Brother, CA Technologies, Canon, Cassidian, Cisco, Dell, Epson, Ericsson, Fujitsu, Google, Hitachi, Hewlett Packard, Huawei, IBM, Ingram Micro, Intel, iQor, JVC Kenwood Group, Konica Minolta, Kyocera, Lenovo, Lexmark, LG Electronics, Loewe, Microsoft, Mitsubishi Electric Europe, Motorola Mobility, Motorola Solutions, NEC, Nokia, Nvidia Ltd., Océ, Oki, Oracle, Panasonic Europe, Philips, Pioneer, Qualcomm, Ricoh Europe PLC, Samsung, SAP, SAS, Schneider Electric IT Corporation, Sharp Electronics, Siemens, Sony, Swatch Group, Technicolor, Texas Instruments, Toshiba, TP Vision, Western Digital, Xerox, Zebra Technologies, ZTE Corporation.

National Trade Associations

Austria: IOO	Germany: BITKOM, ZVEI	Slovakia: ITAS
Belarus: INFOPARK	Greece: SEPE	Slovenia: GZS
Belgium: AGORIA	Hungary: IVSZ	Spain: AMETIC
Bulgaria: BAIT	Ireland: ICT IRELAND	Sweden: Foreningen Teknikföretagen i Sverige, IT&Telekomföretagen
Cyprus: CITEA	Italy: ANITEC	Switzerland: SWICO
Denmark: DI ITEK, IT-BRANCHEN	Lithuania: INFOBALT	Turkey: Digital Turkey Platform, ECID
Estonia: ITL	Netherlands: Nederland ICT, FIAR	Ukraine: IT UKRAINE
Finland: FFTI	Poland: KIGEIT, PIIT, Zipsee	United Kingdom: techUK
France: AFDEL, AFNUM, Force Numérique	Portugal: AGEFE	
	Romania: ANIS, APDETIC	