



Cable Europe Position Paper on Data Protection

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Cable Europe 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.

Cable Europe welcomes the Commission's package on Data Protection. We support the improvement to strengthen individual rights and tackle the challenges of globalisation and new technologies.

HARMONISATION

Cable Europe supports strongly the Commission's objective of enhancing the Internal Market dimension. **Harmonisation** will help companies to better secure, control transfer of data and reduce legal uncertainties. We therefore **support** the Commission's chosen legislative instrument to ensure more harmonisation across Member States. A **Regulation** will help solving the existing hugely fragmented situation by ensuring to achieve the internal market in the area of privacy and data protection. It will improve privacy levels and support a consistent privacy experience for data subjects while reducing administrative burdens and cross-border restrictions.

APPLICABLE LAW

Cable Europe supports the goal of the proposed regulation aiming at achieving a one-stop-shop for appointing a Data Protection Officer (DPO). We however consider that the provision stipulating that the DPO should be in the country of main establishment of the company should be **further defined** to find out which is the lead DPO/legal entity. Companies should be able to determine main establishment themselves, based on a list of possible criteria.

E-PRIVACY DIRECTIVE

Individuals located in the EU should be granted the same level of protection for personal data, regardless of the geographical location, technology used or the economic sector of the service provider ("equivalent service same

rules”). Data protection rules should be flexible, technologically neutral and should horizontally apply to all economic sectors and actors targeting and processing personal data of individuals located in the EU. Therefore, **sector specific regulation for parts of the ICT value chain is inappropriate and inadequate**, also in light of the constant development of new services which are difficult to categorize within the current definitions used in the e-Privacy Directive.

The co-existence of the e-Privacy Directive (ePD) and the proposed General Data Protection Regulation (GDPR) would be incompatible with technology and service neutrality. This would be negative for both consumers and e-coms operators. Even if the rules of the GDPR and ePD are aligned, their coexistence will lead to divergent implementation into national law. Therefore clarity is required. **All the ePD provisions should be incorporated into the GDPR or at least overlapping issues should be deleted from the ePD.**

CONSENT

The Regulation introduces a new definition of consent: ‘prior, informed and explicit’. Cable Europe would favour ‘**Consent in Context**’. Indeed, we do not agree with the Art.29 WP advice that required that ‘prior’ consent on cookies should be given. Therefore we also do not agree with the inclusion of ‘explicit’ consent in the Data Protection Regulation. This was absolutely not the intention of the negotiation for the revision of the e-Privacy Directive. The notion of explicit consent introduces a too high burden of proof in the sense that operators have to collect (personal) information and show evidence to regulators to be able to prove that ‘explicit’ consent has been given. This will stifle innovation. However we do support the view to **strengthen transparency rules** so that consumers have as much information as possible to make their choice. Most of the time consumers do not even understand what for their consent is required for but ‘prior’ consent does not fit with technological developments and practices. Too much ‘consent’ will kill the purposes for which it is required. It will also kill innovation while future-proofed data protection rules should support the development of new services. In the same context of innovation, we think that ‘profiling’ provides important benefits that should not be prohibited. Moreover the Data Protection Regulation does not present a definition of profiling; it is therefore not clear what activities are allowed and what activities are forbidden. Greater focus must therefore be given to more proportionate responses more adaptable to new technologies.

RIGHT TO BE FORGOTTEN

The GDPR is proposing a Right for consumers to *obtain the erasure and the further dissemination of personal data*.

Cable Europe supports a consumer-centric regulation that will empower consumers more strongly. We also support the assumption that transparency is key in order for consumers to make informed choices but we also believe that any information -to have the effect expected- should apply equally to all players and be easily accessible by consumers.

We believe it is right that the consumers receive a ‘right to withdrawal their consent’. We however wonder how this right will be enforced. Indeed, as

cable operators we do not always control the data that are being asked to be removed. Therefore, we believe that **it should be made clear that this obligation should bind hosting providers, content providers, service providers etc that are in control of this data.** This would otherwise lead to too much legal uncertainty for the operators.

PRIVACY BY DESIGN/DEFAULT

Cable Europe supports the principle of '**accountability**' which would reiterate the principles upon which privacy is to be respected in order to make data protection compliance more effective while at the same time reducing and simplifying certain administrative formalities. However, rather than defining the means and mechanisms by which organisations achieve conformance with the principles, the framework needs to identify the outcomes that are expected. The way these principles will be implemented should remain in the hands of the companies.

As for the impact assessment proposal, we believe that it is done by cable operators on a case by case basis before the launch of a new service. Therefore **voluntary impact assessment** should remain the rule and no mandatory system should be put in place that would put too much burden on operators and might kill innovation. The concept of 'privacy by design' goes on the same wave. It is part of the accountability principle, should not be mandatory but rather defined better. We really wonder how it will be enforceable and fear that it might have a big impact on business competitiveness.

ADMINISTRATIVE BURDEN

As said above, Cable Europe supports the Commission's goal for more harmonisation that will help companies to reduce legal uncertainties and administrative burdens. Vice President Reding had announced that the proposed Regulation is a major step in reducing administrative burdens. We however consider that **further improvement** could have been done in this field and even avoid more red tape in certain areas such as Data Breach Notifications, Data Protection Impact Assessments or the Mandatory nomination of a Data Protection Officer. Instead, we believe that focus should be on the principle of **Accountability** which would lead to ex post controls and checks based on goals to achieve rather than prescriptive ex ante provisions.

INTERNATIONAL DATA TRANSFERS

Cable Europe believes that improving and streamlining the current procedures for enhancing the Internal Market but also for international data transfers is key and will help companies to work and ensure a coherent privacy policy for data flow across borders. This plays a key role in the competitiveness of European companies. Standard data protection clauses are already in place in international agreements but we believe that their administration remains cumbersome. The EU legal framework should recognize the concept of '**group of companies**' in order to facilitate the transfer of data between members of the same group.

SANCTIONS

Cable Europe supports the Commission's intentions to extend enforcement rules and sanctions. Privacy should be based on clear principles protected by meaningful and effective sanctions. But the GDPR should try to find inter-dependent solutions to complex technological developments rather than specific solutions to different privacy challenges that would kill innovation. We believe that the GDPR should introduce a **proportionality test** and relevant sanctions according to context with regards to the general behaviour of a company rather than applying them 'blindly'. With the current proposal we fear there is a risk of huge sanctions for a relatively minor offence by a company that is generally behaving in a very responsible way and has all the right procedures in place.

DELEGATED ACTS IN 27 AREAS

The GDPR proposes to give the right to the Commission to come up with additional guidelines without having to review the Regulation and without democratic scrutiny. Cable Europe supports the necessity to make sure the Regulation is future proof and can deal with future innovations that we cannot yet foresee. However, as this creates **legal uncertainty** for business, the amount of delegated acts needs to be reduced.

RECITAL 39

Cable Europe supports the new recital 39 of the GDPR which allows processing of data for network management / network security purposes. We believe it is a very good recital, as we are worried about potential criminalization of traffic interception for day to day network management and maintenance purposes. For this reason, we would encourage that this **recital is moved into the body of the Regulation.**