

BRE-JBZ

From: Kaai, Geran
Sent: vrijdag 3 april 2015 15:58
To: Verweij, Ellen
Subject: FW: European press publishers concerns regarding data protection ahead of the JHA Council of 5-6th December 2013
Attachments: EPC ENPA EMMA Letter for the JHA Council December 2013 final.pdf; Joint publishers and journalists' statement - EU draft Regulation on Data Protection comments final.pdf

From: BRE-JUS
Sent: maandag 2 december 2013 18:38
To: Grave, Martijn-de; Ruiter, Mienke-de; Dam, Caroline-ten; Alink, Marnix; Kaai, Geran; Timmermans, Marieke; Sorel, Alexander; Luijsterburg, Sander; Bos, Noline; Zwart, Jan
Subject: FW: European press publishers concerns regarding data protection ahead of the JHA Council of 5-6th December 2013

Van: [REDACTED]
Verzonden: maandag 2 december 2013 18:37:20 (UTC+01:00) Brussels, Copenhagen, Madrid, Paris
Aan: Bos, Noline; BRE-JUS
Onderwerp: European press publishers concerns regarding data protection ahead of the JHA Council of 5-6th December 2013

Dear Ms Bos,
 Dear Mr Kaai,

Ahead of the 5-6 December Justice and Home Affairs Council we would like to bring to your attention key concerns of the European press publishers regarding the impact of the draft data protection regulation on our editorial and commercial activities.

Please find also attached an Annex, which has been co-signed by the European Journalists Federation that focuses exclusively on Article 80, which deals with journalistic purposes under the proposed Draft Regulation on Data Protection.

We trust that may convey our letter to your Minister in due time.

Please do not hesitate to come back to us in case you have any questions, comments or requests.

European press publishers concerns regarding data protection ahead of the JHA Council of 5-6th December 2013

Dear Minister,

The undersigned organisations, representing the European publishing industries – which as a whole constitute a major economic sector in the EU, employing more than 750,000 people in 64,000 companies^[1] - are writing

to you with regard to the upcoming meeting of the Justice Council on the 6th December during which the proposed General Data Protection Regulation will be on the agenda. Although we understand that the current meeting will focus on the concept of the one-stop-shop mechanism, we would like to put forward some observations and improvements of interest to the media sector, concerning both editorial and commercial aspects of data processing, which we believe will contribute towards a balanced and functional modern data protection framework.

Both the Council and the European Parliament have put in a significant amount of work towards improving the original proposal. Unfortunately, we believe the current proposals do not yet meet the high standard expected, but continue to rely on some unworkable solutions that would threaten the digital ecosystem and fail to provide meaningful rights or protections to European citizens. Many provisions would increase red tape and jeopardize the competitiveness of European companies - and for media organisations even their very existence - without improving the protection of privacy for European citizens.

The European Publishers Council (EPC), the European Newspaper Publishers' Association (ENPA) and the European Magazine Media Association (EMMA) would like to highlight in particular the following key concerns of newspaper and magazine publishers:

- **A robust, directly applicable exemption for processing** of personal data for journalistic purposes is crucial to preserve **editorial press freedom and safeguard a free and independent, quality press.**
- **The possibility for the press to continue to be able to reach out to potential new as well as current subscribers via direct marketing** is essential to safeguard press distribution for the consumer as well as the business to business press, in order to preserve readership, future press subscriptions and media pluralism.
- **The future of the digital press must not be jeopardized:** publishers today are innovating and investing in business models to take full advantage of the opportunities provided by new technology to serve their readers on all platforms. The sustainability of newspaper and magazine content on all platforms depends on advertising and digital subscriptions, as well as e-commerce. It is therefore essential that the Regulation does not restrict these possibilities and make it difficult for publishers to be able to interact easily with their readers, and adapt to their needs.

The need to preserve press freedom and journalism

The essence of media organisations is to underpin democracy through their journalistic work. The European Union prides itself on having high standards of protection for press and media freedom, with the Council itself only last week adopting conclusions^[2] stressing the importance of this. Unfortunately, this high level of protection would no longer be guaranteed if the current wording in the Council text of the relevant Article (80) of the draft Regulation was to be retained. This would also be the case as regards the amendment adopted by the European Parliament's LIBE Committee in its orientation vote. For further details regarding our specific concerns on this point, would like to refer you to our joint statement together with the European Federation of Journalists (EFJ) *attached to this letter*.

The need to preserve current and future business models of press publishers

The impact on European media companies goes far beyond the cost of compliance with the new rules. We believe that not enough consideration has been given to the full business impact on media companies, especially to their ability to generate new revenues, decrease operational costs, and the need to re-engineer business processes. Media companies and their distribution will come even more under pressure with clauses that restrict their ability to acquire new readers and subscribers through direct marketing channels.

Furthermore, we feel that more needs to be done in order to develop workable approaches in the Regulation that will:

- Implement a **risk-based approach** including recognizing **context** and risk in the definition of personal data, data processing, and appropriate measures and sanctions;
- Limit the requirement for explicit consent to genuinely at-risk situations;
- Implement a meaningful “one-stop-shop” mechanism and simplify the provisions on main establishment to facilitate effective application of new data protection rules for both business and consumers;
- Remove the proposed “one-size-fits-all” approach to sanctions which is disproportionate as it applies the same sanctions to deliberate violations of the rules and to unintended negligence that results in no harm to the data subject.

The Council's approach thus far is moving in the right direction, particularly insofar as deliberations aim to “take account of both the interests of citizens and businesses, especially SMEs^[3]”. We would like to congratulate and support the Council on its work and the improvements it has brought to the text. We trust that you will carefully consider these crucial requirements which we have highlighted and we remain at your disposal should you wish to discuss these further.

Yours sincerely,

[Redacted Signature]

[Redacted Signature]

[Redacted Signature]

[Redacted Name]

EPC Chairman

[Redacted Name]

ENPA President

[Redacted Name]

EMMA President

Contacts:

[Redacted Name]

EPC Executive Director

[Redacted Name]

ENPA Executive Director

[Redacted Name]

EMMA Executive Director

[Redacted Name] European Policy Adviser

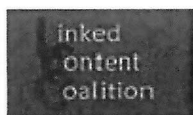


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Visit also: www.linkedcontentcoalition.org

for an innovative cross-media project, working for consistency in standards for better rights management

^[1] The EU newspaper and news media publishing sector generated total revenues of €36 billion in 2011.

^[2] http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/educ/139725.pdf

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European press publishers concerns regarding data protection ahead of the JHA Council of 6th December 2013

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Yours sincerely,



EPC Chairman

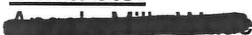


ENPA President



EMMA President

Contacts:



EPC Executive Director



ENPA Executive Director



EMMA Executive Director

² http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/educ/139725.pdf

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EFJ, EMMA, ENPA and EPC statement on the need to preserve press freedom and journalism in the EU draft General Data Protection Regulation

**Call by journalists and publishers across Europe to
safeguard press freedom and journalism under Article 80**

3 December 2013

EFJ, the European Federation of Journalists, ENPA, the European Newspaper Publishers' Association, EMMA, the European Magazine Media Association, and EPC, the European Publishers' Council, are extremely concerned that the approach taken by the European Parliament's LIBE Committee and taken in the latest Council text on Article 80 of the draft General Data Protection Regulation seriously undermines press freedom and journalism.

A directly binding exemption in the draft Regulation for journalistic data processing is essential to ensure that journalists and publishers can continue fulfilling their democratic mission as regards investigating, reporting, writing and publishing editorial content without any obstacle, and to guarantee that sources are adequately protected. It has to be ensured that with the change to a Regulation, the current level of protection will not be lowered in each Member State.

The approach on Article 80 taken by the **European Parliament's Civil Liberties (LIBE) Committee in its orientation vote on 21 October 2013 on the draft Data Protection Regulation is not acceptable**. The existing exemption as well as the Commission proposal have been significantly weakened in the "compromise" amendment adopted. All references to press and journalistic activities have been removed and the application of the exemption for journalistic data processing has been made optional at national level by using the wording "whenever this is necessary" and "to reconcile" data protection with freedom of expression.

A clear reference to "journalistic purposes" needs to be upheld as it is the only way to maintain proper protection of journalism (for example, storing of personal data in editorial archives, protection of personal data of sources, digital transmission of personal data by publishing articles and maintaining online archives). The LIBE Committee compromise **surprisingly ignores amendments which support a strong, clear and directly binding exemption for journalistic data processing previously adopted in Parliamentary opinion** providing committees with broad support of MEPs from several parties. The LIBE amendment weakens rather than maintaining the current exemptions from data protection restrictions and from control by data protection authorities, and therefore poses a severe threat to press and media freedom in many parts of Europe.

Also in the Council, the **latest text discussed on Article 80 in the Data Protection Working Group (DAPIX) under the Irish Presidency poses a severe risk to press freedom and journalism**. The text only indicates that "Member States shall reconcile the right to the protection of personal data with the right to freedom of expression, including the processing of personal data for journalistic purposes". All references to the chapters to which

the exemption should apply have been removed. The Council's approach considerably weakens the original Commission's proposal and does not even consider or improve the existing legislation based on Article 9 of Directive 1995/46/EC.







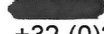



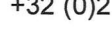



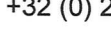

The suggested wording in the **latest Council text removes any obligation for Member States to specifically foresee an exemption for data processing for journalistic purposes**, and therefore does not provide a guarantee that journalists would still be allowed to process personal data for fulfilling their democratic mission. It also gives a significant margin of interpretation on whether the exemption should even exist at national level and to what extent it should apply.

A directly binding exemption for journalistic data procession is urgently needed as all restrictions set out in the new regulation, including the control of editorial content by Data Protection Authorities, will be directly applicable. The compromise adopted in the LIBE Committee and the latest Council text instead leave the question of protection to national implementation and thereby open up the way for difficult discussions in Member States and opportunities for governments to curtail press and media freedom. In several countries it is even not clear whether the current level of protection for media freedom will be upheld.

Following this analysis, journalists and publishers in Europe, represented by ENPA, EMMA, EPC and EFJ would like to reiterate their **call towards governments and MEPs to support an appropriate approach for the respect of press freedom** and the need for journalists to process personal data without restrictions in order to achieve their democratic mission.

The **amendments to Article 80 adopted in the JURI and ITRE Committee opinions** and tabled (but sadly not adopted) by several MEPs from different political groups in LIBE Committee **provide, in our view, an appropriate response** for the exercise of professional journalism and the protection of press freedom.

Contacts:

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