

**BRE-JBZ**

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**From:** Kaai, Geran  
**Sent:** vrijdag 3 april 2015 15:55  
**To:** Verweij, Ellen  
**Subject:** FW: New Coalition of European Organisations on Data Protection Launched Today!  
**Attachments:** European Coalition Position on Key Elements of GDPR.pdf

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**From:** [redacted] [mailto:[redacted]]  
**Sent:** maandag 12 januari 2015 16:39  
**To:** Leenders, Sophie  
**Cc:** Kaai, Geran  
**Subject:** New Coalition of European Organisations on Data Protection Launched Today!  
**Importance:** High

Dear Ms. Leenders,

Happy New Year ! I hope you had a great holiday season.

You may remember that we met together with Mr. [redacted], [redacted] Government and Industry Relations at Ericsson, on 18 December to discuss the state of play of the General Data Protection Regulation.

On that occasion, we mentioned the **forthcoming establishment of a Coalition of European organisations** on the subject of data protection and international data transfers. The Coalition would give voice to concerns that European companies and organisations have with respect to the GDPR, since some of its provisions may severely hinder EU industrial operations on the global market with negative effects for competitiveness.

I am glad to inform you that the Coalition is now up and running! At present, it is made up of **fifteen European companies**, from SMEs to global multinationals and non-profit organisations operating in a variety of sectors, on a national, regional and global scale. With an **aggregated turnover of over € 100 billion and some 520,000 employees worldwide**, the Coalition members' considerable presence allows them to bring growth, progress and jobs to the EU's economy.

Attached you will find the Coalition's position paper with its main messages on the GDPR. I hope you will find it useful in view of the future work within DAPIX.

The Coalition members would be also pleased to meet you to discuss about their concerns with you in person. They would be available during the **weeks of 19-23 January, 26-30 January and 2-5 February** at your best convenience.

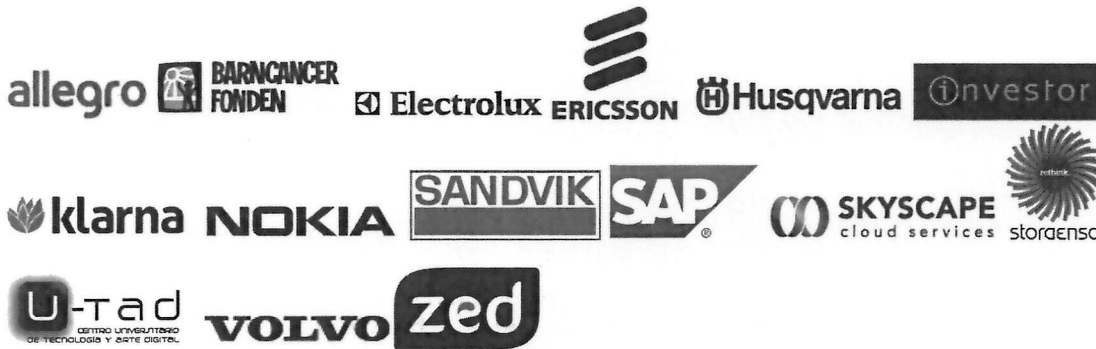
Please do not hesitate to contact me should you have any questions. I look forward to your feedback,

Kind regards,

[redacted]

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January 2015

## KEEP EUROPE GROWING

We are European companies that operate across different sectors of the economy with significant operations within and beyond the borders of the European Union (EU). We welcome the European Commission's proposal for a General Data Protection Regulation (GDPR), which contains important and helpful suggestions for reforming Europe's current data protection framework. While there are differences in our everyday businesses, we are united by our shared concerns regarding the GDPR. Several issues of critical importance must be addressed to keep Europe and its industries growing. We wish to find common grounds with EU policy makers to keep Europe growing and with that aim propose the following:

### **Controller & Processor**

We strongly believe that the modernization of Europe's data protection regime requires a review of the roles and responsibilities of data controllers and processors. However, we caution against the implementation of **joint liability** that blurs the responsibilities in the data processing value chain, which would jeopardize the protection of citizens' rights and increase costs for industry.

### **International Data Transfers**

We stand by the view that while aiming to encourage growth in the EU's internal market the proposed Regulation must do more: it must also **foster global trade in services and promote cross border data flows** with third countries. Not all data transfers are equal. Therefore, we support the introduction by the Council of legitimate interest as a legal basis to transfer data. We encourage the EU Institutions to preserve this legal provision during trilogue discussions.

### **Sanctions**

We recognise that reasonable **administrative fines are necessary part of an effective data protection regime** so that deceptive enterprises are not able to exploit non-compliance. However, we believe that an **enforcement strategy promoting accountability and increased detection** using well-balanced sanction guidelines is preferable to simple deterrence.

### **Additional crucial issues**

An effective **One-Stop-Shop** approach must be maintained, including a **lead Data Protection Authority (DPA)** operating under two principles: **a single privacy regulator even if operations span several Member States**, and **'one decision - one outcome'**.

**Overly prescriptive requirements** and **high administrative burdens** placed on controllers and processors can and certainly should be avoided in circumstances when they don't contribute to safeguarding a high level of data protection.

**Controller & Processor:** The current legislative framework laid out in the 1995 Directive provides for a clear separation between the roles of data controllers and data processors. Today their respective responsibilities are also well defined by clear contractual terms creating separate liabilities for each body when contract violations occur. We firmly believe that the freedom to negotiate between contractual parties is a fundamental principle which should be retained in the proposed Regulation.

While we agree there is need to review the roles and responsibilities of data controllers and data processors, we caution against the introduction of a "one size fits all" joint liability solution that blurs the responsibilities in the data processing value chain. Such a solution risks reducing the protection of EU citizen's rights while leading to unnecessary administrative burdens on businesses.

The roles and responsibilities set out in the 1995 Directive have overwhelmingly stood the test of time. Therefore we believe the existing principles regulating the roles, responsibilities and liabilities in the data processing value chain should be maintained in the proposed Regulation. We encourage the EU Institutions to pursue such provisions during trilogue negotiations.

**International Data Transfers:** While we strongly support the intent of the proposed Regulation to foster growth within the EU's Digital Single Market, we firmly believe that the proposed Regulation must account for the global nature of today's data value chains and the increasing role of global digital services markets. The promotion of cross border data flows will be critical for the growth of data controllers and data processors based in the EU.

We acknowledge the need to protect EU citizens' data when transferred outside the EU. This is particularly relevant in light of recent global events. However, open data flows and accountability do not constitute conflicting interests if openness is underwritten by accountability, suitable verification and non-circumvention.

In light of the above, we applaud the Council's expansion of legitimate interest to allow data controllers and data processors to transfer temporary, non-bulk or non-frequent data in its partial general approach of Chapter IV. The introduction of legitimate interest will have immense economic relevance for both ICT and non-ICT companies based in the EU and will contribute to increased job creation and stimulate EU-based investment. We wish to encourage the EU Institutions to maintain this concept during the upcoming trilogue discussions.

**Sanctions:** The introduction of an effective sanctions mechanism is an important step in the revision of Europe's data protection regime. It is in the private interest of both citizens and accountable companies to have a Regulation which works to deter and penalise those enterprises who use non-compliance as a competitive advantage over compliant and accountable companies.

We believe that the best way to safeguard the right to privacy is to implement an enforcement strategy that is focused on increased detection of data breaches while simultaneously fostering trust between industry and regulators in an effort to promote accountability. Such a participatory enforcement approach has the potential to go beyond 'best-practice' promotion and create an environment where anonymous 'bad-practices' can be safely reported by industry and mediated by regulators. We stand by the belief that such an environment should include the development of safe procedures for whistle-blowing reporting.

We support the development and introduction of codified and reasonable sanction guidelines. Sanctions should be proportionate to the harm caused to individuals. Flexibility and discretion in enforcement should be made available to authorities instead of mandatory fines. An emphasis should be placed on using punitive sanctions as a matter of last resort. Fines should be limited if the concerned organisation has taken serious steps to act responsibly in its data processing activities. When fines are calculated, they should take into account diversified and specialised enterprises noting the difference between business models, especially when it comes to high revenue/low margin businesses and low revenue/high margin businesses. Furthermore, we encourage monetary capping of fines to limit the absolute size of penalties.

#### **ABOUT THE COALITION**

*Our Coalition is made up of fifteen European companies, from SME to Global Multinationals and non-profit organisations operating in a variety of sectors, on national, regional and global scale. With an aggregated turnover of over € 100 billion and some 520,000 employees worldwide, our footprint allows us to bring growth, progress and jobs to the EU's economy. Our membership comprises the following ...*

- ... an online auction house...*
- ... a non-profit organisation dedicated to collecting money to prevent and combat cancer diseases in children...*
- ... an home appliance manufacturer...*
- ... two providers of communications technology and services...*
- ... a designer, engineer, manufacturer and distributor of outdoor power products...*
- ... an investment company...*
- ... an e-commerce company providing payment services for online storefronts...*
- ... an engineering group in tooling, materials technology, mining and construction ...*
- ... an enterprise software corporation...*
- ... a provider of assured, secure cloud services to the UK public sector...*
- ... a pulp and paper manufacturer...*
- ... a university specialising in programmes on the digital economy...*
- ... a producer and distributor of trucks, buses and construction equipment...*
- ... a multiplatform digital entertainment company.*

*Our businesses are profoundly different but deeply united by the need for clear roles and responsibilities, open cross-border data flows, balanced codified sanction guide lines, effective one stop shop and absence of overly prescriptive rules as fundamental conditions for long-term growth, competitiveness and prosperity, for both us and the economies in which we operate.*

For further information or comments, please do not hesitate to contact us:

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