

European press publishers concerns regarding data protection ahead of the JHA Council of 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 companies¹ - 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.

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

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 conclusions² 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

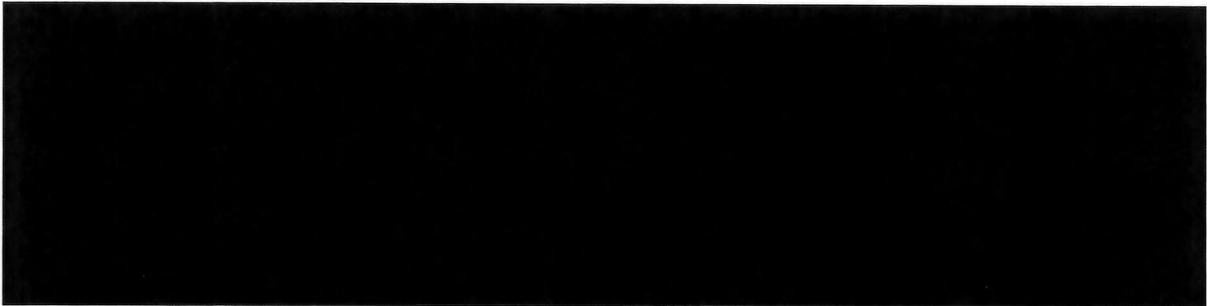
The impact on European media companies goes far beyond the cost of compliance with the new rules. We believe that not enough consideration has been given to the full business impact on media companies, especially to their ability to generate new revenues, decrease operational costs, and the need to re-engineer 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 SMEs³". 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,



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

³ http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/137407.pdf