

Brussels, 28 February 2019

We urge the Presidency to call upon the European Commission to conduct a new impact assessment of the ePrivacy regulation, and to remain cautious in its examination of the draft ePrivacy regulation until a new impact assessment has been produced. The remaining issues are not merely technical in nature: they will also have a direct and significant impact on the European digital economy and thousands of European companies¹.

We believe that a new impact assessment is necessary to take into consideration the following new elements:

- Technologies which may not have existed two years ago or may have been in their infant stages are now broadly used or are soon expected to significantly shape our society and the daily lives of European citizens. Discussions on the impact of the ePrivacy regulation on Artificial intelligence and Internet of Things have increased in recent months, indicating that many share our concern that the current text is not sufficiently technology neutral. We believe that a new impact assessment is necessary to better understand the impact the future ePrivacy regulation would have on new technologies, and on the ability of the European Union to innovate. In addition, we urge the Presidency to consider the possible harmful effects on sectors that play a crucial role for democracy².
- The definitions and provisions related to direct marketing in the current ePrivacy text have not been sufficiently assessed. We believe there has not been sufficient consideration of the potential impact of extending the scope of ePrivacy to types of advertising which are not currently considered to be 'direct marketing', including display advertising. There has also been insufficient consideration of the potential impact of some provisions on the use of predictive dialler technology.
- The General Data Protection Regulation came into full application nine months ago. Regulators, the industry and individuals are still trying to interpret and implement the different provisions of this regulation. We are still expecting new guidelines to be adopted, both at European and national level, and complaints have been put forward which could further shape how the GDPR will be applied to data processing related to user devices. Although we understand it is necessary for the EU to adapt the existing rules pertaining to the processing of electronic communications data and meta-data in light of the GDPR, we believe that the recent entry into force of the GDPR clearly shows that other issues, such as cookie-specific data processing, are already comprehensively covered by the GDPR, which has already led to significant changes across the digital ecosystem. Several Member States have already

¹ WIK study: [economic impact of the ePrivacy Regulation on online advertising and ad-based digital business model](#) published in Germany in November 2017 which states "the European Commission's impact assessment is inadequate".

The Impact Assessment Institute [Study on the European Commission Impact Assessment on ePrivacy](#) produced in July 2017 which claims that "compilation of new robust evidence is necessary to inform consideration and development of measures that will meet the objectives in an effective manner."

² Studies conducted in France (Deloitte impact assessment on the ePrivacy Regulation commissioned by the French Association of National dailies, published in July 2017) and in Germany (Study by the German Magazine Publishers' Association (VDZ), published in January 2018) point to the fact that on average more than 30 % of digital advertising revenue will be lost as a result of the Regulation, consequently greatly impacting the financial health of online news media

voiced concerns that these factors should be taken into consideration in a new impact assessment in order to properly understand the impact the new ePrivacy regulation on European citizens and the industry, thereby helping legislators to agree on a balanced framework which will align with the GDPR and avoid any overlap.

- We believe that the proposed draft ePrivacy regulation should better take into consideration the huge impact it is likely to have on competition, potentially driving advertising spend to a limited number of large, global companies - to the detriment of the (to a large degree) European advertising third-party ecosystem and publishers that will become dependent on such platforms.
- The recent adoption of the European Electronic Communication Code has determined a number of definitions used in the ePrivacy regulation, which will have a significant impact on the final scope of many provisions of the ePrivacy regulation which was not necessarily considered during the European Commission's initial impact assessment. A new impact assessment would be able to take into consideration this newly defined scope and the potential changes it would create in the current ePrivacy text.

In sum, this new impact assessment should focus on assessing the alignment between the ePrivacy regulation and the GDPR, looking at the impact on internet users and the industry, in particular articles 8, 10 and 16 of the ePrivacy regulation. We call on the Presidency to request a new impact assessment of the ePrivacy regulation proposal in order to fully grasp the impact the text will have on all sectors of the economy, and we stand ready to support the Council in its effort to find an appropriate and balanced legislative framework for the future.



Signatories include:

- Association of European Radios (AER)
- Advertising Information Group (AIG)
- German Direct Marketing Association (DDV)
- European Association of Communications Agencies (EACA)
- Association of Television and Radio Sales Houses (egta)
- European Magazine Media Association (EMMA)
- European Newspaper Publishers Association (ENPA)
- European Publishers Council (EPC)
- Federation of European Direct and Interactive Marketing (FEDMA)
- World Federation of Advertisers (WFA)
- The Austrian Federal Economic Chamber (WKO)