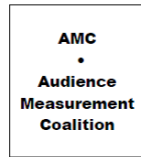




NEWS MEDIA EUROPE



GESTE

To HE Ambassador Per Fabricius Andersen

Deputy Permanent Representative of Denmark to the EU

Your Excellency,

We write to you on behalf of EMMA (European Magazine Media Association), ENPA (European Newspaper Publishers' Association), EPC (European Publishers' Council), NME (News Media Europe), AIG (Advertising Information Group), AMC (Audience Measurement Coalition), FEDMA (Federation of European Direct and Interactive Marketing), AER (Association of European Radios), EGTA (European Group of Television Advertising), and GESTE (Les éditeurs de contenus et services en ligne) which together represent a vast array of interests and business models from the press publishing industry, commercial television, radio stations and the wider advertising industry.

We have welcomed the significant attempts of the Council to improve the text and to address some of the questions raised during the process by our sectors. However, the proposal in its current form still contains too many points of concern to our sectors.

For these reasons, we believe that it would be premature to finalise an agreement on the text, and to agree on a negotiating mandate. The option to withdraw the text pending the forthcoming review of the impact of GDPR should remain a serious option and we would urge you to support withdrawal of the text on this basis.

A new approach to ePrivacy is necessary for the following reasons:

- The Commission's proposal as currently discussed raises serious concerns regarding its potential impact on the business models of a multitude of sectors. The European Parliament's Report, far from addressing these issues, would have disastrous effects on the competition and thus on the sustainability of the media and marketing sector. We believe that the proposed draft ePrivacy Regulation in its current form, would consolidate market dominance for the same handful of players it seeks to curtail. Our member companies are under extreme competitive pressure from platforms and this Regulation will only exacerbate and accelerate this effect to the detriment of users (it seeks to protect). The ePrivacy Regulation adds new competition issues and will (indirectly) only benefit large platforms.
- After two and a half years of negotiations, essential questions in the proposed regulation remain unanswered including the inflexible legal basis, the scope of application, the ambiguous relationship with the General Data Protection Regulation (GDPR), its profound impact on competition in the digital market and the reflection of ECJ decisions with regard to

the treatment of audience measurement. While the Council has tried and continues trying to address various industries' concerns and to find solutions, we are especially concerned that the German delegation would like to reintroduce Article 10, demonstrating that an agreement on the text currently on the table is far from being reached. We strongly oppose such intentions and respectfully ask the other members of the Council Working Party on Telecommunications and Information Society to reject such a possibility.

- The relationship between the GDPR and the ePrivacy remains unclear, especially considering that 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. In addition, regulators and courts are already expected to clarify many provisions which will further shape the European data protection and privacy landscape (i.e. ECJ decisions with regard to the treatment of audience measurement). It was not possible to consider this evolution when drafting the ePrivacy Regulation, but cannot be further ignored in the development of a coherent European legal framework.

In the context of the appointment of a new European Commission, which has already expressed strong ambitions for the digital economy, we feel strongly that a fresh start in the debate with a new legal draft and structure is necessary to deliver a technologically adequate, neutral and practically feasible regulation, adjusted to today's digital economy. The imminent review of the application of the GDPR in the EU, will provide the opportunity to ensure consistency and coherence for industry and citizens.

We therefore suggest that Member States request the European Commission to reassess the appropriateness and sustainability of the ePrivacy proposal in the light of the ongoing evolution of the GDPR, to reconsider its impact on competition, and ideally to repeal the proposal.

Yours sincerely,

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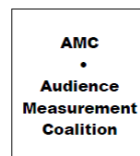
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