

Les éditeurs
de contenus
et services
en ligne

GESTE



To the Attention of Ms. Margarete Schramböck, Austrian Federal Minister for Digital and Economic Affairs

Brussels, 04 March 2020

Dear Minister,

We write to you on behalf of the associations EMMA (European Magazine Media Association), ENPA (European Newspaper Publishers' Association), EPC (European Publishers' Council), AER (Association of European Radios), ACT (Association of Commercial Televisions), AIG (Advertising Information Group), AMC (Audience Measurement Coalition), FEDMA (Federation of European Direct and Interactive Marketing), EGTA (Association of television and radio sales houses), GESTE (Les éditeurs de contenus et services en ligne), EACA (European Association of Communications Agencies) and SPIR (The Association for Internet Progress) and IAB Europe (Interactive Advertising Bureau Europe), which together represent a large array of interests of the European digital media market, concerning the Croatian Presidency's proposal on the ePrivacy Regulation amending Articles 6 and 8 and corresponding Recitals.

The undersigned associations welcome the introduction of the possibility to access the terminal equipment on the basis of a legitimate interest of the service provider in Article 8, thereby recognising the legitimate interests of advertising-financed digital media. This clearly demonstrates the intention of the Croatian Presidency to ensure proper conditions for the media sector to thrive in the digital environment.

Nonetheless, the provisions in Article 8 and corresponding recitals are unfortunately undermined by substantial limitations which go far beyond the standards laid out in the GDPR and deprive the text from the intended benefits of the concept of legitimate interest, as well as its accompanying safeguards already enshrined in the GDPR. In addition, the new provision does not contain all the necessary safeguards to ensure a competition neutral regulation.

Therefore, the undersigned associations conclude that while the introduction of legitimate interest as a legal basis is well-intended, its restrictions render it unusable for the European media sector. Unlike many large platforms, the wider ecosystem, including large publishers, rely on third parties as they cannot provide all services in-house. Limiting legally the use of such third parties, puts news and media

publishers into a competitive disadvantage.

After an analysis of the Croatian Presidency's latest proposal, we found that the following provisions are the ones which would impede the good intention behind the changes brought in the Croatian Presidency's proposal from providing financial sustainability of a free and independent media ecosystem in Europe:

- The new Article 8.1(g) authorizes processing to first parties and their processors while excluding joint controllership. The involvement of digital ad-tech would not be possible due to the test established by the CJEU in "Fashion ID GmbH & Co.KG vs Verbraucherzentrale NRW eV" case that provides that the involvement of digital ad-tech parties will trigger joint controllership. The proposal which is intended to align to the GDPR should take this into account and reflect the GDPR standard duly.
- Article 8.1a. provides that the data shared with third parties must be anonymised. Anonymising data cannot be technically fulfilled with regard to the use of identifiers and markers. Instead, it should be sufficient to pseudonymize the data to provide a workable solution while also ensuring a high level of protection for processing operations.
- Recital 21b rightly recognizes services which safeguard the freedom of expression and information, including for journalistic purpose. Press publications, audiovisual media services but also radio should be able to rely on a legitimate interest for the processing of data. We are concerned however with the requirement in the same recital for the end-user to "accept such use". Instead, it should read "has been given the right to object", in order to ensure consistency with the balance of interest test and the language used in Recital 21c.

The possibility to condition access to the services remains of utmost importance to the media sector. We are concerned with the deletion of any reference to conditionality in recital 20. Conditionality should be acknowledged as a full right for the media sector.

We welcome the intention of the Presidency to provide a more balanced Regulation in line with the GDPR, while also acknowledging the digital realities of the European media sector. Nonetheless, a more thorough reflection and further discussions are needed to ensure coherence with the GDPR as well as competition neutral solutions. We look forward to constructive discussions with the Council to address the remaining deficiencies of the proposal.

Yours sincerely,

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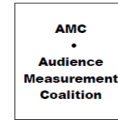


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