

BEUC-X-2015-114/MGO/DMA/cs

Brussels, 12 November 2015

Subject: General Data Protection Regulation – Red lines for consumers

Dear Ambassador,

I am writing on behalf of BEUC, the European Consumer Organisation, which represents 41 independent national consumer associations from 31 European countries. As we enter the final lap in the endurance race that have been the negotiations on the General Data Protection Regulation, we address you to emphasise the importance of reaching a compromise which effectively ensures a high level of protection for consumers' privacy and helps boost their trust in digital services.

At present, consumers are exposed, faced with a 'take it or leave it' situation where there is no choice but to trade personal data in exchange for products and services. There is really no possibility to question if the trade-off is worth it or to properly assess its implications. Most consumers are even unaware of the trade-off and, in any case, usually there is no real alternative to it.

Without a doubt the need to better protect consumers' privacy and put them back in control of their personal data is urgent. In order to achieve this fundamental objective, the **Regulation must comprise, at the very least, the following elements:**

- Requirements to **ensure that users are clearly informed** about who is processing their personal data and for what purposes, as well as about their rights and how to exercise them (Chapter III – Sections 1 and 2);
- **Strong purpose limitation** and **data minimisation** requirements (Article 5) that allow consumers to rest assured that only the minimum amount necessary of personal data is being processed and that the data will only be used for the specific purposes that have been communicated, further processing for incompatible purposes not being allowed (Article 6.4);
- **Carefully crafted legal grounds for the processing of personal data** (Article 6) which include robust safeguards to guarantee that user consent is meaningful and purpose-limited (Article 7), and to prevent the misuse of 'legitimate interests' as a basis for processing (Article 6.1f);
- The **limitation of exceptions related to data processing for scientific/statistical purposes** to research activities conducted for the public interest (Article 6.2 and Article 83);

- A **comprehensive set of user rights** (Chapter III) which ensure that consumers can access their personal data and ask for it to be modified or erased (Articles 15, 16, 17), that they can easily take their data with them when they switch services (Article 18), and that they can object to the processing of their data for profiling purposes (including both the creation of the profiles and the automated decisions based on them – Articles 19 and 20);
- **Limited flexibility** and appropriate **safeguards** when it comes to the possibility for Member States to introduce **restrictions to user rights**, avoiding vague derogations (e.g. “other important objectives of general public interest” - Article 21);
- Requirements for companies to implement **privacy by design and by default** as a principle in the development of their products and services (Article 23);
- Safeguards to ensure that the risk-based approach and the accountability principle do not result in lack of compliance and oversight, this especially applies to **breach notification requirements** (Articles 31 and 32) and to the designation of a **Data Protection Officer** (Article 35), which should be a mandatory requirement except for those entities processing personal data as an accessory activity;
- A framework for **international data transfers** (Chapter V) which ensures that when personal data is sent to third countries the protection guaranteed under EU law travels with it. In line with the recent Court of Justice ruling on Safe Harbor, it should be stated that “**adequacy**” means an “**essentially equivalent**” level of protection (Article 41);
- **Effective enforcement powers for Data Protection Authorities** (including the possibility to apply significant fines with a strong deterring effect - Article 79), as well as **mechanisms for consumers to seek redress** when their rights have been infringed and to obtain compensation for any damages suffered (Articles 73, 74, 75, 76 and 77). This shall include the possibility for consumer organisations to bring collective actions for damages on behalf of a group of consumers and also the possibility for such organisations to lodge complaints and bring forward legal actions independently of a consumer’s mandate (Article 76).

These above are our red lines. It is high time to address the endemic imbalance that lies in the so-called “privacy trade off” that currently rules the online world. This Regulation must provide the building block for a much-needed new paradigm for data protection, one built around transparency and user control, with privacy by design and by default as driving principles, and effective enforcement as a guiding light.

European consumers and citizens need a robust EU data protection framework for the decades and digital innovations to come, and we need it now. We call on the Luxembourg Presidency to do its utmost to meet this urgent and fundamental need.

Yours sincerely,

Monique Goyens  
Director General