



## INDUSTRY JOINT STATEMENT ON THE REVIEW OF THE EU LEGAL FRAMEWORK FOR DATA PROTECTION

### **Achieving a joint goal – to establish an enabling user-centric EU privacy framework that supports innovation**

Our organisations (CableEurope, ECTA, ETNO, EuroISPA and GSMA Europe) represent the whole European electronic communications industry: fixed and mobile telecoms operators, Internet Services Providers and cable companies, and national and pan-European players. Our industries provide access, hosting and content services to European consumers, helping to create a platform for strong economic growth via ecommerce and remote working, as well as new communication, health and government services.

As **major industry stakeholders**, we wish to bring to your attention a high level summary of our main considerations on the future of data protection in the European Union. More detailed considerations are set out in our individual responses to the recent consultation.

We are of the opinion that the Data Protection Directive (Directive 95/46/EC) is a very important piece of legislation and its basic principles remain valid. However, their interpretation, application and enforcement have not resulted in the harmonised framework and level playing field necessary to establishing certainty for data controllers and individuals.

The **key outcome of the review** should be to establish an enabling user-centric privacy framework that supports innovation in information use, technology and business models and which empowers users to become aware of and to manage their privacy in simple, clear and contextually appropriate ways.

**Data Protection rules should be flexible, technologically neutral and horizontally apply to all economic sectors and actors processing personal data** which impacts on the privacy of EU citizens.

### **LEVEL PLAYING FIELD**

The current review of the Directive should aim to **create a true “level playing field”** for all businesses processing personal data. All EU based and non-EU based online service providers that run websites and or provide services and applications that target European citizens, should benefit from the same level playing field (“same services, same rules”). EU citizens’ personal data shall be granted the same level of protection, regardless of the geographical location or the economic sector of the service provider. Otherwise, the

inconsistent application of EU data protection rules will continue to have a clear negative impact on the competitiveness of EU companies, and on the protection of an individuals privacy and their data and on their trust and confidence.

## **HARMONISATION**

The review should focus on **ensuring more harmonisation** across Member States' national laws. The current lack of harmonisation has led to important operational challenges and an inability to provide individuals with a consistent privacy experience due to inconsistencies in interpretation and application of the rules, and a consequent lack of clarity and legal certainty within and outside of the EU. The protection of EU citizens' privacy will only be ensured if the internal market in the area of privacy and data protection is fully achieved through greater levels of harmonisation and **clearer rules on applicable law**; only then may EU citizens be sure their personal data will be protected and handled correctly in all 27 EU Member States.

## **INTERNATIONAL DATA TRANSFERS**

Focus should be put on **reducing complexity and costs associated with the current rules for international data transfers** outside the European Union. These rules need to be adapted and modernised. Considering the new economic reality, personal information flowing across borders has become a norm. Additionally, in complex situations with multiple data controllers/processors (e.g. cloud computing), the current rigid provisions of the Directive may severely affect the competitiveness of EU companies worldwide. The emergence of new services in this cloud context brings a need to clarify and simplify the law that applies to companies that operate across multiple EU Member States and beyond, which gives data controllers the means to establish group-wide solutions under an appropriate accountability framework.

## **REDUCTION OF ADMINISTRATIVE BURDEN**

One way to achieve harmonisation is to **reduce administrative burdens imposed on data controllers which do not enhance the privacy of individuals or the security of their data**. Drastically limiting unnecessary formal requirements will free time and resources of both data controllers and national DPAs. Bureaucratic obstacles to the free movement of data are inhibiting the development of 'cloud' services which are increasingly underpinning the 'digital environment' and driving innovation and growth. The proposed framework on data protection and privacy should draw on industry technological innovation and self regulatory codes to **provide a dynamic and timely response to changes** in the privacy landscape and any need for new protections. The proposed framework should further consider adopting an 'accountability' approach that is based less on prescriptive legislation and regulation and more on the adoption, commitment to and practice of core internationally recognized privacy principles and information governance standards.

## **EDUCATION AND AWARENESS**

Individuals are increasingly becoming the data controllers of their own data as they seek to publish and share their information online. Education is a key component of ensuring individuals are better enabled to be aware of not only the privacy implications relating to their use of a product or service, but also their responsibilities in exercising preference, choice and control over the use of their data. For data protection rules to be effective, **data subjects must be aware not only of their rights but also their obligations and must assume their share of responsibility** when navigating online. Such education tasks will greatly benefit from a simplification of the current privacy rules.

## **BALANCE BETWEEN DATA PROTECTION AND INNOVATION**

Overly cautious and strict rules on matters such as consent and notice are not suitable for the digital environment and could damage innovation in future technology and business models without enhancing an individual's privacy. Privacy is not static but dynamic and contextual. Data Protection rules should be flexible enough to strengthen innovation and allow the development of new services, related to greater personalization and increasing mobility of personal data. EU businesses are competing in the global arena, so the ongoing review should not minimize the **importance of the economic dimension of Data Protection** and should not impede EU businesses ability to compete in the global market by depriving them from offering or taking advantage of innovative services and products.

## **CONCLUSION**

The Directive 95/46/EC has played a crucial role in protecting the fundamental right to data protection and offering mechanisms for businesses to maintain consumer confidence. Nevertheless, the lack of harmonisation and the excessive administrative and bureaucracy burdens have raised barriers for the completion of the Internal Market in the area of privacy and data protection. The current review of the Directive 95/46 is also an opportunity to modernise and adapt its provisions to technological and societal developments in a globalised connected world. If the new framework is to withstand the test of time and be relevant to future generations it must be based on technological neutrality and consider that privacy is a contextual and dynamic right that the innovative and flexible approaches of businesses can help to protect. We are ready to work with the European Institutions and other stakeholders to address these issues, in order to deliver the digital growth and societal benefits that Europe needs to realise an efficient Digital Single Market.

March 2011

The contributors to this joint statement are:



**Cable Europe** ([www.cable-europe.eu](http://www.cable-europe.eu)), the European Cable Communications Association, is based in Brussels and groups all the leading European cable TV operators and their national trade associations throughout Europe. The aim of Cable Europe is to promote and defend the industry's policies and business interests at European and international level. The European cable TV industry provides digital TV, broadband Internet and telephony services to more than 73 million customers. Contact: Caroline Van Weede, Managing Director (+3225211763/ [caroline.vanweede@cable-europe.eu](mailto:caroline.vanweede@cable-europe.eu))



**ECTA** (the European Competitive Telecommunications Association - [www.ectaportal.com](http://www.ectaportal.com)) is the pan-European pro-competitive trade association that represents more than 100 of the leading challenger telecoms operators across Europe. For over a decade, ECTA has been supporting the regulatory and commercial interests of telecoms operators, ISPs & equipment manufacturers in pursuit of a fair regulatory environment that allows all electronic communications providers to compete on level terms. Our members have been the leading innovators in Internet services, broadband, business communications, entertainment and mobile. Contact: Vicky Hanley-Emilsson (+32 2 227 11 79/ [vhanley-emilsson@ectaportal.com](mailto:vhanley-emilsson@ectaportal.com)).



**ETNO** (the European Telecommunications Network Operators' Association - [www.etno.eu](http://www.etno.eu)) is the voice of the European telecommunications network operators with over a decade of experience in shaping EU telecoms policy. The association represents 40 companies located in 35 European countries. They account for an aggregate annual turnover of more than 250 billion Euros and employ over one million people across Europe. Contact: Caroline Greer, Regulatory Affairs Manager (+3222271083/ [greer@etno.be](mailto:greer@etno.be)).



**EuroISPA** is the world's largest association of Internet Services Providers (ISPs) representing the interests of more than 1800 ISPs across the EU and the EFTA countries. EuroISPA is a major voice of the Internet industry on information society subjects such as cybercrime, data protection, e-commerce regulation, EU telecommunications law and safe use of the Internet ([www.euroispa.org](http://www.euroispa.org)). Contact: Andrea D'Incecco, Head of Policy (+32 2 503.22.65/ [andrea@euroispa.org](mailto:andrea@euroispa.org))



**GSMA** represents the interests of the worldwide mobile communications industry. Spanning 219 countries, the GSMA unites nearly 800 of the world's mobile operators, as well as more than 200 companies in the broader mobile ecosystem, including handset makers, software companies, equipment providers, Internet companies, and media and entertainment organisations. The GSMA is focused on innovating, incubating and creating new opportunities for its membership, all with the end goal of driving the growth of the mobile communications industry. In the European Union the GSMA represents over 100 operators providing more than 600 million subscriber connections across the region. For more information on GSMA, please visit: Mobile World Live, the new online portal for the mobile communications industry, at [www.mobileworldlive.com](http://www.mobileworldlive.com), GSMA corporate website at [www.gsmworld.com](http://www.gsmworld.com), GSMA Europe [www.gsmeurope.org](http://www.gsmeurope.org). Contact: Martin Whitehead, Director, GSMA Europe (+32 2 792 05 50/ [MWhitehead@gsm.org](mailto:MWhitehead@gsm.org))