

EUROPEAN DATA COALITION



KEEP EUROPE GROWING

We are European companies active across different sectors of the economy with significant operations within and beyond the borders of the European Union (EU). Over the past years, we have closely followed and contributed to the debate on the General Data Protection Regulation (GDPR), seeing the issues surrounding data protection as critical to the future of the European data-driven economy.

The European Data Coalition (Coalition) is committed to contribute to the development of a progressive data protection framework, including during the implementation phase of the GDPR. In this context, we welcome the fact that Article 29 Working Party's Action Plan, which outlines its priorities during the transitional phase, includes regular consultations with industry.¹

The Coalition has emphasised the necessity of protecting the fundamental right to privacy and increasing trust in data processing activities, but we have also reminded stakeholders that privacy is not an absolute right and that it *"must be considered in relation to its function in society"*.² This balance is imperative for the successful digitization of the European knowledge society/economy that we proudly cherish. On many important provisions, the GDPR remains vague, impractical or undifferentiated, hence the need to contribute to its refinement. Beyond this, there are areas in which the regulation allows Member States to have different interpretations, putting harmonisation – one of the primary initial goals of the GDPR – at risk.

The aim of the Coalition is to contribute to a progressive implementation of the GDPR and, in particular, to provide real life experience and advice on:

Data Processing & the Rights of the Data Subject

For these issues, the implementation phase will be crucial for developing guidelines for businesses regarding their obligations under the new legislation, for example on the conditions under which data portability (Art. 20) is mandatory. Guidelines will be helpful in ensuring a sensible interpretation of these provisions avoiding excessive costs, without benefits for the consumer.

In addition, guidelines and proposals are needed to ensure the maximum possible level of harmonisation is achieved in terms of data processing conditions (Art. 6). So that companies know how to achieve legal compliance, clarification on the conditions for consent (Art.7) are necessary.

¹ Statement on the 2016 action plan for the implementation of the General Data Protection Regulation ([link](#)).

² Handbook on European data protection law, page 1 ([link](#)).

Processes and Formalities

The implementation phase must be used as an opportunity to provide clarity on a number of procedures the new regulation obliges businesses to go through. These include recommendations on the situations in which data breach notifications (Arts. 33-34) are necessary and on the content of data protection impact assessments (Art. 35).

The Role of the Authorities

The Article 29 Working Party will be renamed as the European Data Protection Board (EDPB), gain new competences, particularly under the one-stop-shop mechanism, and most certainly have a new budget, allowing it to ensure consistency throughout the EU. Further clarity is still necessary on the full scope of its competences (Arts. 68 and 70). In addition, a chief economist function should be created within the EDPB (or the EDPS), in order to ensure that the full scope of objectives as laid down in the GDPR and related primary EU legislation are pursued in a balanced manner, and that Better Regulation principles are adhered to.

Sanctions and Liability

New sanctions to be administered by Data Protection Authorities are created under the GDPR (Art. 83). During the transitional phase, the application of sanctions across EU Member States needs to be based on a predictable process that takes into account both the specificities of the case and mitigating factors, as well as other procedural steps and warning signs. Fines cannot constitute a first step following noncompliance.

The accepted standard for documentation for data processors and data controllers to prove their compliance with the GDPR needs to be clarified and harmonized at an EU-wide level (Art. 82.3). Such standards will help both the data processor and data controller to ascertain whether the required controls have been fulfilled. It will also ensure that the processor is not jointly and severally liable only due to lack of acceptable documentation.

Codes of Conduct

Following the spirit of the GDPR (Arts. 40 *et seq.*), the transitional phase can be an effective period for the promotion of codes and conducts among businesses. Unified tools and the support of the relevant authorities could greatly accelerate this process.

Employment data

Member States are able to adopt specific rules on the management of data in an employment context (Art. 88). In order not to lose the benefit of harmonization across the EU brought about by regulation, the Article 29 Working Party should be encouraged to ensure the greatest level of consistency in this matter.

Derogations and special conditions

The GDPR contains several derogations and exemptions regarding the restrictions to obligations, data protection rights and certain specific processing situations. This is likely to result in a harmful degree of variation across the EU, demanding from European companies operating across the EU, a permanent adjustment to different approaches adopted nationally by the Member States. In keeping with the aims of an EU regulation, it will be very important for the EC and the EDPB to promote the greatest level of consistency and avoid the unnecessary costs of further fragmentation.

ABOUT THE COALITION

Our Coalition is made up of twenty-one European companies, from SMEs to Global Multinationals and non-profit organisations operating in a variety of sectors on a national, regional and global scale. With an aggregate turnover (2015) of over € 222 billion and some 968,000 employees worldwide, our footprint allows us to bring growth, progress and jobs to the EU's economy. Our membership includes...

... a global leader in power and automation solutions...
... the leading Central and Eastern European e-commerce company...
... a productivity solutions provider of compressors, vacuum solutions, construction and mining equipment...
... a non-profit organisation dedicated to collecting money to prevent and combat child cancer diseases...
... a global leader in household appliances...
... two providers of communications technology and services...
... a designer, engineer, manufacturer and distributor of outdoor power products...
... a multinational retail-clothing company...
... an investment company...
... a SME provider of online marketing through search engine marketing, conversion and lead generation...
... an e-commerce company providing payment services for online storefronts...
... an engineering group in tooling, materials technology, mining and construction ...
... an enterprise software corporation...
... a global provider of heavy trucks and buses, engines and services...
... a global provider of renewable solutions in packaging, biomaterials, wood and paper...
... a multinational company managing a portfolio of businesses in retail, financial services and technology...
... the leading university in technology and digital arts programmes...
... a provider of business software and services to more than 340 000 business in the Nordics...
... a producer and distributor of trucks, buses and construction equipment...
... the leading company in advanced mobile services...

Our businesses are profoundly different but deeply united by the need for clear, predictable and practical provisions, open cross-border data flows, balanced codified sanction guidelines, effective one-stop-shop and absence of overly prescriptive rules as fundamental conditions for long-term growth, competitiveness and prosperity, for both us and the economies in which we operate.

For further information please visit us www.europeandatacoalition.eu or contact us at frederico@europeandatacoalition.eu or rene@europeandatacoalition.eu