



Europe



## GSMA Europe and ETNO briefing papers on the proposed General Data Protection Regulation

- **Inconsistencies between the GDPR and the e-Privacy Directive**  
*Inconsistencies between the 2002 Directive and the proposed Regulation are likely to lead to inconsistent consumer privacy experiences and rights for equivalent services and data. We discuss possible ways to avoid this.*  
Articles concerned 2, 3, 4, 31, 89 - [Link](#)
- **Applicable law**  
*We welcome the proposals in this field, but suggest some key improvements to ensure legal certainty for business and consumers and to ensure European consumers are protected irrespective of from where a service or product is being provided.*  
Articles concerned 3, 4, 51 - [Link](#)
- **Consent in the online environment**  
*We highlight key issues of over-relying on consent and suggest a context-based approach, while highlighting the link with transparency requirements and compatibility issues with the ePrivacy Directive. We propose measures to create consistent and effective privacy experiences for consumers.*  
Articles concerned 4, 6, 7, 9, 14, 79 - [Link](#)
- **International data transfers**  
*We welcome measures to simplify transfers and the codification of Binding Corporate Rules (BCRs). However, we are concerned that related procedural requirements are too strict and call for a review of these.*  
Articles concerned 4, 6, 42, 43 - [Link](#)
- **Sanctions**  
*We highlight the importance that sanctions are not only proportionate but fair, necessary and assist in ensuring effective protection for privacy.*  
Articles concerned 15, 28, 32, 79 - [Link](#)
- **Documentation obligations**  
*We point to the risk that new documentation obligations will lead to costly, time-consuming burdens without improving the protection of personal data.*  
Articles concerned 22, 28 - [Link](#)
- **Futureproofing the GDPR**  
*We express our views on how consistency mechanisms, delegated powers, comitology and self-regulation can play a key role to ensure the future-proofness of this regulation.*  
Articles concerned 38, 57, 60, 62, 86, 87 - [Link](#)
- **Data Protection Impacts Assessments**  
*While supporting PIAs, we suggest improving the text in order to avoid unreasonable burdens to businesses and innovation.*  
Articles concerned 33, 34 - [Link](#)
- **Data breach**  
*We welcome harmonization in this field and point to a few improvements aimed at ensuring that the principle is applied in a fair and proportionate way.*  
Articles concerned 31, 32 - [Link](#)



Europe



## **GSMA Europe and ETNO**

### **Briefing paper on the proposed General Data Protection Regulation**

#### **Data Protection Impact Assessments**

September 2012

#### **Summary**

ETNO and GSMA support objectives to ensure that risks to data protection and privacy are identified and addressed. That said, we believe the data protection impact assessments (DPIAs) within the General Data Protection Regulation (GDPR) are unnecessarily prescriptive.

- We believe the obligations in the (GDPR) are generally disproportionate and may risk delaying new products and services and add bureaucracy and costs.
- We also consider the obligation to seek the views of data subjects or their representatives (e.g., consumer organisations) on the intended data processing operations, Article 33(4), to be disproportionate.



Europe



## Proposed rules in the GDPR

Article 33 imposes an obligation on data controllers and processors to carry out an assessment of the impact on the protection of personal data of the envisaged processing operations where they present “specific risks” to individuals.

## Issues and impact

ETNO and GSMA consider the provisions in the GDPR on DPIAs to be overly detailed, prescriptive and disproportionate.

- Data controllers should have flexibility in determining risks under the principle of accountability. Data controllers know the particularities of their products, services or sectors and can better adapt DPIAs to their needs.
- Article 33(2) (a) to (e) sets out categories of data and types of processing operations deemed likely to present specific risks. Where these are identified or confirmed, data controllers or processors are required to consult with national data protection authorities (DPAs) *before* the processing may take place. We believe this is an excessive requirement that would negatively impact businesses and the development of new products or services.
- Article 33 includes processing to analyse or predict a natural person’s location. Unless, exempted, this has significant implications for communications and online organisations that use location data (such as postcodes, cell-ID, GPS, WLAN or IP addresses) for network planning or delivery of online services.
- Under Article 34(3), DPAs can prohibit specific activities where risks have not been sufficiently identified or mitigated. This creates legal uncertainty and may inhibit innovation in information use and technology developments.
- Under Article 34(4), DPAs can also compile and publish a list of processing operations deemed to present specific risks to the rights and freedoms of individuals, and which require the prior approval of the DPA. This could require an excessive number of consultations, putting DPAs’ resources under pressure and holding up the launch of innovative services in Europe.
- Article 33 (4) obliges data controllers to seek the views of data subjects or their representatives (e.g., consumer organisations) on the intended processing of their personal data. This obligation is disproportionate and would create commercial concern for companies developing new products and services in highly competitive markets.
- Furthermore, the consultation obligations do not reflect the internal controls and product development processes and standards methodologies deployed within responsible companies.

## Policy considerations

The GDPR seeks to make data controllers more responsible for ensuring effective data protection and for mitigating risks to individuals. While ETNO and GSMA support this policy objective, we believe a blanket imposition of DPIAs is excessive and disproportionate and will lead to unnecessary cost and bureaucracy. It may also inhibit innovation in technology developments and information use that continue to provide societal economic and social value.



Europe



ETNO and GSMA also believe that industry is best placed to identify and mitigate specific risks arising from the context of technology and data use. This can be achieved by a combination of privacy by design, privacy enhancing technologies, codes of conduct and contractual arrangements.

- For example, a mobile user may download an application that involves four or more entities sharing and using their personal data (including location data). Some of these entities, such as the app developer or app store, may not be 'established' in the EU. The various entities in this scenario are best placed to identify risks and establish mechanisms and processes for mitigating them, and this will help achieve an effective balance between innovation and protecting the personal data and privacy of individuals.



Europe



### About GSMA

The GSMA represents the interests of mobile operators worldwide. 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 also produces industry-leading events such as the Mobile World Congress and Mobile Asia Congress.

For more information, please visit Mobile World Live, the online portal for the mobile communications industry, at [www.mobileworldlive.com](http://www.mobileworldlive.com) or the GSMA corporate website at [www.gsmworld.com](http://www.gsmworld.com).

In the European Union the GSMA represents over 100 operators providing more than 600 million subscriber connections across the region. [www.gsmworld.com/gsma\\_europe](http://www.gsmworld.com/gsma_europe)

### About ETNO

ETNO, the European Telecommunications Network Operators' Association, is the voice of Europe's leading providers of e-communications services and investors in tomorrow's services and infrastructure.

ETNO's 38 member companies and 11 observers from Europe and beyond represent a significant part of total ICT activity in Europe. They account for an aggregate annual turnover of more than €600 billion and employ over 1.6 million people. ETNO companies are the main drivers of broadband and are committed to its continual growth in Europe.

ETNO contributes to shaping an investment-friendly regulatory and commercial environment for its members, allowing them to roll out innovative, high-quality services and platforms for the benefit of European consumers and businesses.

More information: [www.etno.eu](http://www.etno.eu)

#### GSMA Europe

Martin Whitehead  
Director GSMA Europe  
Park View, 4th floor  
Chaussée d'Etterbeek 180  
1040 Brussels  
T: +32 2 792 05 56  
E: [mwhitehead@gsm.org](mailto:mwhitehead@gsm.org)

#### ETNO

Daniel Pataki  
Director ETNO  
Avenue Louise, 54  
1050 Brussels  
T: +32 2 219 32 42  
E: [pataki@etno.be](mailto:pataki@etno.be)