

**EMMA and ENPA position on the proposed
“General Data Protection Regulation” (COM (2012) 11)**

The Commission proposal for a General Data Protection Regulation of 25 January 2012 impacts various activities of newspaper and magazine publishers' businesses.

As well as affecting **editorial press freedom**, it also impacts **press distribution** for both the consumer and the business to business press **and the future development of the digital press**, and therefore the economic sustainability of magazines and newspapers across Europe. Furthermore, given the broad scope for delegated acts by the Commission proposal, the framework for data protection in the future remains to a large extent uncertain and unpredictable for European companies. **EMMA and ENPA would like to highlight the following comments in particular:**

1. The need to safeguard press distribution for the consumer press as well as the business to business press, in order to preserve readership and media pluralism

A press subscription is a product that must be explained, but which has no dedicated retail outlet. In order to safeguard press distribution, direct marketing without prior consent is therefore crucial.

Up to 40% of subscribers to certain magazines and newspapers in various Member States depend on the current possibility to carry out direct marketing without prior consent. It should be noted that there are only marginal objection rates to receiving direct marketing by mail without prior consent (e. g. less than 10 objections out of 100,000 letters).

This approach is also necessary for “**controlled circulation**” **business to business** and special interest magazines, as they are also sent to targeted addressees (e.g., doctors, computer and financial specialists etc) without the recipients' prior consent.

The current approach **poses the serious risk of a dramatic loss of subscribers and decrease in circulation** of many titles across the EU where these publications are dependent on subscriptions sales and press distribution.

Under the current Directive, publishers are able to process personal data for the legitimate interest of the data controller, as well as third parties, on condition that strict information requirements are met and consumers have the right to object (as in the proposed Regulation under [Art 19](#)). The proposed Regulation, however, **limits how businesses such as publishers can communicate with existing and potential readers.**

Unlike under the current rules, the wording **does not allow publishers to process personal data for the legitimate interest of third parties**, restricting it to only the data controller (under [Art 6\(1\)\(f\)](#)). This would mean it would no longer be possible to have access to addresses of third parties, which is crucial for reaching interested parties. It is therefore **imperative that this possibility is reintroduced**. This is especially **important for the thousands of SMEs**, which can neither afford big media advertising, nor masses of unaddressed direct mail.

Furthermore, there are several other provisions in the proposal that would threaten press distribution. These include the restriction on data processing for **purposes other than those for which the data were originally collected** under [Article 6 \(4\)](#), which can in fact be in the interest of the customer for various reasons. In addition, there are **extended information obligations** ([Art 14](#)) with the threat of a fine that amounts to over 1% of the global turnover of a company and the provision on **profiling** ([Art 20](#)).

2. Need to preserve editorial press freedom, to ensure a free and independent, quality press

Exemptions for journalistic data processing are essential to ensure that journalists and publishers can continue fulfilling their democratic mission as regards investigating, researching, writing, checking, editing - whether or not leading to publication of material - as well as publication, dissemination, and archiving of articles without any obstacles, and to ensure that sources are adequately protected.

The Commission proposal leaves it up to the Member States to provide for such exemptions under Article 80. However, as the provisions of the Regulation will directly restrict journalistic data processing (i.e., without national implementation), the **chapters exempted from applying to journalistic data processing under Article 80 must also be directly binding, without further modification.** Otherwise, existing standards of protection of editorial press freedom could be endangered as it cannot be foreseen whether all Member States will introduce new robust exemptions without hesitation.

There is also no conflict with the subsidiarity principle here: journalistic activities foreseen to be excluded from the data protection Regulation via the exemption for journalistic data processing, can still be covered by media, libel and privacy laws and enforced at national level.

3. Need to secure the future development of the digital press, by avoiding unnecessary bureaucratic burdens and ensuring key elements for a positive online user experience

Newspaper and magazine publishers are facing many challenges as regards digitization and are **investing** in the development of digital business models to finance their editorial products across all platforms. They need to be able to interact easily with their readers, especially in the digital environment, to be able to **adapt to their readers' needs**. The proposal in its current form would unnecessarily increase **bureaucratic burdens** for publishers:

The “**right to be forgotten and to erasure**” (Art 17) rightly does not apply to data processing for “journalistic purposes”, which according to Recital 121 would also include readers’ digital commentaries and opinion forums. As the latter have become an important element of the digital offerings of publishers, an obligation to delete such comments at the request of not only the person posting the comment, but also **the person being commented on** with the threat of a fine of 500,000 euros or up to 1% of worldwide turnover for an enterprise (Art 79), would be disproportionate, in many cases it would also be impracticable, and unduly interfere with the (often pseudonymous) dialogue which is only understandable if the entire context is published.

The Regulation’s provisions on **consent**, which has to be “explicit” by “a statement or a clear affirmative action” under Art 4(8), would be too restrictive, particularly for the many SMEs who do not have the advantage of having log-in systems like established global digital players, which make it easier to obtain consent. For example, new rules which demand explicit consent for **profiling** (Art 20(2)c) could potentially hinder digital business models, including advertising. It would also be hard to verify that a person providing consent was authorised to do so and not **a child** under 13 (Art 8(1)). These bureaucratic burdens, further exacerbated by e.g., stringent rules on rights of information (Art 14) and access for the data subject (Art 15), threaten to create barriers to potential customers engaging with publishers, while discouraging consumer, B2B and special interest publishers from offering innovative services.

More generally, we are concerned by the **many delegated acts** foreseen by the Commission to expand further these and many other provisions in the draft. Given the significant implications, we believe that any future changes must be subject to the full democratic EU law-making process.

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