



ZENTRALVERBAND DER DEUTSCHEN WERBEWIRTSCHAFT ZAW E.V.

# **Main points of the ZAW position paper on the amendment of European data protection law**

**Proposal of the EU Commission for a Regulation on the protection  
of individuals with regard to the processing of personal data and on  
the free movement of such data**

**(General Data Protection Regulation) – COM (2012) 11 final**

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### **1. Limiting the area of application to data-processing of relevance for the citizen / creating an incentive for economical use of data**

In view of the increasing significance of data in the modern information society, the future Regulation should be restricted in scope to relevant data-processing activities - depending on the nature and importance of the data. In the opinion of ZAW, the underlying principle of the draft proposal, to prohibit data-processing unless permission is given for each application of data processing, is outdated.

When dealing with data the emphasis should be on the possible potential hazards in each case, considering whether data processing should not be generally permitted, and be subject to further conditions only in cases which raise problems under data protection law and when there is an overriding interest in the protection of those concerned (e.g. in the case of health data).

Pseudonymized and anonymized data should be excluded from the scope of the Regulation.

### **2. Maintaining established legal business models in the advertising industry**

The permissions granted in Article 6 must be more flexible in nature: the interests of third parties to which the data will be supplied must also be taken into account within the so called balance-of-interest-clause (Article 6 Para. 1f)). For the sake of clarity and completeness, reference must also be made in Article 6 Para. 4 to the balance-of-interest-clause as a further condition allowing a subsequent change of purpose. Otherwise, established legal business models in the advertising industry would de facto be prohibited and the existence of companies placed in jeopardy. Regarding the principle of consent, it is necessary to ensure that this can continue to be expressed by conclusive behaviour. For the Regulation to be competitively neutral, it is also essential to make explicit reference to the procedures laid down in the E-Privacy-Directive (Directive on privacy and electronic communications) 2002/58/EC for expressing consent in the online sector. Finally, the established principle of the right to object of Directive 95/46/EC must be preserved. According to this, the right to object correctly depends on the existence of compelling legitimate grounds relating to the data subjects particular situation to the processing of data relating to him.

### **3. Respecting the real information requirements of the persons/parties concerned and the formal and technical requirements of information media**

In the opinion of ZAW, the general information obligations covered by the proposed Regulation should be subject to reasonable limits, in terms of quantity and with respect to the period of time. The general obligations foreseen in the present draft Proposal over-estimate the information needs of the parties concerned. An excess of information - quantitatively and with respect to time – particularly in a complex area like data protection, can easily cause the person concerned to feel overburdened, with the result that they no longer take account of the content of this information. Moreover, due to frequently limited formal and technical specification of the information medium, the information obligations are in many aspects impossible to realize in practice.

### **4. Proper differentiation in measures based on building of profiles**

As in the general definitions, in the case of Article 20 there is also an exception missing to privilege the application of pseudonymization and anonymization techniques. In addition, for

legal precision, the area of application of the provision must be clarified and restricted: measures which in no conceivable circumstances could significantly affect a natural person commensurable with „producing legal effects concerning this natural person“ must be excluded from the area of application. This applies, for example, when a company addresses consumers with advertisements or promotional material.

## **5. Creating incentives for self-regulation initiatives**

In addition to the declaration of intention contained in the proposed Regulation to encourage the development of codes of conduct, effective incentives must be created for self-regulation. These could consist of allowing self-regulation initiatives to be applied as an alternative in specified areas. But the legal framework should, at least, be defined so as to allow the industry appropriate scope to create autonomous regulations. Particularly in the area of data protection in electronic and online communication, self-regulation measures could provide effective, flexible and practical answers to the diverse and complex challenges in this area.

## **6. Effective speciality in practice of the E-Privacy Regulation 2002/58/EC**

In the opinion of the ZAW, Article 89 of the proposed Regulation is inappropriate to guarantee a genuine legal speciality of the so-called E-Privacy Regulation in practice. This is however essential to take adequate account of the special features of the online environment and not to threaten the existence of existing business models such as advertising-financed tele-media offerings without a log-in system, or to inhibit innovation in this area.

## **7. Recognising the special nature of market-, opinion- and social research**

A provision should be incorporated in the Directive taking appropriate account of the significance and special nature of market- and social research as an empirical basis and underpinning for social, political and economic decisions and considering their special characteristics. It must also be ensured in future that objective data on the distribution of advertising media are made available to the market and that customers for advertising in placing their commissions receive reliable information on the performance of the media. The conditions for exemption in the proposed Regulation are insufficient for this purpose.

Berlin, 24th September 2012

*ZAW is the umbrella organisation of 40 associations and organisations from the advertising industry, the media, advertising agencies and professions, and research. It is the overall representative body of the advertising industry in Germany.*

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