

14 March 2013

Klaus Heiner-Lehne
Chairman, The Committee on Legal Affairs
European Parliament
Rue Wiertz
Altiero Spinelli 11G306
B-1047 Brussels

Royal Mail Group
100 Victoria Embankment
London
EC4Y 0HQ

Tel: 020 7449 8112
Fax: 020 7530 7108
jon.millidge@royalmail.com
www.royalmail.com

Dear Herr Heiner-Lehne

Proposals and observations of Royal Mail Group ("RMG") on the draft General Data Protection Regulation (the "Regulation")

RMG is the sole designated provider of the Universal Service for mail in the United Kingdom, delivering a vital service to every British business and member of the public.

Providing the Universal Service requires RMG to collect and deliver six days per week (five days per week in the case of packets) to every address in the United Kingdom, at an affordable and geographically uniform price. We are also one of the largest employers in the United Kingdom – our current permanent workforce exceeds 150,000.

As such, we are in a unique position to assess both the potential economic impact of the Regulation and its potential impact on individuals, especially on the fundamental rights and freedoms of expression, to engage in work and to conduct a business. With the benefit of our unique position we support a number of the amendments to the Regulation proposed by members of The Committee on Legal Affairs, which we consider will better protect and promote the European economy and those rights of individuals. We are writing to explain these and encourage the Committee to adopt them.

The Committee on Legal Affairs' Proposed Amendments to the Regulation

RMG considers that, as drafted, the Regulation could severely adversely affect business, and consequently growth and employment, across the European Union, and will fail to provide clear and certain benefits for individuals.

Accordingly, RMG agrees with a number of the amendments proposed by members of the Committee on Legal Affairs in the document entitled "Amendments 72-451" on the Draft Opinion of Marielle Gallo dated 29 November 2012.

In particular, the following amendments address particular concerns highlighted by RMG in its submission to the LIBE Committee:



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1. Article 4 – Definitions

We note and agree with the principle that "*conduct by the data subject indicating assent to the data processing proposed*" should be sufficient to indicate consent (Sajjad Karim's Amendment 114).

As drafted, this Article is unclear as to what information is subject to the Regulation, and thus the extent of its application. Such uncertainty is contrary to the public good and fails to provide clear protection for data subjects. Further, in regard to the definition of 'Consent', a requirement to obtain explicit consent is unnecessarily burdensome and inflexible (provided that the data subject is adequately notified so that detriment to the data subject can be avoided). In particular, we consider that data controllers must be able to interact with their customers without having to obtain explicit consent where the purposes for that interaction may change from time to time.

2. Article 6 – Lawfulness of Processing

RMG agree with amendments 137 and 139 proposed by Antonio Lopez-Isturiz White and Sajjad Karim.

RMG have proposed that the Regulation is amended to provide that the legitimate interests of a third party, as well as those of a data controller, may justify data processing in appropriate circumstances. RMG currently processes personal data for purposes which are in the legitimate interests of third parties rather than its own interests. These interests include preventing fraud, money laundering and other crimes, where postal address information may play an essential role. The current draft of the Regulation could prevent this processing and thereby limit data sharing to the detriment of the economy, financial services sector, businesses and individuals.

RMG also processes personal data in connection with third parties' direct marketing. This is an established and reputable activity which enables individuals to access goods and services offered by those third parties and supports employment. However, the current draft of the Regulation would prohibit this, to the detriment of the European economy and the rights and freedoms of individuals.

3. Article 20 – Measures based on profiling

We note that the benefits of profiling have been recognised and highlighted by Sajjad Karim and Rebecca Taylor (Amendments 219 and 220).

Profiling through automated data processing should be prohibited only where it causes a significant detriment to a data subject.

Our view is that it is sufficient, and sufficiently certain, that data subjects are granted rights by this Article against harm caused by automated processing. As drafted, there is uncertainty as to what extent providing RMG's Universal Service may be prohibited by this Article. This could harm a vital public service and innovation in our business, without providing any benefit for data subjects.

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4. Article 19 – Right to object

We note and agree with the position of Antonio Lopez-Isturiz-White (justification to Amendment 216) that *"there appears to be no reason why merely lodging an objection should have the consequences laid down in paragraph 3"*.

Article 19(1) entitles data subjects to object to data processing in particular circumstances described in Articles 6(1)(d) to (f). RMG's view is that if a data controller can satisfy Article 6(1)(d) to (f), which do not require relevant legitimate interests to be *"compelling"*, there is no logical reason why it should be required to meet that higher standard when dealing with a data subject's objection. In circumstances where a data subject's objection is upheld, a data controller should be able to continue to process their personal data for purposes not connected with the objection and to ensure that that objection is met.

5. Article 7 – Conditions for consent

We support the deletions proposed by Committee Members Antonio Lopez-Isturiz White and Sajjad Karim (Amendments 151 and 152) which recognise the impracticality of the *"significant imbalance"* test.

The current Article 7 will have a negative impact on the conduct of business in the European Union by creating uncertainty as to whether consent to process personal data has been obtained. Additionally, a right to withdraw consent *"at any time"* would lead to considerable uncertainty in a business to consumer relationship; an ability to withdraw consent would damage contractual relations and lead to an increase in fraud risk.

6. Article 15 – Right of access for the data subject

Committee members, Rebecca Taylor and Sajjad Karim, have both recognised that an ability to charge an appropriate fee has a benefit by reducing burdens on companies, limiting frivolous requests and reducing the risk of fraud (Amendments 170 and 171). RMG agrees with this view. Complying with data subjects' access requests is complex and costly and an ability to charge a fee should be reinstated.

7. Article 17 – Right to be forgotten

We note that Committee Members have expressed concern regarding provisions in Article 17. In particular, we agree with proposed Amendments 195, 196, 198, 200, 202 and 203. This new right in the Regulation will result in additional costs for RMG not only in managing the requests but also dealing with likely legal or regulatory challenges brought by individuals expecting their data to be completely erased.

8. Article 32 - Communication of a personal data breach to the data subject

We support the position of Antonio Lopez-Isturiz White's (Amendment 295) that there should be no obligation to notify where this *"could clearly obstruct current investigations or delay measures to resolve the security breach"*.

We understand that *"undue delay"* in Article 32(1) is to be construed as *"within 24 hours"*. Such a timeframe for making notification to data subjects is wholly inadequate for RMG to determine whether there has been a personal data breach. Moreover, the very short time period would not allow RMG to collate the information and undertake the analysis to provide the information required by Article 32(2).

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In summary, the current draft of the Regulation poses significant risks to European business, and consequently growth and employment. The risks could be avoided without compromising the rights of individuals. We support the above amendments tabled by members of the Committee on Legal Affairs which seek to revise the Regulation in ways that aim to reduce these risks. We request that the Committee considers our comments and adopts the amendments referred to above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jon Millidge', with a long, sweeping tail stroke extending downwards and to the right.

Jon Millidge
Company Secretary