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STAKEHOLDER SUGGESTIONS

- COMMUNICATIONS NETWORK, CONTENT AND TECHNOLOGY -

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The Commission services have complemented relevant quotes from each suggestion with a short factual explanation of the state of play of any recent, relevant ongoing or planned work by the EU institutions.

The document does not contain any official positions of the European Commission unless expressly cited.

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1. SUMMARY

This briefing includes five suggestions in four policy areas:

Data Protection:

- The German Insurance Association (GDV) foresees an increase in information requirements under the EU General Data Protection Regulation and questions its relation to the existing e-Privacy Directive.
- The Finnish Survey for better regulation emphasises that the Commission proposal on a general data protection needs to ensure that the financial implications and administrative burden of the reform remain under control.

The final text of the GDPR has been formally adopted by the European Parliament and Council. The regulation is likely to enter into force in Spring 2016 and will be applicable as of spring 2018.

- The Danish Business forum (DBF), suggests a revision of the "Cookie" rule enshrined in the ePrivacy Directive to reduce costs for industry. The e-Privacy Directive is currently subject to an evaluation under the REFIT Programme

The Universal Services Directive:

- The Finnish Survey for better regulation suggests repealing an article of the Universal Service Directive. The USD is part of the wider EU's telecoms Regulatory Framework for electronic communications networks and services framework, which is currently subject to a REFIT evaluation.

The Copyright Directive:

- The Finnish Survey for better regulation argues that the copyright levy systems of Member States lead to increased administrative burden. On 9 December 2015 the Commission adopted the first legislative proposal on the copyright modernisation – a Regulation to enable the cross-border portability of online content services.¹ In addition, on 9 December the Commission presented a Communication setting out its vision and a comprehensive action plan to make EU copyright fit for the digital age.

1.1. Policy Background – Digital Single Market

When taking office, President Juncker identified the completion of the Digital Single Market (DSM) as one of the Commissions' ten political priorities.

Commission proposals on the DSM, were adopted on 6 May 2015 and are estimated as potentially contributing €415 billion per year to Europe's economy, creating jobs and transforming public services. It is built on three pillars:

- (1) **Access:** better access for consumers and businesses to digital goods and services across Europe;

¹ COM(2015) 627 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1452684682365&uri=CELEX%3A52015PC0627>

- (2) **Environment:** creating the right conditions and a level playing field for digital networks and innovative services to flourish;
- (3) **Economy and Society:** maximising the growth potential of the digital economy.

Within these 3 pillars, the DSM includes a set of 16 targeted actions to be delivered by the end of 2016.

2. DATA PROTECTION DIRECTIVE

2.1. Submission by the German Insurance Association (GDV)

General Data Protection Regulation: clarify relationship to existing regulations

To date, it remains unclear in what relation the planned EU General Data Protection Regulation will stand to the existing e-Privacy Directive.

No arrangement has been found yet regarding data protection in the public sector and as to how overlap between the relevant content of the EU General Data Protection Regulation and the existing national regulations can be eliminated.

With respect to the EU General Data Protection Regulation, it must be expected that the information requirements for undertakings will sharply increase. Currently, the magnitude is still unclear, but it is also not foreseeable whether these increased information requirements will contribute real added value for consumers.

2.2. Submission by the Danish Business Forum (DBF)

The current rules on collection of data (following the e-privacy directive) are meant to enhance the protection of personal data. However, the regulation is very burdensome for businesses given that cookie information and consent mechanisms must be implemented on almost all websites. In addition, the current rules are likely to be counterproductive as the constant stream of "cookie pop-up-boxes" that users are faced with completely eclipses the general goal of privacy protection as the result is that users blindly accept cookies.

Suggestion

The "cookie regulation" should be amended in a manner which will both decrease industry costs of implementation and raise awareness of privacy among users. Less intrusive types of cookies (for instance cookies used for website statistics) should be exempted and regulation should be reserved for websites using cookies that pose genuine risks of privacy intrusion. The benefits will be fewer burdens to businesses, more alertness to privacy issues among users, and the possibility of more effective and targeted enforcement.

2.3. Submission by the Finnish Survey for better regulation

It is important to harmonise the EU's data protection regulations. However, it appears that the

objective of the proposal for a general data protection regulation (COM(2012) 11 final) to reduce the administrative burden will not be attained. Amendments have indeed been made to the Commission's proposal following negotiations. Efforts to influence the preparations need to be continued to their conclusion to ensure that the financial implications and administrative burden of the reform remain under control. Additionally, the overly stringent requirements concerning the information to be stored in biometric data banks would complicate the operations of national biometric data repositories.

2.4. Policy Context

The submission of the GDV relates to the interplay between the ePrivacy Directive and GDPR. The Submission by the Finnish Survey on better regulation relates to the proposal of the GDPR directive. The DBF submission relates to the so-called "cookie rule" enshrined in Article 5(3) of Directive 2002/58/EC on privacy and electronic communications (the ePrivacy Directive), as amended by Directive 2009/136/EC.

General Data Protection Directive

The right to the protection of personal data has been explicitly laid down in Article 8 of the Charter of Fundamental Rights and in Article 16 of the Treaty on the Functioning of the European Union. The latter gave the EU new responsibilities to protect personal data in all areas of EU law, including police and judicial cooperation.

On 25 January 2012 the European Commission has today a comprehensive reform of the EU's 1995 data protection directive (95/46/EC) to strengthen online privacy rights and boost Europe's digital economy.

Technological progress and globalisation have profoundly changed the way data is collected, accessed and used. In addition, the EU Member States have implemented the 1995 rules differently, resulting in divergences in enforcement, which in turn created complexity, legal uncertainty and administrative costs.

The data protection reform is a key enabler of the Digital Single Market which the Commission has prioritised. The reform will allow European citizens and businesses to fully benefit from the digital economy and it has been estimated that a single law (the General Data Protection Regulation) will do away with the current fragmentation and costly administrative burdens, leading to savings for businesses of around €2.3 billion a year. The GDPR will help reinforce consumer confidence in online services, providing a much needed boost to growth, jobs and innovation in Europe.

Current State of Play

Following political agreement reached in trilogue, the final text has been formally adopted by the European Parliament and Council. The regulation is likely to enter into force in Spring 2016 and will be applicable as of spring 2018.

In addition, the Commission proposed a Directive for Police and Criminal Justice Authorities, which forms the second part of the data protection reform package.

The e-privacy Directive

The Commission announced in the Digital Single Market Communication of 6 May 2015 ('DSM Communication') that it would prepare the 'review (of) the ePrivacy Directive with a focus on ensuring a high level of protection for data subjects and a level playing field for all

market players'

The e-Privacy Directive (2002/58/EC) particularises and complements Directive 95/46/EC with respect to the processing of personal data in the electronic communication sector, ensuring the free movement of such data and of electronic communication equipment and services in the Union.

Current state of play

The e-Privacy Directive is subject to an evaluation under the REFIT Programme where issues of effectiveness, efficiency, coherence, EU added value and relevance will be thoroughly assessed. A special emphasis on burden reduction is envisaged and the results of this evaluation will feed into the Impact Assessment of its revision and inform the design of the e-Privacy Directive.

3. UNIVERSAL SERVICE DIRECTIVE

3.1. Submission by the Finnish Survey for better regulation

Article 5 of the directive on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive 2002/22/EC) contains unnecessary provisions on the right of end-users to telephone directories and public pay telephones. The article should be repealed as outdated. The obligation to provide a universal service should be technology-neutral.

3.1. Policy Context

Universal Service Directive (USD) 2002/22/EC is part of the wider EU's telecoms Regulatory Framework for electronic communications networks and services.

The three basic characteristics of the current universal service concept relate to availability, affordability and accessibility, while minimising market distortions. The scope of universal service as determined at EU level includes: (i) access at a fixed location comprising: a connection to a public communications network enabling voice and data communications services at data rates sufficient to permit functional internet access, and access to publicly available telephone services; (ii) a comprehensive directory; (iii) comprehensive directory enquiry service; (iv) availability of public payphones. The universal service regime provides for the following means to finance the universal service obligations: (a) a public fund, (b) a fund to which providers of electronic communications networks and services are required to contribute, or (c) a combination of both.

Recent surveys show a declining usage of some of the services under the current universal service obligations, in particular with regard to public payphones, directory enquiry services and phone directories (see "E-Communications and Telecom Single Market Household Survey" (2014); for phone directories see "E-Communications Household Survey Report" (2010), Special Eurobarometer 335). Many Member States have relaxed their universal service obligations related to these services. Some Member States have never imposed universal service obligations in this respect. In general, comprehensive directories and comprehensive directory services are often deemed to be satisfactorily delivered by the market without the need for a public intervention, while public payphones are often considered of declining significance due to widespread availability of comparable services

such as mobile telephony, for example.

Current State of Play

The REFIT evaluation of the current regulatory framework is being done both because of the legal obligation to periodically review the functioning of the regulatory framework and because of a number of structural changes that electronic communications networks and services have undergone since telecoms rulebook was last revised in 2009.

The evaluation was launched Q3 2015 and is being carried out in line with the new Commission Better Regulation principles, including a broad and comprehensive public consultation (which ran from 11 September till 7 December 2015).

The consultation addresses Universal Service in a separate comprehensive chapter. It also explicitly addressed the question on the content of provisions of Article 5 of the USD, namely the scope of universal service, including those on telephone directories and public pay phones.

4. THE COPYRIGHT DIRECTIVE

4.1. Submission by the Finnish Survey for better regulation

The copyright directive (29/2001/EC) leaves the regulation of copying for private use and the compensation system to the Member States, which has led to a wide range of systems. As a result of technological advancement, the copyright levy systems of the Member States have expanded to cover a considerable variety of device segments. The administrative burden due to the copyright levy systems has increased disproportionately compared to the compensation to be charged under the system. This complicates the emergence of new business models.

4.2. Policy Context

As announced in President Juncker's Political Guidelines² and further outlined in the digital single market strategy³, the modernisation of the EU copyright framework is a key priority for the coming years. In particular, as announced in the 2016 Commission Work Programme the digital single market strategy will be taken forward in the area of copyright with a step-by-step approach.

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, also referred to as the 'Information Society' Directive or the 'InfoSoc' Directive, aimed at ensuring the smooth functioning of the internal market and a favourable environment protecting and stimulating creativity and innovative activities within the EU. Consistent with this objective, the Directive promoted harmonisation of exclusive rights and, to a lesser extent, of limitations and exceptions to these rights that are essential to the online dissemination of content. The Directive entered into force on 22 June 2001.

Member States were given until 22 December 2002 to implement the Directive into national law, but only two Member States (Greece and Denmark) meet the implementation deadline.

² http://ec.europa.eu/priorities/docs/pg_en.pdf

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1452784833683&uri=CELEX:52015DC0192>

Most Member States transposed the obligations of the Directive in the course of 2003 and 2004, while a few Member States took longer. The transposition was completed in 2006.^q

Over the last years, the Commission carried out an in-depth analysis of the current EU copyright rules, in order to explore if they are still fit for purpose in view of the EU's objective to achieve a genuine digital single market and in the face of challenges and opportunities posed by the new technology. This included a wide-ranging public consultation, which gathered broad interest with more than 9,500 replies⁴, the stakeholder dialogue 'Licences for Europe'⁵, as well as a series of legal and economic studies on various aspects of the existing copyright framework.⁶ The consultation process also included a dedicated stakeholder dialogue on private copying and reprography levies presided by António Vitorino, former Commissioner for Justice and Home Affairs, who presented his recommendations in January 2013.⁷

Current state of play

On 9 December 2015 the Commission adopted the first legislative proposal on the copyright modernisation – a Regulation to enable the cross-border portability of online content services.⁸ In addition, on 9 December the Commission presented a Communication setting out its vision and a comprehensive action plan to make EU copyright fit for the digital age.⁹ As the Commission communication explained, this "political preview" will be translated into legislative proposals and policy initiatives in the next months, taking into account all inputs from the in-depth analysis and extensive consultation process.

In its section 'Adapting exceptions to digital and cross-border environments' the 2015 communication specifically referred to the current situation regarding the levies system. In particular, the communication explained that substantial case law of the Court of Justice of the EU (CJEU) has clarified some of the issues signalled by the 2013 Vitorino Report as detrimental to the free movement of goods and services. However, persisting national disparities can be problematic, especially when products subject to levies are traded across the EU.

In this regard, the communication announced that the Commission will assess the need for action in this area to ensure that, when Member States impose levies for private copying and reprography to compensate right holders, their different systems work well in the single market and do not raise barriers to the free movement of goods and services. Moreover, the Commission will also promote a reflection on how levies can be more efficiently distributed to right holders.

⁴ http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/index_en.htm

⁵ <https://ec.europa.eu/licences-for-europe-dialogue/en/content/about-site>

⁶ http://ec.europa.eu/internal_market/copyright/studies/index_en.htm

⁷ http://ec.europa.eu/internal_market/copyright/docs/levy_reform/130131_levies-vitorino-recommendations_en.pdf

⁸ COM(2015) 627 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1452684682365&uri=CELEX%3A52015PC0627>

⁹ COM(2015) 626, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1452684469864&uri=CELEX:52015DC0626>