

EDPS Comments on the Commission Communication - A European Consumer Agenda - Boosting confidence and growth¹

I. Introduction

- On 22 May 2012 the Commission issued a Communication - A European Consumer Agenda - Boosting confidence and growth (hereinafter: "the Communication"). Although he was not formally consulted, the EDPS considers it appropriate to comment on the Communication as part of his advisory obligations under Article 41(2) of Regulation (EC) No 45/2001².
- These comments are without prejudice to the Opinions already issued by the EDPS³, or which are currently in preparation⁴, on specific issues and legislative proposals mentioned in the Communication.
- In general, the EDPS notes that there is a close link between the subject matter of the Communication and the policy area in which he operates. He therefore emphasises his availability to contribute to the implementation of the objectives set forth in the Communication.

II. Aim of the Communication

- The Communication sets four key objectives to empower consumers and boost their trust:
 1. improving consumer safety;
 2. enhancing knowledge;
 3. improving implementation, stepping up enforcement and securing redress;
 4. aligning rights and key policies to economic and societal change.
- These are developed by eight specific objectives. We will focus on the following:
 - improving information and raising awareness of consumer rights and interests among both consumers and traders;
 - building knowledge and capacity for more effective consumer participation in the market;
 - effectively enforcing consumer law, focusing on key sectors;
 - giving consumers efficient ways to solve disputes;

¹ COM(2012) 225 final.

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p.1.

³ See, for example, EDPS Opinions on the Proposal for a Decision of the European Parliament and of the Council establishing a multiannual Community programme on protecting children using the Internet and other communication technologies, OJ C 2, 7.01.2009, p. 2.,

⁴ For example, on Cloud Computing and on the Commission Communication on a 'European Strategy for a Better Internet for Children.

- adapting consumer law to the digital age.
- As regards the implementation of these objectives, the text mentions some actions and proposals that have already been initiated or issued by the Commission (such as the data protection reform package⁵ or the proposals for Alternative and Online Dispute Resolution⁶). It also addresses new initiatives but their content is not specified yet.

III. General comments

- Data protection rights and consumer rights, which are all recognised by the EU Charter of Fundamental Rights⁷, have a different scope of application: while consumer rights can only be invoked by consumers, privacy and data protection rights also protect individuals when they are not acting as consumers. However, as the Communication recognises, both sets of rights are closely interrelated.
- The Communication acknowledges that data protection law can contribute to increasing consumer's trust⁸. The EDPS supports this view and believes that the protection of consumer rights and the protection of personal data can create useful synergies, in particular in the digital environment.
- Therefore, the EDPS recommends taking into account data protection rights while implementing the objectives of the Communication. The present Comments focus on key objectives 2, 3 and 4 of the Communication, which are the most related to data protection.

IV. Specific comments

IV.1. Data Protection Rights should be taken into account in consumer policy

- The second key objective, "enhancing knowledge" includes the specific objectives of empowerment of consumers and the improvement of information and awareness raising on consumer rights.
- The proposed Data Protection Regulation strengthens data protection rights and creates new rights such as the right to be forgotten⁹ and the right to data portability¹⁰. However, a lack of awareness might hamper their effective exercise, particularly in the digital environment.

⁵ Proposal for a Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (COM(2012) 11 final), hereinafter ("the Data Protection Regulation") and Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (COM(2012) 10 final).

⁶ Proposal for a Directive of the European Parliament and of the Council on Alternative Dispute Resolution for consumer disputes (COM(2011) 793 final) and Proposal for a Regulation on Online Dispute Resolution for consumer disputes (COM(2011) 794 final).

⁷ See Article 38 (Consumer Protection), Articles 7 (Respect to private and family life) and 8 (Protection of Personal data) of the EU Charter of Fundamental Rights.

⁸ The data protection reform package is mentioned several times as contributing to the objectives of the Communication.

⁹ See Article 17 of the proposed Data Protection Regulation (although it is based on the right to erasure, already present in the current framework).

¹⁰ See Article 18 of the proposed Data Protection Regulation.

- Therefore, specific objective 3, "improving information" should also cover the information individuals are entitled to receive on how, by whom and for what purposes their data are being collected, accessed and stored, and to whom they might be transferred¹¹. The principle of transparency -both in the consumer and in the data protection field- becomes even more relevant in an increasingly developed digital sector.
- Clear information is also essential for consumers to decide whether they accept to provide their personal data. In many of the situations consumers face, especially on the Internet, the main legal basis for the processing of personal data (apart from those needed for the performance of a contract) is consent. In order for this consent to be valid, it has to be freely given, specific and informed¹². These conditions are not always fulfilled because of a lack of awareness, information or knowledge, especially in complex situations such as behavioural advertising¹³ and social networks.
- As part of the actions to achieve these objectives, an EU-wide campaign is envisaged to increase knowledge about consumer rights and interests. The EDPS welcomes this initiative and recommends including awareness raising on data protection rights in this campaign.
- The EDPS also welcomes the interactive exchange platform proposed in the Communication for teachers and other professionals working with 12-18 years old. Children should also be particularly targeted in awareness raising campaigns. The EDPS reminds that the proposed Data Protection Regulation grants specific protection to children¹⁴.
- The Communication also mentions the improvement of portals such as "Your Europe portal"¹⁵ and the "e-YouGuide"¹⁶. The EDPS welcomes the fact that the "e-YouGuide" already contains some information on data protection rights. However, this should be completed and updated. The portal "Your Europe" should also include a section on data protection rights.
- Specific training for non-profit organisations advising consumers is also foreseen, as well as support to national consumer organisations. These activities should also include specific training and capacity building on data protection rights.
- The Communication also foresees the adoption of codes of good conduct. Although the data protection legislation already encourages the development of codes of conduct¹⁷, the EDPS recommends also taking into account data protection rights while developing the codes of conduct related to consumer rights.

¹¹ See Articles 10 and 11 of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31), hereinafter "Directive 95/46/EC" and Articles 11 and 14 of the proposed Data Protection Regulation.

¹² See Article 2(h) of Directive 95/46/EC and Article 4(8) of the proposed Data Protection Regulation, also requiring an explicit statement or clear affirmative action.

¹³ In this regard, see also Article 20 of the proposed Data Protection Regulation (Measures based on profiling).

¹⁴ See Articles 6(1)(f), 11(2), 17(1), 33(2)(d), 38(1)(e) and 52(2) of the proposed Data Protection Regulation.

¹⁵ http://europa.eu/youreurope/citizens/index_en.htm.

¹⁶ http://ec.europa.eu/information_society/eyougide/index_en.htm.

¹⁷ Article 27 of Directive 95/46/EC and Article 38 of the proposed Data Protection Regulation.

IV.2. Compliance with and enforcement of data protection legislation is also key to boost consumers' trust

- The third key objective of the Communication consists of "improving implementation, stepping up enforcement and securing redress". This includes the specific objectives of effectively enforcing consumer law and giving consumers efficient ways to solve disputes.
- As part of the steps to be taken to achieve these objectives, the Commission will consider an initiative on an EU framework for collective redress. As the EDPS has previously stated¹⁸, collective redress should also be possible for infringements of the data protection legislation.
- Consumer associations are also particularly well placed to advise consumers seeking redress for violations of the rights guaranteed to them by the data protection legislation. The EDPS supports the empowerment of organisations and associations defending consumers and data protection rights to bring actions for damages on behalf of victims of infringements to data protection legislation, as proposed also by the data protection reform package¹⁹.
- The EDPS also welcomes the proposals for Alternative and Online Dispute Resolution for consumer disputes²⁰ mentioned in the Communication. He has recommended further improvements to ensure that the rights of the parties of a dispute resolution scheme are protected²¹.
- The EDPS also notes that the proposed Data Protection Regulation seems to partly align some aspects of redress for breaches of data protection law with consumer law, as it would allow data subjects to seek judicial remedy in their country of residence²². The EDPS welcomes these developments, although further clarifications are needed²³.

IV.3. Initiatives to adapt consumer law to the digital environment should comply with data protection law

- The Communication also sets the objective of aligning rights and key policies to economic and societal change (key objective 4), including the specific objectives of adapting consumer law to the digital age.
- Commission proposals in this field will include initiatives on collective rights management; private copying and reprography levies; availability of audiovisual content and broadcasting services; assessment of current rules aimed at protecting children from misleading advertising; a legislative framework for electronic identification, authentication and signatures; minimum requirements for information on website localisation and on the legal existence of its owner; and policy proposals on cloud computing.

¹⁸ See EDPS Opinions on the Commission Communication "A comprehensive approach on personal data protection in the European Union" of 14 January 2011 (OJ L181, 22.06.2011, p.1) and on the Proposal for a data protection reform package of 7 March 2012.

¹⁹ See Articles 73 and 76 of the proposed Data Protection Regulation.

²⁰ Cited above.

²¹ See the EDPS Opinion on the Commission proposals for a Directive on Alternative Dispute Resolution (ADR) for consumer disputes and a Regulation on Online Dispute Resolution (ODR) for consumer disputes of 12 January 2012.

²² See Article 75(2) of the proposed Data Protection Regulation.

²³ See para. 262 of the EDPS Opinion on the Proposal for a Data Protection Reform package, cited above.

- The EDPS notes that most of these initiatives will have an impact on the protection of privacy and personal data. He therefore expects to be consulted on these proposals as early as possible in the legislative process. The EDPS has already expressed his views on some of these topics²⁴ and might issue further Opinions on the mentioned proposals²⁵.

Brussels, 16 July 2012

²⁴ See the EDPS Opinions on the proposal for a Regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights of 12 October 2011 and on the proposal for a Council Decision on the conclusion of the Anti-Counterfeiting Trade Agreement (ACTA) of 24 April 2012.

²⁵ For example, on cloud computing and electronic identification authentication and signatures.