



POLISH CHAMBER OF COMMERCE

We foster entrepreneurship.
www.o.r.g.pl



Organizacja Firm Badania Opinii i Ryńku



POLISH MARKETING ASSOCIATION



9 January 2017

Mr Andrus Ansip
Vice-President of the European Commission
European Commission
200 Rue de la Loi
B-1049 Brussels

Mr Günther H. Oettinger
Commissioner for the Digital Economy & Society
European Commission
200 Rue de la Loi
B-1049 Brussels

Dear Vice-President Andrus Ansip,
Dear Commissioner Günther Oettinger,

We are writing on behalf of Polish organisations representing Polish SMEs (The Polish Confederation Lewiatan), publishers & digital advertising industry (IAB Poland, a member of the Polish Chamber of Commerce), direct marketers (Polish Marketing Association SMB), advertisers, media and media houses (IAA), marketing communication agencies (SAR – Marketing Communication Association), digital research companies (OFBOR), e-commerce (e-Commerce Poland) and internet providers (PIIT) with regard to the upcoming revision of the ePrivacy Directive.

Being aware that the final text is still evolving we would like to express our serious concerns about the direction the review of the ePrivacy Directive seems to be taking, based on a draft proposal for an ePrivacy Regulation that was leaked in early December. A proposal that goes along its lines would impair the inclusive and open internet as we know it and would have negative economic consequences for European and Polish business across all sectors. It would also put them in a competitively disadvantageous position towards other markets and ultimately damage the potential of Europe's data-driven economy. Moreover, undermining the advertising business model will deprive millions of people in Poland and Europe of access to content and services free at the point of access online, whether as individual citizens or small businesses. Such an approach would fail to meet the stated objectives of the legislation to provide Europeans with the confidence and trust they deserve because the strict requirements on processing data would instead create endless and unnecessary demands on their time, attention and patience when using every-day essential services.

We believe that the General Data Protection Regulation (GDPR) adequately addresses the vast majority of the issues the ePrivacy regime seeks to cover. In fact, a new law, along the lines of the leaked draft ePrivacy Regulation, would undermine the GDPR and much of the intended value attributed to the GDPR. We see insufficient evidence in the Commission's draft explanatory memorandum that an ePrivacy Regulation adopted under Article 114 TFEU would meet the requirements of subsidiarity and proportionality particularly as the GDPR is in the process of being implemented. In our opinion the clarity around the way in which data is collected and processed, that consumer groups have called for in this matter has been met fully in the GDPR. It should not also be overlooked that the GDPR forms an adequate legal instrument that ceases the existing regulatory asymmetry between market players and enables innovation across the whole internet value chain. The proposed ePrivacy regulation would maintain these regulatory asymmetries, hamper competition, consumers, and innovation alike, especially in the field of location data within IoT and M2M. Reinforcing stricter sector specific rules, instead of removing them, would jeopardize the achieved symmetry and harmonization by the GDPR.

We would like to draw your attention to the fact that many industry organisations, on European and national level, including Polish ones, repeatedly called for a simple repeal of the ePrivacy Directive as the first, best option, at both the April workshop and the October roundtable with Commissioner Oettinger.¹ In a letter dated 23 November 2016, a group of European industry organizations brought to your attention the critical role that revenue from data-enabled advertising plays in the financing of online media.² It was explained that it provides an indispensable revenue stream without which media, both on European and national level, would be hard-pressed to manage the challenging transition to the online environment with obvious negative implications for media plurality over the medium-to long term, and, ultimately, for an informed citizenry — the basis of any functioning democracy. Unfortunately, requirements in the leaked draft would indeed seriously reduce the online media's ability to build much needed advertising revenues, and hamper their relations with third parties which serve to provide insights to improve digital business models.

We are especially concerned with the proposals on browser settings, third party cookies and privacy by design. We believe the ePrivacy Regulation should be technology neutral allowing companies to choose the best and most appropriate technology for their individual needs, all in accordance with the GDPR. Lastly, we are disheartened that the promised "streamlining" of the so-called cookie rules appears to boil down to introducing only one new, extremely narrow, exemption for first party analytics to the existing prohibitive rules on the use of cookies. Furthermore, by limiting the available legal grounds for using cookies to just one – consent – the proposal would also have the pernicious effect of favouring certain business models over others. Particularly key third party data-driven business service providers would be disadvantaged as they are not in a position to obtain consent.

We urge the Commission to take a critical look at its draft proposal for an ePrivacy Regulation, taking into due consideration the constructive warnings and feedback industry have provided during the past year. In particular we ask you to refrain from introducing additional rules on cookies, consent and privacy by design until the GDPR has been applied in practice.

Yours sincerely,

¹ See Joint Statement Empowering trust and innovation by repealing the e-Privacy Directive, signed by inter alia ETNO, ECTA and GSMA, available at <https://ec.europa.eu/eusurvey/files/ccf27ee2-83d8-4ac7-aa7f-a376e16e5138>

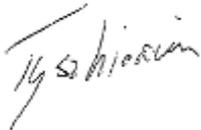
² See IAB Europe Press Release, European publishers urge European Commission to recognise importance of digital advertising in review of the ePrivacy Directive, available at <http://www.iabeurope.eu/all-news/press-releases/european-publishers-urge-european-commission-to-recognise-importance-of-digital-advertising-in-review-of-the-eprivacy-directive/>



Włodzimierz Schmidt
President & CEO
Interactive Advertising Bureau Poland (IAB Poland)



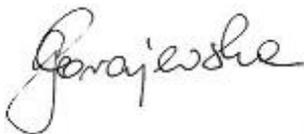
Henryka Bochniarz
President
The Polish Confederation Lewiatan



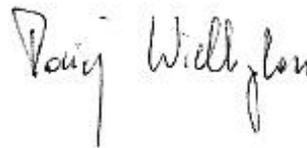
Paweł Tyszkiewicz
General Manager
SAR Marketing Communication Association



Jacek Olechowski
President
IAA Poland, International Advertising Association



Elżbieta Gorajewska
President
OFBOR



Maciej Wielkopolan
Vice-President
Polish Marketing Association SMB



Ireneusz Piecuch
President
Polish Chamber of Information Technology and Telecommunications (PIIT)



Patrycja Sass-Staniszevska
President
e-Commerce Poland Chamber of Digital Economy

Cc:

Mr. Jean-Claude Juncker
President of the European Commission
European Commission

Mr. Frans Timmermans
First-Vice President of the European Commission
European Commission

Ms Věra Jourová
Commissioner for Justice, Consumers and Gender Equality
European Commission

Ms Margrethe Vestager
Commissioner for Competition
European Commission

Ms Elżbieta Bieńkowska
Commissioner for the Internal Market, Industry, Entrepreneurship and SMEs
European Commission