

Dear Minister,

In light of the upcoming Justice and Home Affairs Council on 8-9 June, EDiMA* would like to draw your attention to our concerns regarding the proposed Directive on the supply of digital content (hereinafter “DCD” or “proposal”).

While we believe that considerable progress has been made to address some of the shortcomings of the European Commission proposal, we would like to urge you to take the below comments into account during the upcoming discussions in order to ensure a high degree of consumer protection and legal certainty.

The concept that consumers pay with their personal data is a key problem in the proposal and should be removed to avoid interference with the application of EU data protection framework.

We concur with the European Data Protection Supervisor (EDPS) who rightly warns that the notion of “paying with personal data”, and the regime thereof contained in the proposed Directive, would alter the balance created by the GDPR regarding the circumstances under which the processing of personal data may take place.¹ We concur with the EDPS who states in his recent opinion that “the Proposal is not the proper instrument to regulate the use of personal data.”

We call on the Council to remove any overlaps and contradictions between the proposed Directive and existing data protection rules. Personal data is already covered by existing data protection rules. More specifically, we urge the Council to limit the scope of the proposed Directive digital content where the user has paid a (monetary) price.

Overextending the scope of DCD creates legal uncertainty

In our understanding, the latest DCD text broadens the list of various services covered by the Directive. While this is to be welcomed, as the text clarifies the services and circumstances that fall under the scope of the DCD, the definitions list is too extensive as it attempts to cover all types of digital services including platforms and OTT services. As digital technologies evolve rapidly, it is difficult to create detailed definitions which might not be applicable in an ever-changing digital environment. It would be advisable with regard to services that are currently being subject to other regulation - such as platforms, social networks, digital content, OTT services and others - to use and apply existing legislation in order to maintain coherence and legal certainty.

¹ EDPS Opinion 4/2017, see: https://edps.europa.eu/sites/edp/files/publication/17-03-14_opinion_digital_content_en.pdf.



We urge the Council to delete any definition that would fail to pass the test of time and take due account of existing rules and EU legislation that is currently in the making. In order to maintain coherence and legal certainty for consumers and companies alike it is essential that full harmonisation is maintained.

Kind Regards,

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Director General

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