

Position Paper Privacy and Data Protection

Safety and Transparency for Trust and Consumer Centrality



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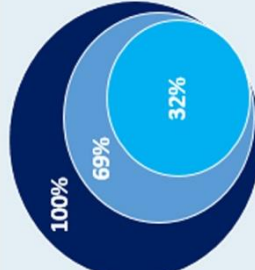
2014



Europe 2013 Key e-commerce data at a glance

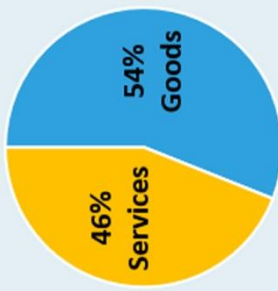


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816 million people live in Europe
565 million people use the Internet
264 million people are e-shoppers

€ 363.1 bn Turnover E-commerce Goods & Services



Europe € 363.1 bn +19%
EU28 € 317.9 bn +18%



€ 16.4 trn GDP 2013



UK, Germany, France account for 61% of total e-commerce sales in Europe

2,111,000+ jobs directly or indirectly via e-commerce

550,000+ estimated online businesses

3.7 billion+ number of parcels annually (f)

Average spending per e-shopper
 € 1,376

220 million households

5.7%

Estimated share of online retail in **total retail**

“443 million social media users”

Top 5 mature e-commerce countries in turnover (million)	Turnover (million)
UK	€ 107,157
Germany	€ 63,400
France	€ 51,100
Netherlands	€ 12,000
Austria	€ 10,970

Top emerging countries	Turnover (million)
Russia	€ 15,500
Spain	€ 14,414
Italy	€ 11,268
Poland	€ 5,225

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Ecommerce Europe is the association representing around 25,000 companies selling products and/or services online to consumers in Europe. Ecommerce Europe is a major stakeholder in policy issues concerning the Digital Single Market - which experiences difficulties in the cross-border coordination between Directorate-Generals, Member States, and Members of the European Parliament. Ecommerce Europe offers to be a one-stop-shop for the European Institutions for all e-commerce related issues. Ecommerce Europe can be consulted when it comes to market research and data, policy questions and in-depth country knowledge.

Ecommerce Europe asks the European institutions for a one-stop-shop for e-commerce policies which are currently covered by a plethora of legislation. In order to achieve this Ecommerce Europe proposes an integrated perspective on five key themes: **Internet security & privacy, consumer rights, e-payments, tax issues and e-logistics**. Detailed proposals linked to these themes are outlined in the Ecommerce Europe multiple position papers.

Privacy and Transparency for Consumer Trust and Consumer Centrality

Privacy and protection of personal data are key drivers for trust in the e-commerce sector and cross-border industry development. Consumer trust is at the core of the e-commerce market, and therefore the fair, safe and transparent use and collection of data is key to the growth of the industry. Recent technical developments in information collection and analysis stimulate business innovation and provide opportunities for merchants to further tailor their business to the consumer's needs – thereby creating a flourishing e-commerce market to the benefit of all. When personal data and privacy are adequately protected, merchants will still be able to benefit from recent technical developments in information collection.

Ecommerce Europe therefore asks that policy makers harmonize privacy and data protection rules through a risk-based approach and without additional administrative burdens.

Governance and law making on privacy, data usage, data collection and data protection both on a national level and on a European level are spread across separate areas and departments like justice, telecommunication, consumer contractual rights, fundamental human rights and fair competition. **Ecommerce Europe pleads for an integrated approach and cooperation between the several bodies concerned.**

Legislation on privacy, data processing, data collection and data protection should:

- facilitate a flourishing business environment;
- recognize the nature of the relationship between a consumer and a merchant;
- should meet the legitimate interests of both the consumer/data subject and the merchant;
- provide a level playing field for web shops in- and outside of the European Union, thereby facilitating the true cross-border and global nature of the e-commerce market.

Ecommerce Europe is committed to collaborate with policy makers and stakeholders on the following recommendations for Privacy and Transparency:

1. Adopt a risk-based approach

Ecommerce Europe urges lawmakers to take a balanced approach in the regulation of data collection, data processing and data protection. Such a balanced approach is risk-based and **focuses on the factual use of data by merchants** rather than an academic worst-case scenario based on potential use. A risk-based approach also differentiates between data with a high privacy impact and data with low or no privacy impact. Lawmakers should base their policy and legislation on this sliding scale of intrusiveness. Moreover they should recognize the **industry's potential of self-regulation** and should refrain from regulation when it comes to the collection and processing of data with low or no privacy impact.

2. Adhere to the current definition of personal data

A clear distinction should be made between the processing of personal data and other data not being personal. In order to come to a fact-based discussion about risks and opportunities of the processing of data, Ecommerce Europe advocates a risk-based approach in the interpretation of the concept of personal data in current legislation and proposals for new or reformed legislation. In order to avoid confusion in the public debate Ecommerce Europe recommends **to restrict the definition of personal data** to data that have more than low or no privacy impact for the data subject. This definition is similar to the **current definition** in the Data Protection Regulation of 1995.

3. Adopt a balanced framework for the processing of Personal Data

Ecommerce Europe welcomes the efforts made on the reform of the Data Protection Regulation to come to a single uniform European set of rules. **An update of the existing legislation has great potential for optimizing privacy rights** for the consumer and regulating in a fair and balanced way the legitimate interests of the industry in data processing, data collection and profiling. However, Ecommerce Europe is concerned that **the proposed legal framework will be too strict and inflexible**. On one hand the proposed legal framework might limit the possibilities for exploiting the economic potential for profiling and collecting Big Data and thus may **hamper innovation** in the sector. On the other hand concerns rise about the **costs for business** for data processing,

profiling and collection of Big Data through administrative burdens and excessive and too strict obligations (especially for SMEs) to perform a privacy impact assessment, to assign a data protection officer and of data leak notification procedures.

4. Realize the economic potential of Big Data collection

The collection of “Big Data” **holds great potential** for business innovation, new business models and market opportunities. It also has an evident potential to optimize the service to the consumer, thus enhancing his experience with and confidence in online shopping. Both personal data and non-personal data can be subject to Big Data collection. Ecommerce Europe emphasizes the idea that the collection of Big Data should be **transparent and only be subject of privacy and data protection legislation as far as personal data are involved**. In order to maximize the economic potential of Big Data to all players in the e-commerce industry (especially SMEs) and to provide for fair competition, Big Data collectors should facilitate equal access on fair conditions to the Big Data they control for all competitors.

5. Acknowledge the win-win situation of profiling

Ecommerce Europe believes that **clear and transparent use of profiling** is essential for a flourishing e-commerce business environment. Profiling benefits users as the technique can be used to further tailor to the users’ needs, simplify their ordering,

payment and delivery process and personalize their online shopping experience. A risk-based approach based on merchants’ factual use of profiling and the actual privacy impact for the consumer is also for profiling indicated. As far as profiling has no or limited impact on the consumer’s privacy, it should rather be subject to self-regulation than to legislation. Lawmakers should acknowledge the win-win situation created by transparent profiling and the differentiation – not discrimination – of users.

6. Introduce a standard information tool for informing the consumer and a risk-based consent rule

Ecommerce Europe believes that the responsible processing of personal data, profiling and collection of Big Data builds on the idea of consumer trust and awareness. Solid data protection regulation should be based on the idea of transparency ensuring that there is no doubt to the question whether the data subject is fully aware of what is going to happen, enabling him to make a free and informed choice about the processing of its data for a specified purpose. To facilitate a merchant-consumer relationship built on trust and in order to ensure that consumers feel adequately informed in all online transactions, Ecommerce Europe urges lawmakers to consider a standard information tool for informing the consumer on their privacy rights. This model should be developed **in cooperation with the industry, representative organizations of data subjects** and endorsed by the Commission

and Data Protection Authorities as a fair and compliant manner of informing the data subject on privacy and data collection.

Ecommerce Europe emphasizes that the privacy impact of personal data processing is context-dependent. Therefore, a **risk-based consent rule**, depending on the specific circumstances and the context of the personal data collection, is the most suitable approach. In essence, Ecommerce Europe favours the notion of “unambiguous consent” as a suitable instrument. In addition, Ecommerce Europe supports leaving open the possibility of consent by appropriate device settings. This idea will do justice to both consumers’ interests regarding user friendly solutions and legal certainty, as well as businesses’ interests with regard to keeping additional costs to a minimum by means of a uniform technical standard. Under certain circumstances, clearly communicated default options or pre-ticked boxes should be deemed as valid means to acquire unambiguous consent.

7. Strengthen the effectiveness of existing rights on the notion of the right to be forgotten

Ecommerce Europe supports the existing legislation on the notion of the right to be forgotten. The current data protection rules state that private data may only be stored for a limited time and are supplemented by the right of individuals to have their data deleted and/or withdraw their consent. This already forms, strictly speaking, a “right to be forgotten”. The introduction of a new

“right to be forgotten” is therefore unnecessary and could create redundancy with these provisions. Ecommerce Europe prefers to **strengthen the effectiveness of existing rights rather than create a new right of uncertain scope and meaning**, which is likely to have serious and unwarrantable consequences for the e-commerce sector and will partly be an illusion because of technical impossibilities. Moreover merchants have a wide range of obligations to keep data on transactions for the sake of bookkeeping, consumer warranty, taxation, identification and more. Any notion of the right to be forgotten should therefore be **restricted to user generated content** – as is suitable in a balanced approach between consumers’ and merchants’ interests.

8. Restrict Data Portability to user generated content

Ecommerce Europe is not opposed to data portability as it can benefit the consumer in facilitating a smooth online shopping process. However, data portability should not be obliged by law as this will distort the market and hamper competition. Ecommerce Europe believes that data portability should only be used when it is to the **benefit of the consumer**. Imposing such a right to portability in the e-commerce sector can lead to additional costs for businesses since companies have to develop new systems for data management. Moreover, Ecommerce Europe thinks that the creation of such a right **will discourage companies from implementing innovative services**

because sensitive commercial information is allowed to be transmitted to competitors. Therefore the obligation to provide for this right should be **restricted to user-generated content**, which is content that is generated by the data subject itself, and thus to social networks in particular.

9. Clarify the notion of consent in cookie legislation

In order for merchants to provide a trustworthy and user-friendly shopping experience it is important for the consumer to be adequately informed about the cookies being placed, so that the consumer can make a choice based on his informed consent. Implementation of the Cookie Directive across the EU has learned however that the definition of (timing of) 'consent' is unclear across Member States. Ecommerce Europe encourages policy makers to **develop a clear definition of (timing of) consent** based upon industry solutions. Any further confusion concerning the legislation should be clarified **in accordance with the recommendations of all stakeholders**, such as the Article 29 Working Party.

10. Installation of supranational dialogue bodies

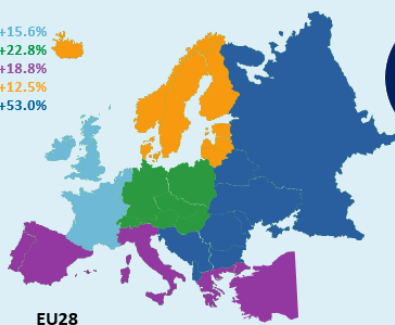
Uniformity on a national, European and global level on interpretation of rules and the enforcement by the several supervisory authorities on privacy, data collection and data protection should create a level playing field for the industry. This **starts with self-regulation of the global online industry**. Next to this it requires

cooperation between the several competent authorities on Data Protection, Consumer Protection, Competition and Telecommunication on a national level. On the other hand cooperation is needed in supervision between the national authorities on a European level, by creating **supranational dialogue bodies** like the article 29 Working Party is for the area of data protection. **In all cases relevant stakeholders need to be represented** in these supranational bodies and should be involved in their policy decisions and interpretation of legislation.

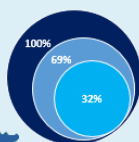
Ecommerce Europe association data at a glance 2014



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Our Mission
 To promote the interest of e-commerce in Europe through advocacy, communication and networking.

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 Online
 Measurement
 Standard
 ECommerce



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 * Pure Player award

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 2. e-Privacy & Transparency
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Reports contain countries
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