

KEEP EUROPE GROWING

Dear Members of the European Parliament,

The European Commission's proposed change to establish **joint liability of controllers and processors** in the General Data Protection Regulation (GDPR) aims to fix a system that is not broken.

Careful consideration leads us, **the Coalition of European Organisations on Data Protection**, to conclude that **separate and distinct responsibilities for controllers and processors remain the right choice for Europe**. Altering existing responsibility principles under the current Directive (95/46/EC) will have significant and enduring negative consequences for European competitiveness.

Arguments in favour of joint liability have implied that responsibility towards the data subject under the current Directive is unclear. However **the 95/46/EC Directive is explicit: controllers are responsible. Processors assume direct liability only when operating outside the instructions of a controller.**

The **real problem is a lack of awareness that the existing system works** and has stood the test of time. In recent weeks, European Data Protection Authorities have taken decisions to clarify⁽¹⁾ the obligations processors have towards controllers under the 95/46/EC Directive.

In short, today's **EU Data processing market is effective**. Controllers are hardly "forced" to choose a cost-minimizing non-compliant processor; rather SMEs and large controllers can choose from an ample market of compliant processors.

Furthermore, **joint liability contradicts the data minimisation principle**, according to which no more personal data than needed should be held or stored. If under the GDPR processors are expected to be liable alongside controllers, naturally they will need access to the same information afforded the controller. Without this information, the processor can neither determine whether it can offer services nor accept the terms of joint liability.

Finally, the proposed change **makes the mistake of equating processing solutions with defective products**. A database is neutral and has no inherent safety risk. Risk is linked to misuse of products, and in the context of data processing this usage is governed by the controller.

As trialogues approach, we ask you to reflect carefully on this issue. We believe you will come to be convinced, as we are that **the current regime of separate responsibilities for controllers and processors** serves its purpose well and remains the right choice for Europe.



Rene Summer
Spokesperson, Coalition of European Organisations on Data Protection

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⁽¹⁾ For example see: http://ec.europa.eu/justice/data-protection/article-29/documentation/other-document/files/2014/20140402_microsoft.pdf

Coalition of European Organisations on Data Protection

Our Coalition is made up of nineteen European companies, from SMEs to Global Multinationals and non-profit organisations operating in a variety of sectors, on a national, regional and global scale. With an aggregate turnover (2013) of over € 121 billion and some 607,000 employees worldwide, our footprint allows us to bring growth, progress and jobs to the EU economy.

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Contact: info@europeandatacoalition.eu