

eBay comments ahead of IMCO vote on the Comi opinion on the General Data Protection Regulation proposal

eBay thanks IMCO MEPs for their work on the General Data Protection Regulation proposal which reflects the objectives of the regulatory review to both increase consumers data protection and facilitate the legitimate use of personal data by businesses established in the Internal Market.

While we very much welcome the intentions of the Internal Market and Consumer Protection Committee draft opinion and amendments tabled by other MEPs, we would like to draw your attention to several issues ahead of tomorrow's vote.

Main establishment and one-stop-shop (Article 4 – paragraph 1 – point 13).

This sensitive to our business issue was not covered by the compromises amendment and will be voted separately.

In order to reinforce legal certainty and avoid disputes over Data Protection authorities (DPAs) competences, we believe it should be the controller's responsibility to designate its main establishment, and **amendment 179** (Andreas Schwab/Marielle Gallo) as well as **180** (Malcolm Harbour/Adam Bielan) suggesting further clarification of the criteria for that designation clarify this.

Such criteria should be similar to the checklist used by the Article 29 Working Party in determining the lead data protection authority for the approval of Binding Corporate Rules¹.

Furthermore, both amendment 179 and 180 strongly support the introduction of a 'one-stop-shop' approach with respect to the competence of the lead data protection authority in the Member States where the company has its main establishment, as it allows companies to operate in multiple Member States, while streamlining companies' relationship with enforcement authorities.

Therefore, eBay would strongly recommend voting in favour of both amendment 179 and 180.

Amendment 179

Andreas Schwab, Marielle Gallo

Proposal for a regulation

Article 4 – paragraph 1 – point 13

Text proposed by the Commission

(13) 'main establishment' means ***as regards the controller, the place of its establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, 'main establishment' means the place of its central administration in the Union;***

Amendment

(13) 'main establishment' means ***the location as designated by the undertaking or group of undertakings, whether controller or processor, on the basis of, but not limited to, the following optional objective criteria:***

(1) the location of the European headquarters of a group of undertakings;

(2) the location of the entity within a group of undertakings with delegated data protection responsibilities;

(3) the location of the entity within the group which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; or

(4) the location where effective and real management activities are exercised determining the data processing through stable arrangements.

The competent authority shall be informed by the undertaking or group of undertakings of the designation of the main establishment;

Amendment 180

Malcolm Harbour, Adam Bielan

Proposal for a regulation

Article 4 – paragraph 1 – point 13

Text proposed by the Commission

(13) ‘main establishment’ means ***as regards the controller, the place of its establishment in the Union where the main decisions as to the purposes, conditions and means of the processing of personal data are taken; if no decisions as to the purposes, conditions and means of the processing of personal data are taken in the Union, the main establishment is the place where the main processing activities in the context of the activities of an establishment of a controller in the Union take place. As regards the processor, ‘main establishment’ means the place of its central administration in the Union;***

Amendment

(13) ‘main establishment’ means ***the location as designated by the undertaking or group of undertakings, whether controller or processor, subject to the consistency mechanism set out in Article 57, on the basis of, but not limited to, the following optional objective criteria:***

(1) the location of the European headquarters of a group of undertakings;

(2) the location of the entity within a group of undertakings with delegated data protection responsibilities;

(3) the location of the entity within the group which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; or

(4) the location where effective and real management activities are exercised determining the data processing through stable arrangements.

The competent authority shall be informed by the undertaking or group of undertakings of the designation of the main establishment.

Data portability

eBay welcomes the amendments **128 and 280** (Andreas Schwab, Rafał Trzaskowski, Marielle Gallo) on Recital 55 and Article 18 respectively, on data portability. These again are not covered by the compromises.

We would highly recommend EU decision makers **voting in favour of both amendments 128 and 280**, deleting the provision suggested by the Commission that may have a detrimental effect on both data subjects and data controllers mainly regarding interoperability and transferability.

Amendment 128

Andreas Schwab, Rafał Trzaskowski, Marielle Gallo

Proposal for a regulation

Recital 55

Text proposed by the Commission

(55) To further strengthen the control over their own data and their right of access, data subjects should have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain a copy of the data concerning them also in commonly used electronic format. The data subject should also be allowed to transmit those data, which they have provided, from one automated application, such as a social network, into another one. This should apply where the data subject provided the data to the automated processing system, based on their consent or in the performance of a contract.

Amendment

Deleted

Amendment 280

Andreas Schwab, Rafał Trzaskowski, Marielle Gallo

Proposal for a regulation

Article 18

Text proposed by the Commission

Article 18

Right to data portability

1. The data subject shall have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain from the controller a copy of data undergoing processing in an electronic and structured format which is commonly used and allows for further use by the data subject.

2. Where the data subject has provided the personal data and the processing is based on

Amendment

Deleted

consent or on a contract, the data subject shall have the right to transmit those personal data and any other information provided by the data subject and retained by an automated processing system, into another one, in an electronic format which is commonly used, without hindrance from the controller from whom the personal data are withdrawn.

3. The Commission may specify the electronic format referred to in paragraph 1 and the technical standards, modalities and procedures for the transmission of personal data pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

Extraterritorial scope of the Regulation

According to Article 3 the scope of the Regulation extends to controllers established outside of the EU where the processing activities relate to goods/services offered to EU citizens or where their behaviour is monitored. We acknowledge that it is desirable to have companies based outside of the EU respect EU data protection standards when processing personal data of EU citizens. However, in a cross-border context, we believe that covering all online services throughout the world is too ambitious. The extension shall be rather limited to the cases where a service intentionally addresses EU consumers. Therefore, we would recommend **voting against of the amendment 155** (Catherine Stihler), **156** (Christel Schaldemose, Anna Hedh, Catherine Stihler), **and in favour of amendments 157** (Rafal Trzaskowski) **and 158**.

Amendment 155 Catherine Stihler

Proposal for a regulation Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3 a

This regulation applies to the processing of personal data of data subjects not residing in the Union by a controller or processor established in the Union, through their economic activities in a third country(ies)

Amendment 156

Christel Schaldemose, Anna Hedh, Catherine Stihler

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union.

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, *whether the processing takes place in the Union or not.*

Amendment 157

Rafał Trzaskowski

Proposal for a regulation

Article 3 – paragraph 2 – point a

Text proposed by the Commission

(a) the *offering* of goods or services to such data subjects in the Union; or

Amendment

(a) the *directing* of goods or services to such data subjects in the Union, *irrespective of whether these are provided free of charge in relation to the data subject or not*; or

Amendment 158

Morten Løkkegaard

Proposal for a regulation

Article 3 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the monitoring of their behaviour.

(b) monitoring the behaviour of such data subjects with a view to offering goods or services to them.

Anonymous data

CA5

eBay welcomes **CA 5 (Art. 4.2a)** on anonymous data that clarifies that this sort of data should not be considered personal data.

Right to be forgotten

eBay welcomes improvements that **CA 2 (Recital 53)** on the “Right to be forgotten” that was renamed to the “Right to erasure” in particular in recital 53. We welcome similar wording in **CA 8 (Art. 17)**. Nevertheless, the current wording could impose some additional burdens on businesses, in particular with the responsibility for the controllers for providing feedback to the data subject on the actions taken by third parties to delete data. More generally, once information is publicly available, we do not have any control over the way in which these data are treated by third parties – e.g. they may be transferred, duplicated, etc.

Data breach notification

eBay welcomes **CA 3** (Recital 67), and **CA 11** (Art.32.1) and in particular removal of 24 hours deadline mentioned in **CA 10 (Art. 31.1)** with regards to data breach notifications. However, data controllers should only notify data breaches that really matter, i.e. those breaches ‘which are likely to adversely affect the privacy of the data subject’ for notifications to DPAs. We would like to highlight that it will be difficult for the data controller to define “significantly” adverse impact.