

Minister of Science Technology and Innovation

Vice-President Neelie Kroes
Commissioner for Digital Agenda

European Commission
BERL 10/224
B-1049 Brussels
Belgium

Dear Vice-President Kroes,

In Denmark, the transposition and implementation of Article 5(3) of the revised ePrivacy Directive ranks high on the national information policy agenda.

Doknr.

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During the past eight months the Danish Ministry of Science, Technology and Innovation has engaged in an intense and ongoing dialogue with national and international representatives of the online industry, the Danish Data Protection Authority, the European Data Protection Supervisor, consumer protection bodies, the European Commission and a range of other significant stakeholders. On several open conferences and workshops, we have discussed the practical implications of the revised Article 5(3), including the idea of business self-regulation which you addressed at the European Roundtable on the benefits of Online Advertising for Consumers on 17 September 2010. In March 2011 we had a public consultation on the proposed Danish legislative framework for the implementation of Article 5(3). These efforts have been conducted with the aim of ensuring the best possible implementation of Article 5(3) into Danish law, taking into account the need to protect users on the web as well as ensuring continuous growth and development of the online industry.

However, consultations with other Member States have reflected a highly diverse interpretation and implementation of the new rules across Europe - especially with regard to the legal and practical requirements arising from the new concept of "consent" in the revised article.

Varying national implementations of the revised Article 5(3) may lead to significant distortion of competition among Member States. For instance, online service providers would most likely be deterred from establishing themselves in Member States with more restrictive interpretations of the requirements of consent due to incurred added costs.

From a consumer point of view, varying national implementations would lead to many different terms of service and thus lack of transparency and recognisability with regard to how users' privacy is protected when using any given service. The result could be confusion, a lack of real informed choice and possibly, as a result, a slower rate of adoption of European digital online services.

Online service providers as well as consumers would have an advantage or disadvantage on the European market depending on the national implementation of the Member State in which an online business is based.

I find it of paramount importance that Member States strike the right balance between considerations of protecting users' privacy and considerations of how the online industry may continue to thrive so we do not involuntarily impede European growth. This will also be crucial for the continued development of single European digital market.

Further guidance from the Commission on this matter would be highly appreciated in the Danish efforts to complete the implementation of Article 5(3), which will continue over the coming months.

Yours sincerely,

Charlotte Sahl-Madsen