



INTERACTIVE SOFTWARE  
FEDERATION OF EUROPE  
*Representing the European video games industry*

## ISFE feedback on the application of the General Data Protection Regulation

The Interactive Software Federation of Europe (ISFE) represents the European video games industry. ISFE's membership comprises national trade associations in 18 countries throughout Europe which represent in turn hundreds of games companies at national level. ISFE also has as direct members the leading European and international publishers, many of which have studios with a strong European footprint, that produce and publish interactive entertainment and educational software for use on personal computers, game consoles, portable devices, mobile phones and the Internet.

The video games industry is the fastest growing segment of the European content industry, with revenues of €21 billion in 2019 and a growth rate in key European markets of 55% over the past 5 years. The industry continuously embraces creativity and innovation with new business models, and via the emergence of on-demand and streaming services and the launch of new high-performance consoles, together with the strong growth of mobile gaming, offers players across Europe and in all age groups the possibility to enjoy and engage with video games<sup>1</sup>.

### **The importance of the Privacy Shield for our sector cannot be underestimated.**

This growth however heavily relies on an efficient transfer of data between territories. As correctly identified in the Commission's recently published "European strategy for data"<sup>2</sup>, international data flows are indispensable for the competitiveness of European companies and a true foundation of the digital economy. That is why ISFE strongly supported from the outset the Commission's initiative to modernize the European data protection rules and to improve the mechanisms for transferring data to third countries. These mechanisms are essential to allow our companies to operate their business worldwide while guaranteeing protection of individuals' data in an effective and comprehensive manner.

Our ability to trade and conduct business may be jeopardized by the European Court of Justice's final ruling in the Schrems vs. Facebook case<sup>3</sup>. While the Advocate General in his Opinion confirms in principle the legality of data transfer processing agreements or standard contractual clauses under the GDPR and explicitly advises the Court to refrain from ruling on the validity of the Privacy Shield, he also gave some observations which may call into question the essential equivalence between the level of protection guaranteed by the United States and the EU on which the Privacy Shield is founded<sup>4</sup>.

The importance of the Privacy Shield for our sector cannot be underestimated. The framework is central to facilitating transatlantic trade and provides significant economic benefits to the EU

---

<sup>1</sup> See also <https://www.isfe.eu/data-key-facts/>

<sup>2</sup> [European strategy for data](#), page 23.

<sup>3</sup> [Case C-311/18](#).

<sup>4</sup> [Opinion of Advocate General Saugmandsgaard delivered on 19 December 2019](#).

economy. Furthermore, companies have heavily invested in ensuring they comply with its legal requirements. The stability of this framework is fundamental to secure confidence and legal certainty in the digital economy. If the final ruling of the ECJ will cast further doubt on the validity of the Privacy Shield, we urge the European Commission to do their utmost to rapidly develop pragmatic solutions that allow to mitigate the concerns and safeguard this important framework for our industry.

**Implementation guidance on the European level has proven to be the most useful.**

As a sector that heavily relies on cross-border data flows, it is equally important to receive implementation guidance based on a consistent EU-wide interpretation of the rules. This prevents legal uncertainty arising from different national interpretations. ISFE members therefore support the issuing of Guidelines and Recommendations by the European Data Protection Board (EDPB) as they promote a common understanding of European data protection framework and a consistent application of the key provisions in the GDPR. Cooperation between supervisory authorities to contribute to such an understanding is one of the cornerstones of the GDPR. That is why ISFE members are very committed to continue to engage with the EDPB in a structured dialogue and provide their feedback on issues of practical implementation. We would welcome if the EDPB would intensify this important work going forward.

**The current proposal for an ePrivacy Regulation jeopardizes the consistent application of GDPR rules.**

The objective of achieving a fully harmonized legal framework related to data protection and privacy is however far from achieved. The overlapping inconsistencies between the GDPR and the proposal for an ePrivacy Regulation have generated a lot of uncertainty and risk of jeopardizing the important work done by our member companies on implementing the GDPR. The proposed Regulation, for instance, mandates consent for activities that in some cases would rely on one of the other legal grounds under the GDPR.

To date, many questions about essential aspects of this proposal remain unanswered. Attempts by the Council to solve these issues have however not been successful. If an incoherent text is adopted, core objectives of the Commission's new digital strategy such as the creation of a single European Data Space where businesses have easy access to high-quality industrial data or the establishment of a regulatory framework for Artificial Intelligence that creates an "ecosystem of trust" can never be fully achieved. That is why we urge the Commission to reconsider this proposal and develop a new approach to meaningful protection of privacy and confidentiality which is fully in line with the GDPR.