



European Commission study about Business-to-Consumer contractual arrangements in the data economy

ISFE and EGDF Statement

1. ISFE and EGDF welcome the invitation by Kantar Public (Belgium) to participate in a survey that gathers companies' views on Business-to-Consumer (B2C) contractual arrangements for the supply of digital content and services for which consumers provide personal data (referred to as "data contracts"). Kantar Public informed us that the survey is part of a study, commissioned the European Commission, to assess the current market for the supply of digital content or digital service and the transfer of ownership of goods for which consumers do not or not only pay a price but provide or undertake to provide their personal data to the trader.
2. ISFE and EGDF are not able to respond to the survey questions, as the concept of data contracts is not sufficiently explained in the text. We will clarify our concerns in this statement. In addition, we will also address the issue of what will happen when a consumer withdraws consent or objects to the further processing of his/her personal data.
3. Central to the questions in the survey is the concept of "data contracts". Questions 9 and 12 explain this concept as: *"B2C contractual arrangements for the provision of digital content and services as well as the sale of goods, for which consumers provide personal data in exchange, without or together with paying a price"*. However, the original definition¹ in the Digital Content Directive imposes an important restriction on the scope of personal data in relation to the supply of digital content or a digital service: *"This Directive shall also apply where the trader supplies or undertakes to supply digital content or a digital service to the consumer and the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer is exclusively processed by the trader for supplying the digital content or digital service in accordance with this Directive or for the trader to comply with legal requirements to which the trader is subject, and the trader does not process this data for any other purpose."*
4. The survey unfortunately does not refer to the definition in the Digital Content Directive, nor to the important distinction between personal data that is provided in exchange for

¹ - see Art. 3.1 of the [Digital Content Directive](#)

digital content or a digital service and the personal data needed for the supply of the digital content or service. Most of the data processing operations in a video game fall in the latter category. Data is processed in particular to purchase and provide video game content, enable a gameplay service, and improve the player experience.

5. In order to supply video game content or a gameplay service to a consumer, various categories of personal data need to be processed. Establishing a connection between the servers of the provider and the device of the player requires the collection and processing of technical information related to the configurations of the network, the device and the connected peripherals such as controllers and headsets. Furthermore, joining an online service requires registration of an account whereby, at minimum, basic contact information need to be provided.
6. The provision of personal data in the context of these processing activities is essential for the supply of any digital content or digital service and should therefore not be considered as a separate means of access next to the payment of a price, as suggested in question 11 of the survey. Such processing operations should fall outside the scope of a data contract.
7. Several questions in the survey query how companies deal with situations where consumers withdraw consent for the processing of personal data or simply stop sharing their data. However, the above-mentioned processing activities for the supply of digital content or a digital service are usually not carried out on the basis of consent, but because they are necessary for the performance of a contract, for compliance with a legal obligation or for pursuing legitimate interests.

About ISFE and EGDF

1. The Interactive Software Federation of Europe (ISFE) represents the video games industry in Europe and is based in Brussels, Belgium. Our membership comprises national trade associations across Europe which represent in turn thousands of developers and publishers at national level. ISFE also has as direct members the leading European and international video game companies, 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 tablets.

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2. The European Games Developer Federation e.f. (EGDF) unites 22 national trade associations representing game developer studios based in 21 European countries: Austria (PGDA), Belgium (FLEGA), Croatia (CGDA), Czechia (GDACZ), Denmark (Producentforeningen), Finland (Suomen pelinkehittäjät), France (SNJV), Germany (GAME), Italy (IIDEA), Netherlands (DGA), Norway (Produsentforeningen), Poland

(PGA), Portugal (APVP), Romania (RGDA), Serbia (SGA), Spain (DEV), Sweden (Spelplan-ASGD), Slovakia (SGDA), Switzerland (SGDA), Turkey (TOGED) and the United Kingdom (TIGA). Through its members, EGDF represents more than 2,500 game developer studios, most of them SMEs, employing more than 40,000 people.

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3. The purpose of both EGDF and ISFE is to serve Europe's video games ecosystem by ensuring that the value of games is widely understood and to promote growth, skills, and innovation policies that are vital to strengthen the sector's contribution to Europe's digital future. The games industry represents one of Europe's most compelling economic success stories, relying on a strong IP framework, and is a rapidly growing segment of the creative industries. The European digital single market area is the third-largest market for video games globally. All in all, there are around 5,000 game developer studios and publishers in Europe, employing over 98,000 people. In 2021, Europe's video games industry was worth €23,3bn.²

ISFE and EGDF Secretariats, February 2023

² [ISFE Key Facts from 2021](#) from GameTrack Data by Ipsos MORI and commissioned by ISFE.