



Confindustria Radio Televisioni

European Commission

Consultation on the template relating to the reporting on consumer profiling techniques

Position paper

Rome, 15th settembre 2023

Association profile

Confindustria Radio Televisioni (CRTV) is the association of Italian radio and television broadcasters.

Established in June 2013, CRTV includes among its members Italy's major national broadcasters: Discovery Italia, Elemedia (GEDI), GMH, La7, Mediaset, Persidera, Prima Tv, Qvc Italia, Radio Italia, CN Media, RAI, Gruppo 24Ore, RDS – Radio Dimensione Suono, Rete Blu, RTL 102,500 Hit Radio, Sportcast, Tivù, Viacom International Media Network Italia, El Towers. Satellite operator Eutelsat Italy is aggregated member. Major local TV and radio broadcasters are represented in CRTV through the Association of Local Televisions and the Association of Local Radios FRT.

All major categories of the broadcasting industry are represented in CRTV: public and private broadcasters, national and local broadcasters as well as platform and network operators. The sector has overall revenue of about 9,8 billion euros and a workforce of approximately 90,000 employees, of which about 30,000 direct (CRTV estimates).

CRTV's goal is to represent the broadcasting industry as a whole, at the institutional, legislative, and contractual levels. In this last regard, CRTV signs the national collective labor agreement for the employees of private radio and television companies with trade unions SLC CGIL, CISL and FISTel UILCOM.

CRTV is a member of Auditel, is associated with IAP (Institute of Advertising Self-Regulation), Association of European Radios (AER), Eurovision, FAPAV (Federation for the Protection of Audiovisual and Multimedia Content Industries) and Osservatorio TuttiMedia. CRTV also has representatives within the following bodies: Comitato Media e Minori, MISE (Media and Children Committee, Ministry of Economic Development), Comitato Consultivo Permanente per il Diritto d'Autore, MIBAC (Permanent Consultative Committee for Copyright, Ministry of Culture), Comitato per lo Sviluppo dell'Offerta Legale delle Opere Digitali, AGCOM (Committee for the Development and Protection of Legal offer of Digital Works, Communication Authority) and ITU-R (International Telecommunication Union Radiocommunication). CRTV participates in the working group set up at the Department of European Policies (Prime Minister's office) to examine the proposed regulation on the single market for digital services.

CRTV collaborates with all competent Ministries, Political Institutions, and Regulators, both national and EU. The Association's activities are aimed at contributing to the creation and maintenance of fair rules that allow the sector to grow, innovate and continue to play its important role in the modernization process of the country.

DMA represents an important opportunity to introduce regulation of the activity of large platforms, which are taking over the entire IT ecosystem, with particular regard to the economic system of the audiovisual sector. The most serious concerns raised by the current, poorly regulated framework are related to: a) the fact that these platforms can direct users to services that they themselves choose, often favoring other platforms that have little respect for copyright and data protection; b) vertical integration of different services may lead to the exclusion of some players from the market; c) the absence of a level playing field.

The DMA must therefore be a source of stringent obligations and duties for large operators. On the other hand, the processes and obligations outlined in the DMA should be adaptable to various business models and the continually changing economic and technological

scenario. To that end it is necessary to reiterate and implement principles such as interoperability and data portability between different platforms, with the aim of eliminating possible "barriers to entry" for new actors in the digital market.

From another perspective, the fact that the European bodies are standing together should be particularly appreciated actively moving to affirm, also in this area, respect for the founding values of the Union (including freedom of expression and protection of personal data), while guaranteeing the principles of competition and free market.

We observe that the forms of profiling used by the gatekeepers are potentially harmful for the citizens of the UE. The GDPR, in order to keep aware the controllers about the use of forms of treatment, provides that: "the controller should use appropriate mathematical or statistical procedures for the profiling, implement technical and organisational measures appropriate to ensure, in particular, that factors which result in inaccuracies in personal data are corrected and the risk of errors is minimised, secure personal data in a manner that takes account of the potential risks involved for the interests and rights of the data subject and that prevents, inter alia, discriminatory effects on natural persons on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual orientation, or that result in measures having such an effect. Automated decision-making and profiling based on special categories of personal data should be allowed only under specific conditions".

Many of the gatekeepers use profiling systems based on AI and automatic decisions to gain personal data, and make marketing choices based on the consumer preferences, sometimes determining them directly. Other operators, working under the European laws, are bound to rules that limit in a strict way the use of instruments like AI or profiling, according to GDPR (art. 22, in particular) and AI Act.

To restore a plain level of competition, the enforcement of DMA has to be led in a way that can put real boundaries to the power of the gatekeepers.

Therefore, CRTV suggests to add, in the section 2 of the template, some points to the list of what the gatekeepers have to communicate, as follow:

1. "whether and with which instruments is granted the right of the data subjects to know and obtain communication in particular with regard to the purposes for which the personal data are processed, where possible the period for which the personal data are processed, the recipients of the personal data, the logic involved in any automatic personal data processing and, at least when based on profiling, the consequences of such processing. Whether the gatekeeper should be able to provide remote access to a secure system which would provide the data subject with direct access to his or her personal data".

The implementation suggested is necessary to pursue the rules set up in recital 63 of the GDPR

- 2.: "whether gatekeeper had developed interoperable formats that enable data portability";

Data portability is one of the most sensible issues of the data processing and is crucial for a wholesome competition in the UE area. Gatekeepers should clarify if their processes are able to guarantee such an important right to the consumers.

3.: “whether the gatekeeper transfers personal data to a third country where it takes the view that, in light of all of the circumstances, the SCCs are not or cannot be complied with and which measure are taken to avoid prejudices for the European consumers”.

The Court of Justice of the European Union, in its decision known as Schrems II, has completely invalidated the Privacy Shield, keeping valid the Standard Contractual Clauses (SCCs), but the emphasising obligations on the parties to the SCCs and Data Protection Authorities which have the potential to restrict when they can be used. Gatekeepers often carry out massive transfers of data across the ocean, and, according to their obligations of transparency, they should state what are they doing to conform to the decision.