

Research Justification

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THE EUROPEAN E-COMMERCE AND OMNI-CHANNEL TRADE ASSOCIATION(EMOTA)

Management Summary

The following research was carried out as a graduation project and done on behalf of The European eCommerce and Omni-Channel Trade Association(EMOTA). EMOTA is a lobbying firm that works to promote eCommerce in the European Union by helping policy makers eradicate trade barriers.

The main research question is as follows “What could be the impact of the currently proposed ePrivacy Regulation that will regulate the use of cookies by webshops, on the businesses of EMOTA members?” The aim of the research is to find ways to mitigate any negative impact the looming regulation will have on the members of EMOTA. To accomplish this, some sub-topics were subject to an examination:

Firstly, it had to be determined the parties involved in the process of the regulation. These include the institutions who will draft the legislation and the people who will be affected by it. A desk research was carried out and qualitative research in the form of interviews with staff members who following the legislative process of the ePrivacy regulation closely. The main insititutions responsible for drafting the legislation were the European Commission, the European Parliament and the European Council. Those most likely to be affected by the regulation were online businesses, Consumers and indirectly EMOTA.

Secondly, since the aim of the ePrivacy was to limit the access of data such as cookies by webshops, it was necessary to find out how much the members of EMOTA rely on cookies to boost their businesses. This part of the research relied mostly on interviews as well as previous surveys conducted recently by EMOTA. The survey was done due to the introduction of the General Data Protection Regulation also known as the GDPR. A similar legislation focused on data regulation that also had implications for the members of EMOTA.

Lastly, the role of EMOTA In the implementation process and aftermath of the regulation was examined. The staff members were interviewed on what role EMOTA would play in order to weaken the effect of the regulation on its members. Overall the research shed further light into the importance of data not only for EMOTA members but for eCommerce in general. Recommendations were also suggested to EMOTA based on the results of the research. These recommendations contain both possible steps EMOTA could take to ensure a more favourable outcome of the regulation and ideas to help its members deal with an unfavourable outcome.

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1. Preliminary Research

1.1 Company/Product analysis and developments

The European e-commerce and Omni-Channel Trade Association commonly known as EMOTA, functions as a representative of Online and Omni Channel trade across Europe. The association is the European level umbrella federation situated in Brussels, Belgium. Being a member-driven organization, its vision includes facilitating cross-border exchange through co-operation and interaction. The main mission of EMOTA is stimulating e-commerce and influencing proposed legislation in such a way that trade barriers are eliminated (EMOTA, 2017)

Services

EMOTA renders its services in the form of effective lobbying in the EU when it comes to e-commerce. Thus, members of the association are rest assured that their businesses are shielded from the several proposed legislation at an EU level. Members are informed early on about upcoming regulations and policies that might create trading issues for their businesses and are offered expertise on how to circumvent such issues.

Management

EMOTA boasts seasoned and well-experienced Heads of national Associations who make up its Board of Directors. The Board of Directors, in collaboration with representatives from crucial players in the industry, manage the organisation. The president is Frederik Palm who also operates as a member of the Bundesverband E-Commerce und Versandhandel Deutschland e.V. and the vice-president is Yiannis Kourniotis.

The EMOTA office located in Brussels, Belgium is overseen by Secretary General Maurits Bruggink. Two interns together with five staff members are employed in the office. Positions in the company include Secretary General, Director of Government Affairs, Policy Advisor and Association Manager.

Members

EMOTA welcomes members from a varied field of e-commerce supply chain. These include webshops, postal operators, national trade associations and online market places. EMOTA has a total of 23 members. Membership at EMOTA mandates an annual fee, the cost being dependent on the size and type of the organisation.

There are four different categories of membership at EMOTA:

Association Membership with relation to e-commerce

At the moment, EMOTA has national association members that are situated in 20 markets. EMOTA currently has 22 national association members. Each of these associations represent a group of e-commerce merchants. The Bundesverband E-Commerce und Versandhandel (bevh) is a German federal association of e-commerce and mail order. The bevh is one of EMOTA's biggest association members as its member base consists of 500 companies.

Corporate Membership that include companies operating within e-commerce

The corporate members of EMOTA are made up of 4 companies and are companies that carry out cross-border e-commerce trade across several markets. The largest and most well-known member of EMOTA is Amazon which falls into this category. EMOTA makes certain that these companies are regularly updated on policy developments that might impact their businesses.

Supplier Membership such as postal operators

DHL and PostNL are two major supplier members of EMOTA. Services provided by the supplier members range from supplying crucial services to e-commerce businesses to delivering products all across Europe. EMOTA currently has 12 members in this category.

Preferred Firms like law firms

These category of members possess expertise on matters relating to online shopping. These include law, payment, VAT and others. Being members of EMOTA enables these firms to promote themselves to other members as experts in e-commerce. 5 members of EMOTA fall under this category.

The members of EMOTA are given the opportunity to participate in talks revolving around current matters related to e-commerce. This means the members not only get to learn about laws that will have ramifications for e-commerce but are also assured their views on any new legislation are clearly represented in the legislation process.

1.2 Problem analysis

In July of 2017, EMOTA conducted a survey among European web shops. Working with 300 submissions, the company determined that an overwhelming majority of these web shops rely on consumer data retrieved through cookies to market their products (EMOTA, 2017) This underlines the immense importance of Big Data for most companies in their attempt to reach out to more customers. Thus it should come as no surprise that companies who are registered members of EMOTA are concerned about a new ePrivacy Regulation that was recently proposed by the European Commission. The law will build on the already existing data protection law known as the General Data Protection Regulation (GDPR) (European Commission, 2018) further restricting the amount of data a webshop can collect from an individual through the use of cookies. It is also known as the cookie law. This is a problem because most members of EMOTA rely on data collection to effectively market their products and reach customers. The idea of the ePrivacy Regulation was conceived out of the need to harmonise online trade in the EU as it will equally apply to all member states. It was also meant to protect consumer's privacy. The law will have an impact on the businesses of these companies and also on EMOTA who represents these companies business interest. The proposed legislation will become problematic for members if and when it becomes law.

1.3 Literature review

Data Economy/E-commerce sector

The era of digitalization and the rapid growth of an economy that is heavily reliant on data has led to breakthrough innovations that have fostered the growth of businesses. According to The Body of European Regulators for Electronic Communications (BEREC), the term data economy describes the ever rising accessibility of data in the digital age and the economical value that such easy access provides. Businesses can leverage this opportunity to easily gain insight into a vast array of customers, enabling a more effective marketing to consumers (Werkmeister, 2018). One of the business fields that has been significantly impacted by the data economy is the E-commerce sector. Electronically conducted online transactions has thrived in the data economy. In 2017, an increase of 11 percent in E-commerce turnover was recorded compared to the previous year, making it worth € 534 Billion. The growth rate is expected to keep rising (Ecommerce News, 2018). Given the continuous ascendancy of E-commerce not only in Europe but also globally, the European Union has enacted a series of guidelines and legislations that aims to harmonise as well as facilitate cross-border E-commerce in the member states (European Commission, 2019) These legislations tackle issue such as:

*Inability to conduct online shopping in a member state from a webshop based in another.
Also known as geo-blocking*

New rules were implemented on 3 December 2018 that was meant to enable cross-border online shopping for consumers regardless of their current residence or nationality. Barriers such as having to pay with a debit or credit card only from a certain country will be eliminated.

Reducing the cost of cross-border delivery

The new rules brought into effect in May 2018 aimed to make cross-border delivery cheaper as online retailers cite high delivery costs as a major problem. The rule will simplify the process of finding the cheapest ways of transporting parcels between member states.

Protecting consumer personal data and privacy

This issue will be the focal point of this report. The General Data Protection Regulation (GDPR) is a directive that was implemented with the purpose of enabling a strong protection of consumer data and privacy in the European Union. The new directive supplanted the Data Protection Act that was enacted in 1994 and is a unified regulation within the EU (intersoft consulting, 2018)

The GDPR

The General Data Protection Regulation (GDPR) was made on 14 April 2016 and was enacted on 25 May 2018 replacing the Data Protection Act which had served as the bedrock of data regulation in the European Union up until that point. The regulation will compel companies within the European Union to adhere to strict new rules dealing with the collection and storage of data. The GDPR mainly consists of the following rules:

Data consent from subjects when it comes to marketing

Under the GDPR, specifically *Article 7*, webshops are mandated to obtain an unambiguous consent from subjects when collecting their data. Any marketing activities that the subject's data can be used for requires the subject actively opting into this. This means the elimination of pre-filled checkboxes on webshops. The subject should also be made known of any third parties that would have access to the subject's data.

The data subject's right to be forgotten

The GDPR also states that customers should be able to alter their information and withdraw their consent to the use of their data for marketing purposes. This is made clear in *Article 17* of the GDPR. Furthermore customers are entitled to delete their information from a system when they want to.

Response in the case of a data breach

Article 33 and 34 of the GDPR provides the guidelines that a company needs to follow in the case of a personal data breach. The organisation is compelled to report a personal data breach to the Information Commissioner's Office (ICO) within 72 hours. If the breach were to pose a high risk to individuals, the individual in question needs to be informed as soon as possible.

Penalties for non-compliance and misuse

Article 83 of the GDPR lays out the conditions for penalizing non-compliance and misuse of data. Small and Medium-sized enterprises (SMEs) will be burdened more by potential penalties as fines could amount to up to € 20 Million or 4% of annual turnover. Businesses also bear the responsibility of securing their data and implementing measures to hinder data breach.

In order to get a sense of how its members were coping with the GDPR, EMOTA conducted a survey among its Association members on the GDPR implementation in their countries.

The ePrivacy Regulation

The ePrivacy Regulation also known as ePR is a proposal that was put forth by the European Union and is meant to update the Directive on Privacy and Electronic Communications (Directive 2002/58/EC and the 2009 update, Directive 2009/136) which is commonly known as the cookie law. Its goal was primarily to shield individuals from online privacy evasion by mandating webshops to obtain a cookie consent from visitors on the use and storage of their personal data. The ePrivacy regulation was proposed to supplement the existing GDPR on data protection. The main difference between the two being that the GDPR was enacted to preserve the protection of an individual's personal data, whereas the ePrivacy regulation would act to preserve the right of an individual regarding personal privacy. For instance, under the proposed ePrivacy regulation all unrequested communication between webshops and consumer would be banned. These include marketing email and text messages. This will require prior consent by the customer.

Cookies

Website cookies are defined as data files about an individual stored in a browser that is based on the individual's browser history (Market Business News, 2018). In the era of E-commerce, many companies are dependent on cookies to market their products online. Cookies allow for more effective consumer targeting as the customers are targeted based on their past preferences stored in the cookie. An example would be logging in to a website. In the absence of cookies, the user would be required to log in all his information again anytime he re-visited the website. Cookies will store the users information enabling features like product comparison, wish lists, and product recommendations whenever the consumer visits the website.

1.4 Information gaps

According to De Bont, it is important to identify any information gaps that might hamper the research before proceeding with the research (Bont, 2014). The ePrivacy regulation is currently just a proposed legislation that is being debated among the member states. It is not likely to become law until 2020. Thus the current proposal is likely to undergo some minor amendments as it is reviewed by the council. Therefore the one general information gap was that there is no final legislation yet. This provided a certain level of difficulty in assessing how the final legislation will ultimately impact the businesses of EMOTA members. An underlying information gap is knowing the scope of the legislation and who specifically will be affected by the legislation. Those impacted will be the major stakeholders. Furthermore, not having the final legislation proved a slight obstacle in determining how companies can align their businesses in order to comply with the law while still remaining successful. However one element of the legislation is certain. Which is that it aims to strengthen consumer privacy by adding restrictions on the way webshops use cookies. This was the main focus of this research. The final underlying information gap was the difficulty in reaching EMOTA members for interviews and surveys. This was as a result of a conflict between EMOTA and its members and will be further explained in the reflection aspect of this report. These lapses in information are factors that contributed in hampering the ability to underpin the professional product for this research.

1.5 Research questions

The research question for this project is *What could be the impact of the currently proposed ePrivacy Regulation that will regulate the use of cookies by webshops, on the businesses of EMOTA members?*

The subquestions for the research are as follows:

- Who are the stakeholders involved in implementation of this regulation?
- How reliant are EMOTA members on cookies in growing their businesses?
- What is the role of EMOTA in the outcome of this legislation?

This research took into account the impact of the already in place GDPR on EMOTA members and how they are currently dealing with it. Furthermore the research focused on further adjustments these companies have to make in order to comply with the new ePrivacy regulation. Given that the ePrivacy legislation is just a proposal at this point,

changes are likely to be made before it is enacted. However these changes are unlikely to be radical in nature. It will only undergo minor amendments. The core purpose of the regulation which is to give consumers more control over the accessibility of their data remain the same. As this involves restricting access to consumer data through cookies, the scope of this research was measured in this regard.

1.6 Project aim

The purpose of this project is to explore the Data economy aspect of EMOTA's operation. As the significance of Data economy across Europe steadily increases, companies are becoming more reliant on consumer data to promote their products and services. This project aims to come up with feasible recommendations for EMOTA to help its members safely manage consumer data acquired through the use of cookies in accordance to the ePrivacy and ways to minimize potential difficulties members might face as a result of the new regulation.

2. Research approach

2.1 Approach per sub-question

For this chapter, the method of Research that was employed for each of the sub-questions will be presented. Overall a combination of different research methods were used in answering the Research question.

Sub-question No 1 **Who are the stakeholders involved in the implementation of this regulation?**

To find out which parties are more likely to be impacted by the implementation of the ePrivacy regulation, interviews were conducted. The interviewees were experts on Data Protection and eCommerce within and outside EMOTA. Consumers were also surveyed during this research, as Consumer rights protection was part of the reason the new data regulation was introduced.

Sub-question No 2 **How reliant are EMOTA members on cookies in growing their businesses?**

A series of Desk research were carried out in order to determine what role Data plays for webshops. For EMOTA members specifically, a survey conducted previously by EMOTA on the issue of Data among its members provided ample opportunity for analysis. This was a previous survey that was conducted shortly before the implementation of the GDPR. Also utilized was another survey which examined the impact the GDPR was having among EMOTA's members and was carried out after the implementation of the regulation.

Sub-question No 3 **What is the role of EMOTA in the outcome of this regulation?**

To answer this question, several of the staff members of EMOTA were interviewed. Desk research was also carried out which relied on EMOTA's position papers on Data Protection.

2.2 Data collection

In this chapter, the various sources used to obtain the necessary information essential for this research will be explored. The sources were divided into two categories (UNSW Library, 2019):

Primary sources that provide a first-hand insight into a case or a problem. These include written interviews that was conducted among the various staff members of EMOTA and an employee of the National German Association Bundesverband E-Commerce und Versandhandel (bevh) which is one of EMOTA's biggest members. As the interviewees were mostly experts on the topic of Data Protection, their responses were integral in answering the sub-questions regarding who the stakeholders were in the implementation of the ePrivacy regulation and the role EMOTA has to play in the outcome of this regulation. Among the interviewees were Alien Mulyk who is the policy advisor for data protection,

Kereto Gormsen who is responsible for trade, digital taxation and Brexit as a policy adviser, Trinn Saag who is the Director of Government Affairs, Maurits Bruggink, the Secretary General of EMOTA and Sebastian Schulz the Director of Government Affairs and Data Protection at the bevh German National association. The bevh is a current member of EMOTA. The interviewees were selected based on their level of expertise on Data Protection and how directly they deal with members. Each of the interviewees were chosen because they were well-versed in Data Protection laws and engage frequently with members directly. For the purpose of diversifying the perspective on Data Protection, a survey was also conducted among young consumers during this research. These respondents were more likely to shop online and therefore are prone to be confronted with the issue of online privacy.

Secondary sources are the analysis and evaluation of a primary source. They mainly described or provided a more in-depth interpretation of a primary source. These sources included a desk research on the issue of Data and Webshops. This was used in providing answers to the Research Sub-question regarding the reliance of EMOTA members on cookies. A survey conducted by EMOTA in 2017 among its members on topic of Data, specifically the General Data Protection Agency was among the sources used. This together with a separate survey which was conducted among the members of EMOTA on the immediate impact of the GDPR. An analysis of all survey results showed how critical data was for members and their webshops as well as why it was so important. It also showed the effect the GDPR was having on most of the webshops. Furthermore, information were also obtained from the website of EMOTA regarding the ever growing role of Data in eCommerce and EMOTA's vision of fostering this growth.

The interviewees chosen for this research are individuals who deal simultaneously with EMOTA, engage with members of the European Parliament as well as members of EMOTA. Their involvement in all these three stakeholders made them suitable and adequate in answering all the necessary questions for this research. They follow the process of implementing a new regulation in the European Union and therefore are well informed about the technicalities of the new ePrivacy Data regulation. The information they provided were able to answer which stakeholders were involved in the ePrivacy regulation and as consultants for EMOTA itself they also provided insight as to the role of EMOTA in the outcome of this regulation. The surveys focused on the main Research units of this project. Namely the EMOTA members whose webshops require the use of cookies in their daily operations and the consumers whose data is being utilized. The surveys were able to prove how heavily members of EMOTA rely on data to operate their webshops and highlight the consumer's perspective on Data Protection. A combination of the interviews and surveys provided the necessary information needed to answer all the Research questions. All data collected are reliable as they are contemporary and authentic. To inject a sense of authenticity into the research, the sources of information included interview from experts on data economy, academic desk research and surveys from potential consumers.

2.3 Data analysis

Following the data collection, the retrieved data was thoroughly analysed and evaluated. A deeply analytical approach known as the inductive approach was used for the data analysis (EvaSys, 2019). Saunders describes the inductive approach as exploring already collected Data in order to discover which themes or issues to follow up or focus on (Saunders, 2019). This was done on a step by step basis. Here are the steps that were followed:

- **Transcribing all data:** The interviews were conducted in written form, the answers were transferred unaltered to the report. The results and analysis of the surveys were presented in aggregate form.
- **Organization of the data:** Information was obtained from various sources. These include information collected from desk research, surveys and interviews. As a result, the data collected were wide-ranging as well as enormous. Organisation was not much required for the data obtained from interviews and surveys as the questions were already tailored to answer the research questions. However the information collected from the desk research for the literature review were filtered to keep the research focused on Data and Data economy. Thus ensuring all information corresponds with the purpose of the research.
- **Coding:** The data collected from the interviews were encapsulated into themes. This was accomplished through descriptive coding. The underlying patterns in the responses given by the interviewee was be categorized into basic themes that helped answer the Research questions.
- **Data validation:** All information acquired during the research was selected on the basis that they were up to date, relevant to the research topic, authentic and reliable. The interviewees were experts within EMOTA, Survey monkey was used in surveying a large group of respondents, and the desk research produced adequate information that aligned with the Research aim.
- **Concluding the Data Analysis:** This step involved presenting the results of the research in the Result section of the report. The results were interpreted in order to draw a final conclusion that provided an answer to the Research question.

2.4 Operationalisation

The variables in the Research concept were identified into factors that could be easily appraised. An operationalization was required to facilitate this process. The table consists of items that were examined during the research.

Concept	Dimension	Indicators
Data Protection	<ul style="list-style-type: none">• GDPR• ePrivacy Regulation	<ul style="list-style-type: none">• Scope of impact the GDPR has had on conducting online businesses(cost of modifying webshops in order to adapt to the new law, any potential loss in revenue, any

		<p>potential decrease in webshop traffic)</p> <ul style="list-style-type: none"> • Number of changes that has been made in the way online business has been conducted since the introduction of the GDPR • What is the member satisfaction level of the guidelines provided by EMOTA in dealing with the GDPR? • How many parties are bound to affected by the proposed ePrivacy regulation?
Reliance of webshops on Online cookies	<ul style="list-style-type: none"> • Consumer privacy 	<ul style="list-style-type: none"> • How much personal data is extracted from a customer through cookies? • Range of purposes cookies serve for a webshop
Online advertising	<ul style="list-style-type: none"> • 3rd party advertising 	<ul style="list-style-type: none"> • How frequent does the webshop engage in 3rd party advertising? • Approximately how many customers is the webshop able to reach through 3rd party advertising?
Business growth	<ul style="list-style-type: none"> • Sales and revenue 	<ul style="list-style-type: none"> • What is the proportion of sales generated by online advertisement? • What is the level of impact on revenue due to restricted access of customer data?

Table 1 Operationalisation

3. Results

In this chapter, the result of the research conducted to answer each of the sub-questions will be presented. The results were produced through an analysis of the information that were gathered.

Sub-question No 1 **Who are the stakeholders involved in the implementation of this regulation?**

Stakeholders can be an individual, group or organisation with a particular interest in another organisation or in the case of this research a regulation.

It was vital to find out who will be most affected by the new regulation before proceeding with the research. The scope of the law was not wide enough to have much of an impact on certain kinds of businesses. Thus the level of stakeholders varied depending on certain factors. One of these factors was the size of the company. This was deduced by conducting interviews with the staff members of EMOTA who were experts on Data Protection laws in the European Union. According to the interviews, the smaller businesses will carry a heavier part of the burden that comes with the implementation of the ePrivacy legislation. This is due to the fact that smaller businesses are more reliant on the use of cookies to generate traffic for their websites as part of the main element of the ePrivacy regulation is to restrict the use of cookies by webshops. Big established brands like Amazon or the bevh Germany will generate traffic regardless as they are well known. This was confirmed by Sebastian Schulz of the bevh Germany, who stated that members of the bevh saw no decrease in web traffic after the implementation of the GDPR. Another factor was the level of interest a party had in the regulation. In the interviews, EMOTA was identified as a stakeholder, but didn't have a direct interest in the outcome of the regulation like its members had as it wasn't an online seller. EMOTA might be less impacted, however it must ensure that the services and communication it provides its members is compliant with the new regulation. For this purpose of this research, a survey which was conducted during this research among consumers who shop online shows that 52% of those surveyed are somewhat concerned about how their data will be used by webshops.

How concerned are you about the use of your data by webshops?

Answered: 23 Skipped: 0

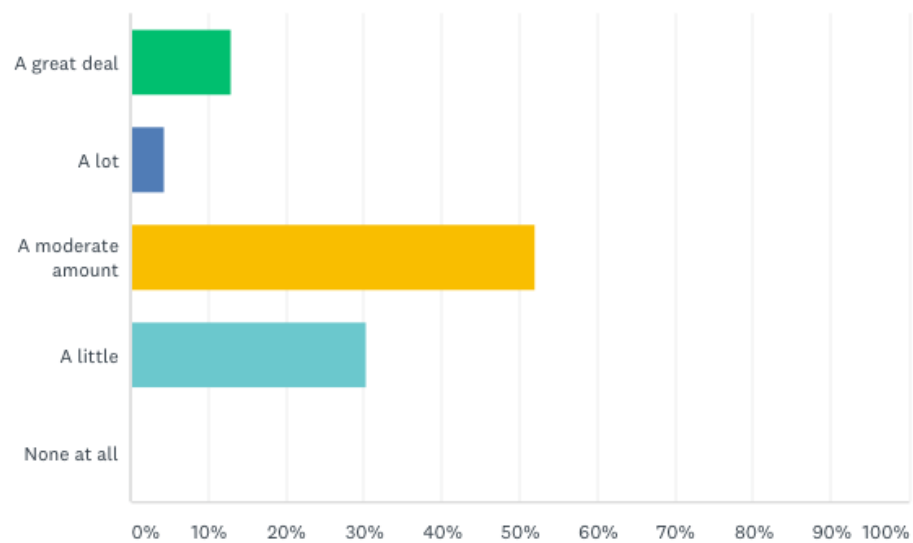


Figure 1 EMOTA's survey result of Consumers level of concern about the use of their data by webshops.

An overwhelming majority also agreed that more should be done to strengthen data regulation laws in the European Union.

In general do you believe that data protection laws for web shops in the EU should be strengthened?

Answered: 23 Skipped: 0

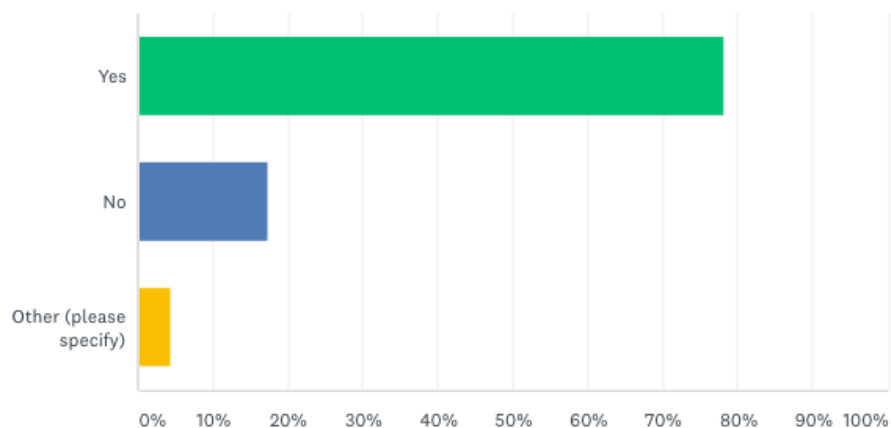


Figure 2 EMOTA's survey result of Consumers' opinion on the strengthening of Data Protection laws

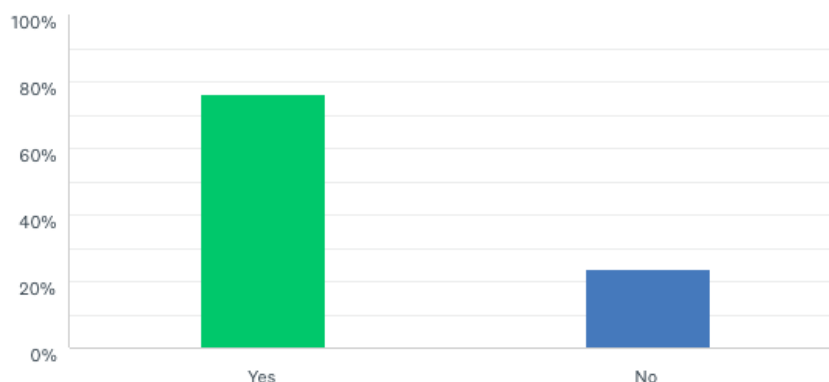
Given that the law aims primarily to protect consumer rights, the consumers stands to benefit most from the regulation should it get implemented.

Sub-question No 2 **How reliant are EMOTA members on cookies in growing their businesses?**

EMOTA membership consist of businesses of various sizes, ranging from small and Medium-sized Enterprises to retail giants like Amazon. This meant there wasn't a monotony when it came to their reliance on cookies. The interviews with the staff members made it clear that there were stark differences in the degree of their dependency on cookies. Amazon for instance has established itself as dominant figure in the retail sector so much that it doesn't need cookies and third party advertising to lure consumers to its website. Regardless, cookies remain very important to each member of EMOTA due to the different purposes they serve for webshops. To find out how reliant the members were on cookies, a desk research was carried out. Due to the lack of cooperation from members in granting interviews and participating in a survey, a secondary data in the form of a previous survey that was conducted by EMOTA on Data and Webshops was used in finding answers to this sub-question. The survey was prompted by the introduction of the GDPR and was carried out in 2017. The survey showed that 76% of the webshops use cookies to collect personal data, establishing the predicament a restriction on cookies could pose for most EMOTA members.

I use cookies to collect personal data from my webshop visitors. (click one box)

Answered: 234 Skipped: 23



ANTWOORDKEUZEN	REACTIES	
Yes	76.50%	179
No	23.50%	55
TOTAL		234

Figure 3 EMOTA's survey result of Webshops' use of cookies in collecting personal data

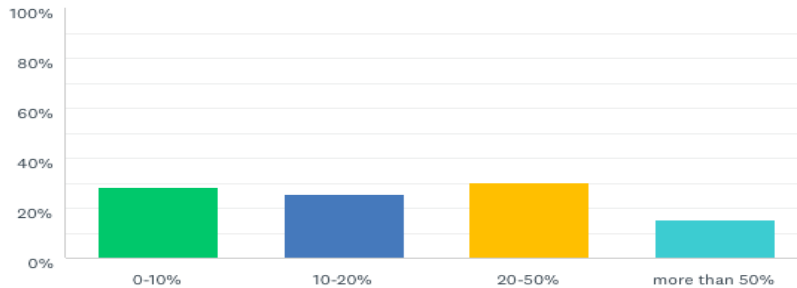
Further analysis into the survey revealed the core reason why members consider cookies vital to their businesses. This has to do with the financial benefits that comes with data collection. According to the survey, 30% of the webshops surveyed estimated that their sales would suffer between 20-50% loss if they cannot use personal data.

Q2



If I cannot use personal data of costumers and/or prospective costumers anymore, I estimate to lose sales. Of my total sales, this would be: (click one box)

Answered: 238 Skipped: 19



ANTWOORDKEUZEN	REACTIES	
0-10%	28.57%	68
10-20%	25.63%	61
20-50%	30.25%	72

Figure 4 EMOTA's survey result of loss of sales if webshops are denied personal data of customers

Upon further evaluation, it was deduced that a proportion of the sales generated can be attributed to advertising. Cookies are essential in this regard as most webshops use them for 3rd party internet media advertising.

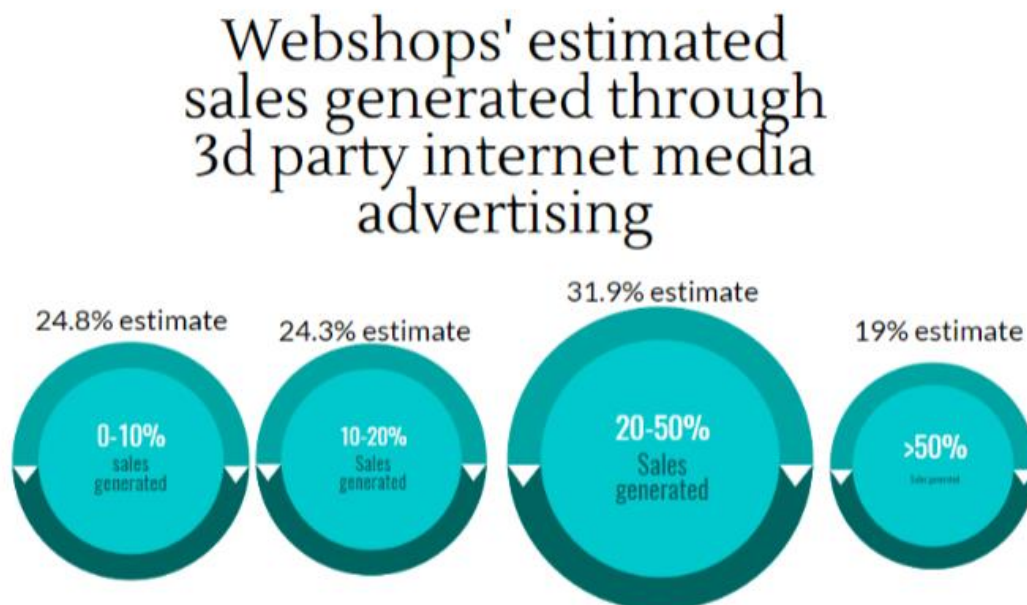


Figure 5 EMOTA's survey result of Webshops' estimated sales generated through 3rd party internet media advertising

Financial stability is essential to the survival success of a business. Given the significant number of sales generated through 3rd party advertising by most of the webshops, a loss of revenue was certain be a major impact the GDPR had on these businesses. This is a fact underpinned by the interview of Sebastian Schulz of the bevh national association of Germany. He estimated the GDPR took a financial toll of upwards 1 million Euros for the members of bevh. These included costs resulting from obligatory changes made to comply with the new regulation such as new processes to fulfill the rights of data subjects and other costs that were not mentioned in the interview. A ban or even just a restriction on the use of cookies will threaten businesses financially. As a result, members of EMOTA find themselves heavily reliant on easy access to consumer data.

Sub-question No 3 **What is the role of EMOTA in the outcome of this regulation?**

In order to get a better understanding of the role of EMOTA during the implementation of the ePrivacy regulation, it was important to realize its position on the new regulation. A desk research on EMOTA's position papers about issues related to Data Protection were studied for this research, in addition to this, interviews were conducted among the staff members to shed more light on the company's perspective regarding the regulation. The questions in this regard were mostly centered on the impact EMOTA was having on the implementation process and its view on what can be considered a favourable outcome of the final regulation. The interviews and the desk research were crucial in providing more insight into how EMOTA dealt with introduction of the GDPR. A similar regulation on Data Protection that was implemented two years ago. These research methods proved productive as it revealed the sections of the regulation that EMOTA was most concerned about. EMOTA was very concerned about the financial difficulties some provisions of the new regulation might pose for its members. Specifically Article 16 which addresses unsolicited and direct marketing. It would cause new restrictions to the way online sellers can communicate and promote their products and services to potential consumers. EMOTA is also concerned about Article 8 which will ban the processing and storage of information from an end-user's equipment. The organisation is committed to ensuring the most favourable outcome for its members by carrying out lobbying activities. These include permanent representations and cooperation with other associations. In the case of an unfavourable outcome which could mean severe restrictions on data collection by webshops, EMOTA can help members draft several guidelines to navigate the new regulation. A survey carried out by EMOTA showed that only roughly 25% of its members were successful in implementing the GDPR and the satisfaction level about the new regulation were low. Some of the members attributed this to the inadequate guidelines to help in complying with the new regulation. Considerable number of changes had to be made on their websites in order to comply with the GDPR. These changes include including unsubscribe options, using straight-forward language when asking for data collection consent and hiring Data Protection officers in the case of bigger companies. Provided with detailed measures on how to comply with the ePrivacy, members will find it easier to navigate the new regulation.

4. Conclusion

Several conclusions can be drawn from this research regarding the sort of impact the ePrivacy regulation will have on the businesses of members of EMOTA.

The implementation and the effect of the ePrivacy regulation will involve various parties, starting with the three institutions engaged in EU legislations. The European Parliament, the European commission and the European council (European Parliament, 2009). The regulation was proposed by the commission and will need to be approved by both the parliament and the council. If it should be approved, its effect will most likely be felt by businesses who rely mostly in the collection of data for marketing and communication. Consumers will also be affected, albeit in a more positive way. Part of the legislation will give consumers the ability to make general privacy choices through their browser setting turning them into gatekeepers. In contrast to its members, EMOTA will not be directly affected by the regulation. However with the interest of its members at heart, it will work to influence the legislative process through lobbying including cooperation with permanent associations. The outcome of the regulation will also be of great interest to consumers who are growing increasingly keen on guaranteeing more protection for their personal information. The small members, consumers and indirectly EMOTA will be the parties most affected by the new regulation.

Further analysis of the research has established that all members especially those dealing with marketing and communication will be affected by the regulation. Accumulated information from consumers has proved to be very valuable asset for webshops (Leonard, 2018). All members of EMOTA are reliant on cookies, however the level of reliance can differ based on the purpose the cookies serve. The purposes can be divided into two categories. Financial and technical purposes. There are smaller companies who rely much on data collection to market their products and lure potential consumers to their webshop. These companies, will be heavily impacted by any restriction on the collection of consumer information. Further regulations into their marketing techniques will result in a decline in sales, creating financial difficulty for the businesses. On the other hand bigger companies such as Amazon are likely to encounter little or no financial woes as a result of the regulation. Such companies will be impervious to most changes in the European Data law due to their already established and vast consumer base. They have such a huge market share that they do not rely much on cookies to generate traffic on their website. This actually creates the possibility of the bigger companies benefiting partially from such a tighter regulation on consumer privacy as the smaller competitors will mostly bear the burden of the impact. Nonetheless the bigger companies will feel some of the effect as well, as cookies serve different purposes besides marketing and generating sales. There are technical functions that are performed using cookies as well. They are also used in managing other activities on webshops such as language settings, Fraud detection, and Delivery settings among other functions. The impact is therefore to be severely felt by smaller companies who might rely on cookies both for financial and technical reasons. Regardless of the level of reliance, any negative impact the restriction of cookies will have on a business is not likely to be dismissed no matter how small. Therefore all webshops are more likely to favour a looser regulation on data collection.

EMOTA works to ensure that the interest of its members is fairly represented in the parliament including in this case of data protection. It achieves this by meeting with members of the European Parliament and presenting arguments in favour of its members interest. EMOTA generally opposes the ePrivacy regulation given its focus on limiting data usage by webshops. The current role of EMOTA is to raise concerns its members have about the regulation to members of the parliament in order achieve more favourable legislative outcome. A complete elimination of Articles 8, 10 and 16 which limit the use of data for marketing will be favoured by EMOTA. However, as this seems unlikely, EMOTA is now focused on guiding its members through the aftermath of the regulation by working to develop guidelines that will help members adjust to the requirements of the regulation.

All in all a restriction of cookies by the proposed ePrivacy regulation while aiming to protect consumer rights threatens to disrupt the way webshops operate. This is due to the important role consumer data plays in enabling efficient marketing and operation of websites. Businesses will face financial difficulties as well as other technical difficulties managing their websites. In order to find a balance between protecting both consumer and business interests, the regulation will be monitored for three years by the commission after implementation. Stakeholders can voice concerns during this review period and possible amendments can be made.

Reflection

This research was successful in the sense that it provided a deeper insight into the link between Data Protection and eCommerce. It weighed the impact of Data collection on the businesses of online merchants. Thus providing EMOTA with stronger arguments when representing its members in the Parliament. The staff members were eager and willing to participate in the process through interviews and offering consultancy on ePrivacy. It was also easy to gather information on Data Security as it is a current issue that is debated and of concern to most individual especially in this technological age.

However the research did not go without some major hiccups. An upcoming merger with one of EMOTA's competitors that will see EMOTA dissolve soured the relationship between EMOTA and its members. This led to members being unwilling to participate in the research. Therefore the research mainly relied on responses of EMOTA members from surveys and studies conducted by EMOTA on the impact of the GDPR, which is a similar Data Protection regulation. The willingness of some of the staff members to join the competitor as well also sowed discord among the staff which at times led to a very tense atmosphere within the office. However this research avoided this conflict and was strictly focused on Data Protection. For this, the staff were glad to share their knowledge. The staff members also had more knowledge of the subject matter having previously guided its members through the implementation of the GDPR.

All in all the research successfully highlighted the different roles of data plays in eCommerce and the challenge to balance both protecting consumer rights and business interests. Nevertheless for future research, it will be advisable to firstly establish that all parties involved are willing to participate in the research in order to ensure a more comprehensive results.

5. Recommendations

The following recommendations have been formulated for EMOTA to help its members during and after the implementation process of the ePrivacy regulation.

Firstly, though the most concerning elements of the legislation for EMOTA and its members such as Article 8 and 10 are unlikely to be erased, it is still important for EMOTA to keep on making the case for a smooth eCommerce experience until the very end before the council reaches a decision. The current draft of the legislation has provided exceptions where businesses might continue to retrieve data through cookies. The Germans have voiced their concerns about these exceptions and are aiming to come up with a proposal that will limit such exceptions. This is more a political decision in order to gain favour with consumers. EMOTA should focus more on swaying the permanent representation of the Germans in the parliament to adopt a more business friendly proposal which will be less detrimental for eCommerce. This is suitable because the Germans are the biggest members of the European Council, which increases the likelihood that their proposal will eventually make it into the final draft of the regulation. It is acceptable given that the German national trade association known as bevh is one of EMOTA's biggest members and would benefit from a less restrictive regulation on data collection for its businesses. This is feasible given that the Germans are more likely to take a more pragmatic approach that will somewhat protect business interest on the issue of data privacy. Given the dominance of the German economy in Europe, they are less inclined to stifle and burden their several Small and Medium Enterprises with too much regulations regardless of their concerns about individual data privacy.

Secondly, in the aftermath of the regulation being adopted, EMOTA together with the Commission data protection lawyers, should work to develop detailed guidelines for its members on how to deal with the new obligations in day-to-day business to make sure that members / webshops are compliant. This is a suitable recommendation as one of the common difficulties sighted by members on a survey conducted by EMOTA about the effect of the implemented GDPR was the lack of implementation guidelines. The guidelines are meant to facilitate the process of complying with rules of the regulation for EMOTA members. It is an acceptable recommendation in the sense that it falls under EMOTA's services of keeping its members informed on policy developments that will impact their businesses. EMOTA already has a team of staff members who specialize in drafting policy updates on Data Protection regulation among other issues of concern to its members, making this a feasible proposal.

Thirdly, the previously enacted GDPR is up for revision in May 2020. The ePrivacy overlaps with certain elements of the GDPR as both deal mainly with data protection. EMOTA should use the revision as an opportunity to point out flaws and difficulties faced by its members as a result of the GDPR to the members of the parliament. During the revision members will voice their concern about the burdens the GDPR places on their businesses. These concerns are well suited to be used as arguments by EMOTA when engaging with Members of Parliament (MEPs) against the restrictive nature of the ePrivacy regarding data collection. It is acceptable because EMOTA can use this opportunity to try to influence the decision of the MEPs in a positive way for its members. Underpinning the feasibility of this suggestion is the

argument that the revision of the GDPR which was fully implemented in 2018 comes too early and therefore the full impact of the new regulation cannot be assessed. This is an argument that undermines the necessity of an additional regulation in the form of the ePrivacy.

Advertising and marketing have become requisite part of the business world. As most businesses rely on individual data to attract potential consumers, they are likely to be hamstrung by a data regulation such as the ePrivacy. However EMOTA can encourage members and advertisement providers to try and look into new innovative ways of advertising that will be compliant with the new legislation. The use of influencers on instagram and youtube, as well social media sites such as facebook could be an option. This is suitable given the massive popularity of these platforms therefore ensuring an effective marketing strategy. It is acceptable as the use of influencers does not require obtaining much consumer data. In the case of facebook which relies on data for marketing, if the company is not using the social media's analysis services, the responsibility to be compliant with the new legislation will be on facebook itself not the company. Consumer's easy access to social media and the low cost involved for businesses makes this a feasible recommendation.

If the following recommendations are applied, a devastating impact of the regulation on EMOTA members can be avoided or at the very least drastically minimized.

References

Art. 1 GDPR – Subject-matter and objectives. (n.d.). Retrieved from <https://gdpr-info.eu/art-1-gdpr/>

Bont, A. D. (2014). *Doing in-company research projects: A step by step approach*. Bussum: Uitgeverij Coutinho.

Ecommerce in Europe was worth €534 billion in 2017. (2018, July 03). Retrieved February 25, 2019, from <https://ecommercenews.eu/ecommerce-in-europe-was-worth-e534-billion-in-2017/>

Leonard, K. (2018, October 25). The Role of Data in Business. Retrieved June 20, 2019, from <https://smallbusiness.chron.com/role-data-business-20405.html>

Onuoha, A. (n.d.). How to Effectively Carry Out a Qualitative Data Analysis. Retrieved from <https://www.achievability.co.uk/evasys/how-to-effectively-carry-out-a-qualitative-data-analysis>

Primary and secondary sources. (n.d.). Retrieved from <https://www.library.unsw.edu.au/study/information-resources/primary-and-secondary-sources>

Saunders, M. N., Lewis, P., & Thornhill, A. (2019). *Research methods for business students*. New York: Pearson.

Sundama. (2019, January 07). New EU rules on e-commerce. Retrieved from <https://ec.europa.eu/digital-single-market/en/new-eu-rules-e-commerce>

Survey shows: Web shops thrive in data economy. (2017). Retrieved January 17, 2019, from <https://www.emota.eu/press/survey-shows-web-shops-thrive-in-data-economy>

Vision and Mission. (2017). Retrieved January 17, 2019, from <https://www.emota.eu/about>

Werkmeister, C. (2018, November 26). Consultation on the EU regulation of the data economy. Retrieved February 24, 2019, from <https://www.lexology.com/library/detail.aspx?g=11194dd0-bcf2-44b1-955f-36af3a9ec400>

What is a data breach and what do we have to do in case of a data breach? (2018, August 01). Retrieved January 17, 2019, from https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations/obligations/what-data-breach-and-what-do-we-have-do-case-data-breach_en

3 main institutions of the EU. (2009, May). Retrieved June 20, 2019, from <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT IM-PRESS 20090525STO56250 0 DOC XML V0//EN>

Appendices

Appendix I: Interview questions for staff members

1. Could you state your name and your position at EMOTA?.How long have you been in this position?
2. Generally speaking, how would you describe the kind of service that EMOTA provides its members?
3. Do you deal with members directly and In what way?
4. Are you familiar with data protection legislation such as the GDPR and the proposed ePrivacy regulation and if yes how exactly are you involved in these legislations at EMOTA?
5. What would you say is the main differences between the GDPR and the ePrivacy regulation?
6. Who are the major stakeholders involved in the implementation of the ePrivacy regulation and why?
7. What is EMOTA's main position on the ePrivacy regulation?
8. Are EMOTA members worried about the impact of the ePrivacy regulation on their businesses? If yes what element of the proposed regulation concerns them the most and why?
9. Which members do you believe will be most impacted by the ePrivacy regulation?
10. How exactly would EMOTA be impacted by this regulation?/How is EMOTA trying to have an impact on it?
11. How did EMOTA help members navigate the implementation of the GDPR?
12. What would you consider a favourable outcome of the ePrivacy regulation? And what steps could be taken in the case of an unfavourable outcome?

Appendix II: Interview questions for the Bundesverband E-Commerce und Versandhandel(bevh)

1. Could you please state your name and position in the association?
2. What is the name of your association/company?
3. Are you a member of a National/European Association?
4. In what way do you think the GDPR has affected businesses in terms of financial costs, decrease in webtraffic or any other form.
5. Could you list any number of changes that your members have made in order to comply with the GDPR ?
6. How frequently do your members engage in 3rd party advertising? Approximately how much percent of potential customers can you reach through 3rd party advertising ?
7. Have your members webshops seen an increase or decrease in traffic since the implementation of the GDPR and by approximately how much ?
8. The EU is discussing a proposal for an e-privacy law that risks further restriction of cookies and data use by web shops. Could you elaborate in what ways online cookies are useful to you?

Appendix III: Transcription of Interviews

Date: 16 May 2019

Interviewee: **Alien Mulyk**, Policy Advisor and native German

Could you state your name and your position at EMOTA?.How long have you been in this position?

I'm Policy Advisor for data protection, VAT, digital / corporate taxation and postal services at EMOTA since April 2018.

Generally speaking, how would you describe the kind of service that EMOTA provides its members?

EMOTA represents the interests of its members towards the European institutions and keeps its members informed about policy developments at European level impacting the eCommerce industry.

Do you deal with members directly and In what way?

Yes. Sometimes they send questions about ongoing legislative processes at EU level that I answer, and I inform them in person on certain topics at the committee meetings.

Are you familiar with data protection legislation such as the GDPR and the proposed ePrivacy regulation and if yes how exactly are you involved in these legislations at EMOTA?

I'm familiar with the ongoing legislative process concerning the ePrivacy regulation. As policy advisor for data protection, I'm in charge of monitoring the process, reporting to members about it and to meet with policymakers to inform them about the position of the industry and convince them to take the needs of the eCommerce sector into account. I was not involved in the process concerning the GDPR as I joined EMOTA only shortly before its application date.

What would you say is the main differences between the GDPR and the ePrivacy regulation?

First of all, the two pieces of legislation cover two different European fundamental rights. Whereas the GDPR ensures a common European standard concerning the protection of personal data of all Europeans (Article 8 of the Charter of Fundamental Rights), the ePrivacy regulation ensures the privacy / confidentiality of communications (Article 7 of the Charter of Fundamental Rights). In this sense, the ePrivacy will be *lex specialis* to the GDPR and applied whenever the GDPR is less precise. Or to put it differently, the ePrivacy legislation will clarify and enhance the GDPR in areas linked to the confidentiality of communication. For eCommerce this concerns e.g. the use of cookies or unsolicited marketing. However, one of the points that are still highly debated in Council and therefore one of the reasons for the proposal to be stuck is that there is still some unclarity concerning some overlaps or duplications between the two pieces of legislation.

Who are the major stakeholders involved in the implementation of the ePrivacy regulation and why?

The stakeholders involved are the European legislative institutions (Commission, Council and Parliament) as well as representatives of the civil society and of businesses. At the moment, everyone is waiting for the Council of Ministers to adopt a position on the Commission's proposal. Once this is done, Council and the European Parliament will start negotiations on the final document. But as it seems, negotiations are stuck. It might be the Finns who are taking over the Council Presidency as of July who might finally reach the general approach.

What is EMOTA's main position on the ePrivacy regulation?

EMOTA would like to see a very business-friendly approach on cookies so that eCommerce merchants can continue using them first of all to guarantee the functioning of their websites and ensure a smooth customer experience with personalised services and secondly, to be able to compete with their big competitors by using third party advertising to generate traffic to their webshops. (Article 8)

Moreover, EMOTA would like to see Article 10 deleted. This article basically requires that consumers make a general privacy choice for tracking and third-party advertising in their browsers, which will turn them into gatekeepers and risks giving even more power to big companies. Moreover, it is very hard for small players to convince consumers to go through a whole consent procedure. Instead consumers will prefer to buy from big operators who can offer log-in models. This is disadvantageous for small webshops and will further consolidate the market position of big players.

The provisions on unsolicited marketing is another point that could have an impact on the eCommerce sector. At the moment the wording of the proposal as discussed in Council would undermine a harmonised digital single market as it allows every Member State to set their own period of time after the sale of a product or service within which a webshop is allowed to contact its clients for direct marketing purposes (Article 16.2a).

Are EMOTA members worried about the impact of the ePrivacy regulation on their businesses? If yes what element of the proposed regulation concerns them the most and why?

Yes, they are. Implementing all the obligations of the GDPR was already very burdensome for them. Another regulation that will come on top of these GDPR obligations is obviously frightening for them.

Their concerns are reflected in EMOTA's main position. They mostly fear that without the way they are using cookies right now, they will lose competitiveness and clients coming to their website as third-party advertising is very important especially for small online shops.

Moreover, the legislation will, as described above, have a lasting effect on the way eCommerce merchants do business.

Which members do you believe will be most impacted by the ePrivacy regulation?

This depends obviously on the final text. Whereas the Parliament has taken a rather restrictive position, Council has so far opted for a more business-friendly approach. But as for probably all pieces of legislation, the burden is usually heavier for small businesses. In this case not only because they have less employees who can deal with the implementation of the legislation, but also because it is much harder for them to convince a potential client to e.g. create an account for a small webshop where he or she might only buy one item. It is very likely that the potential client would then rather go to Amazon where he or she already has created an account and try to find the item there.

In addition, it is mainly the small shops who really rely on cookies for third party advertising to generate traffic on their websites. According to an EMOTA survey from 2017, 50% of online retailers would lose around 20% of their sales if they can't use third party advertising anymore

How exactly would EMOTA be impacted by this regulation?/How is EMOTA trying to have an impact on it?

EMOTA itself would be less impacted as it is not an online seller itself. Obviously, depending on the final outcome, it would need to ensure that the website, the services and communications it provides itself to members comply with the new regulation. However, the impact will be much bigger for the members of EMOTA's member associations as described above.

How did EMOTA help members navigate the implementation of the GDPR?

EMOTA published several guidance documents issued by the Commission and national governments / associations on its website and informed about their existence in its policy updates as far as I know (as I said before, I only joined EMOTA in April 2018).

What would you consider a favourable outcome of the ePrivacy regulation? And what steps could be taken in the case of an unfavourable outcome?

A favourable outcome would be if the final piece of legislation would be formulated in a way to avoid the potential negative impacts described above. So ideally, Article 10 would be deleted, and the use of cookies would still be permitted to the largest extent possible.

In case of an unfavourable outcome, EMOTA could still try to influence the Commission's implementing act that will possibly need to be adopted to ensure the uniform application of the regulation in all Member States. In this process, the Commission asks stakeholders for their input in order to shape the new piece of legislation in a workable and enforceable way. Moreover, the Commission is obliged to monitor and evaluate the regulation within three years (according to the current version of the Council text) to detect a potential need to amend or repeal the regulation in view of potential legal, technical or economic changes. These review processes also offer another opportunity for stakeholders to inform the Commission about their concerns and to try to incite policymakers to amend the legislation in a favourable way.

No matter the exact outcome, the adoption of the ePrivacy legislation will mean more complex rules for online sellers. EMOTA will support the Commission in issuing and disseminating guidance documents / legislation for further clarification to make it easier for webshops to comply with the new obligations.

Interviewee: **Kereto Gormsen**, Policy advisor and native Danish

Date: 23 May 2019

What is your position at EMOTA and how long have you been in this position?

I am a Policy Officer at EMOTA where I primarily follow trade, Brexit and digital taxation. I have had my position for 7 months.

Generally speaking, how would you describe the kind of service that EMOTA provides its members?

EMOTA carries out three main tasks: first of all we gather information on relevant political files which are of interest to our members and developments in areas which are important for them. This could for example be a new piece of legislation which would impact a business in a positive or negative manner. Primarily this information is disseminated through our bi-weekly newsletter.

The second main task EMOTA carries out is engaging with policy makers for example Members of the European Parliament (MEPs), Council staff or officials in the European Commission. With these people, we try to raise concerns our members have and feed into the political process. This is classic lobbying.

The third main task EMOTA carries out is arranging events and meetings for our members. This can be with other stakeholders or political decision-makers.

Do you deal with members directly?

I do but only rarely. Mostly through email contact.

Are you familiar with data protection legislation such as the GDPR and the proposed ePrivacy regulation and if yes how exactly are you involved in these legislations at EMOTA?

I am familiar with the GDPR in a personal capacity but do not follow it at EMOTA. I do follow the ePrivacy regulation at EMOTA and write about the latest changes which are of interest to our members. This is mainly the articles which will set new requirements and burdens on the eCommerce sector: article 8, 10 and 16.

What would you say is the main difference between the GDPR and the ePrivacy regulation?

The GDPR is mainly about guarding people's personal data whereas ePrivacy is focused on the commercial aspects of data privacy and regulates how information obtained e.g. via cookies can be used for commercial purposes. The ePrivacy regulation also seeks to cover

some of the new technologies which are not currently sufficient covered by EU legislation (such as Whatsapp/skype, Facebook messenger)

Who are the stakeholders involved in the implementation of the ePrivacy regulation?

As it is not yet adopted, I am not sure on this.

What is EMOTA's main position on the ePrivacy regulation?

That the provision under Article 6; 8; and 16 are damaging the eCommerce sector and can cause many companies to face financial difficulties while also being so restrictive that it will stifle innovation in a sector which is undergoing rapid change.

Are EMOTA members worried about the impact of the ePrivacy regulation on their businesses? If yes what element of the proposed regulation concerns them the most and why?

EMOTA is primarily concerned that the limitations under article 16 would lead to new restrictions to the way online sellers can communicate and promote their products and services to potential consumers. This would also restrict the use of advertisements by third parties on many websites which is an important source of income for many small eCommerce companies.

Another main issue with the ePrivacy Regulation is Article 8 which will prohibit the use of processing and storing information from an end-user's equipment. This is seen by EMOTA as being far more restrictive than the existing provisions in the GDPR.

Which members do you believe will be most impacted by the ePrivacy regulation?

The smallest online webshops some of which are dependent on cookies for up to 40% of their revenue from online advertising.

How exactly would EMOTA be impacted by this regulation?/How is EMOTA trying to have an impact on it?

EMOTA itself would not be heavily impacted by the ePrivacy regulation, however our members would. The impact would then be very different whether the member is a postal operator, a large company like Amazon or a national eCommerce association representing small online businesses which could be heavily impacted by new restrictions on the use of data obtained via cookies which allows them to use advertisement space and better service their customers.

How did EMOTA help members navigate the implementation of the GDPR?

This was before I started at EMOTA, so I am not familiar with the help we provided members on implementation of the GDPR.

What would you consider a favourable outcome of the ePrivacy regulation? And what steps could be taken in the case of an unfavourable outcome?

A complete deletion of Article 8 and 16. However, this is very unlikely so new language which could ensure that for instance small webshops could be excluded from the scope of the regulation would be welcome.

Interviewee: **Triin Saag**, Policy Advisor and native Estonian

Date: 11 June 2019

What is your position at EMOTA and how long have you been in this position?

I am Triin Saag, the Director of Government Affairs, 1 year

Generally speaking, how would you describe the kind of service that EMOTA provides its members?

It provides legislative advocacy, monitoring, events and European trustmark for webshops.

Do you deal with members directly?

Yes. I work with them directly on legislative proposals and events.

Are you familiar with data protection legislation such as the GDPR and the proposed ePrivacy regulation and if yes how exactly are you involved in these legislations at EMOTA?

Yes. It is not directly my area of competence but data protection and e-privacy are subjects that affect many areas of e-commerce.

Data protection regulation has already been adopted and is more at a consultative and application phase at company level. E.g. how to use data and save it, in which cases it is necessary to delete it etc.

E-privacy is still under discussion and has been of interest to e-commerce due to the use of cookies and third party data. E.g. can I continue collecting the data about people who visit my website, how easy it would be to access also third party data for commercial purposes.

What would you say is the main difference between the GDPR and the ePrivacy regulation?

GDPR is overarching and all-encompassing legislation about data collection, preservation and elimination. E-privacy is more specific legislation regarding tracking and monitoring of communication and data most cases machine-read.

Who are the stakeholders involved in the implementation of the ePrivacy regulation?

E privacy regulation has not been adopted, so it is not being implemented. If it ever needs to be implemented then it will be the companies who collect data from websites.

What is EMOTA's main position on the ePrivacy regulation?

Companies should have to be able to access data via cookies.

Are EMOTA members worried about the impact of the ePrivacy regulation on their businesses? If yes what element of the proposed regulation concerns them the most and why?

Important: Data about potential customers

Concern: If data collection will be prohibited or limited.

Which members do you believe will be most impacted by the ePrivacy regulation?

Members involved in marketing and sales and new markets.

How exactly would EMOTA be impacted by this regulation?/How is EMOTA trying to have an impact on it?

EMOTA would be affected because of its Members that it represents. EMOTA is seeking to ensure that companies can collect data via cookies. This is obtained by lobbying activities – meetings with permanent representations and cooperation with other associations.

How did EMOTA help members navigate the implementation of the GDPR?

It helped Members to draft their guidelines.

What would you consider a favourable outcome of the ePrivacy regulation? And what steps could be taken in the case of an unfavourable outcome?

That companies can continue collecting data via websites to reach potential customers.
In case of unfavourable outcome, EMOTA would need to push for a new legislative change.

Interviewee: **Maurits Bruggink**, Policy Advisor and native Dutch

Date: 17 June 2019

What is your position at EMOTA?

Maurits Bruggink, Secretary General

Generally speaking, how would you describe the kind of service that EMOTA provides its members?

Information gathering, analysis and recommendations, influencing policy-making, promotion.

Do you deal with members directly?

Direct contact through mail, phone, meetings and presentations to conferences.

Are you familiar with data protection legislation such as the GDPR and the proposed ePrivacy regulation and if yes how exactly are you involved in these legislations at EMOTA?

I advise members about the contents of (future) legislation, its impact on business and what steps to take as a online retailer.

What would you say is the main difference between the GDPR and the ePrivacy regulation?

The proposed ePrivacy Regulation will make it more difficult to collect and use data of consumers by introducing stricter and more consistent consent.

Who are the stakeholders involved in the implementation of the ePrivacy regulation?

Those will be online retailer because they would have to adjust the consent settings at their website; the online marketing operators as they will have more difficulties in using cookies to collect data; the contents providers because they will find it more difficult to get advertising revenues from interactive marketing; the consumers because their surfing experience will be frustrated with random and therefore not useful advertising and search results.

What is EMOTA's main position on the ePrivacy regulation?

Do not frustrate the digital (data) economy with further restriction on the use of data.

Are EMOTA members worried about the impact of the ePrivacy regulation on their businesses? If yes what element of the proposed regulation concerns them the most and why?

Online retailers will be restricted in targeted marketing and advertising and will have to spend more resources to get to the consumer.

Which members do you believe will be most impacted by the ePrivacy regulation?

The online retailers will be most affected and lose substantial revenues as a result of the proposed law.

How exactly would EMOTA be impacted by this regulation?/How is EMOTA trying to have an impact on it?

EMOTA has a position paper on the matter, which contains both data and policy statements. It also has a survey on the use of data, used in advocacy. On the basis of these positions, EMOTA has met with many policy makers in order to influence their position.

How did EMOTA help members navigate the implementation of the GDPR?

EMOTA advised members in writing about the GDPR and its effects on online retail. It also referred to the various official EU sources on the matter. National associations have organized a variety of events for their members to inform and advise.

What would you consider a favourable outcome of the ePrivacy regulation? And what steps could be taken in the case of an unfavourable outcome?

A favourable outcome would be if the consent procedures would be less demanding and certainly no provisions dealing with browser setting.

Interviewee: **Sebastian Schulz**, Director of Government Affairs and Data Protection, native German

Date: 22 July 2019

Could you please state your name and position in the association?

Sebastian Schulz, Director PA und Data Protection

What is the name of your association/company?

bevh (German Distance Sellers Association)

Are you a member of a National/European Association?

E-Commerce Europe

In what way do you think the GDPR has affected businesses in terms of financial costs, decrease in webtraffic or any other form.

Extensive financial costs up to >1 Million EUR, decrease of webtraffic not in Germany so far

Could you list any number of changes that your members have made in order to comply with the GDPR?

Review of all compliance obligations (e.g. information obligation, new processes to fulfill the rights of data subjects, new and more detailed documentation, ...)

How frequently do your members engage in 3rd party advertising? Approximately how much percent of potential customers can you reach through 3rd party advertising?

Hard to say. Usually, businesses do not have any audiences on the first stage (besides Facebook and Google of course). So at least all SMEs depend on DMPs and Ad networks (3rd parties).

Have your members webshops seen an increase or decrease in traffic since the implementation of the GDPR and by approximately how much?

No, they don't. In Germany, tracking and targeting is still based on the legitimate interest.

The EU is discussing a proposal for an e-privacy law that risks further restriction of cookies and data use by web shops. Could you elaborate in what ways online cookies are useful to you?

Without cookies or comparable technologies, online marketing will cease to exist. Online marketing will take place like 15 years ago (no targeted the so-called watering can principle).

Appendix IV: Survey results on Data and Webshop conducted by EMOTA

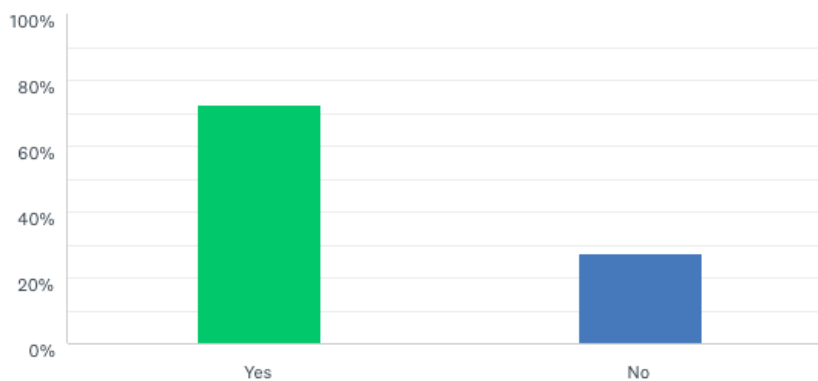
These are the results of a survey that was carried out by EMOTA to highlight the important role of Data among its members. The survey was conducted in 2017 after the introduction of the GDPR but before its implementation.

Q1



I use personal data from customers, like gender, preferences, previous purchases, a.o. in order to market my products. (click one box)

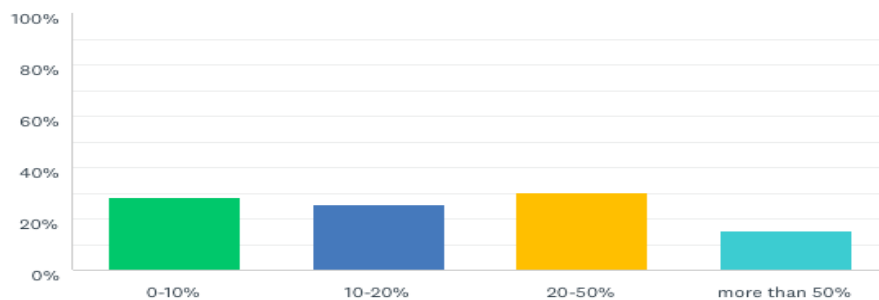
Answered: 257 Skipped: 0



ANTWOORDKEUZEN		REACTIES
Yes	72.37%	186
No	27.63%	71
TOTAL		257

If I cannot use personal data of costumers and/or prospective costumers anymore, I estimate to lose sales. Of my total sales, this would be: (click one box)

Answered: 238 Skipped: 19



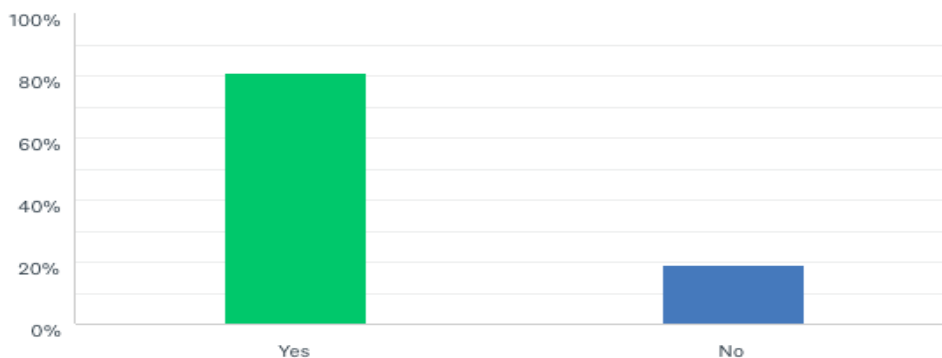
ANSWER CHOICES	RESPONSES	
0-10%	28.57%	68
10-20%	25.63%	61
20-50%	30.25%	72
more than 50%	15.55%	37
TOTAL		238

Q3



I do email marketing, like sending product offers, information on sales, a.o. (click one box)

Answered: 237 Skipped: 20



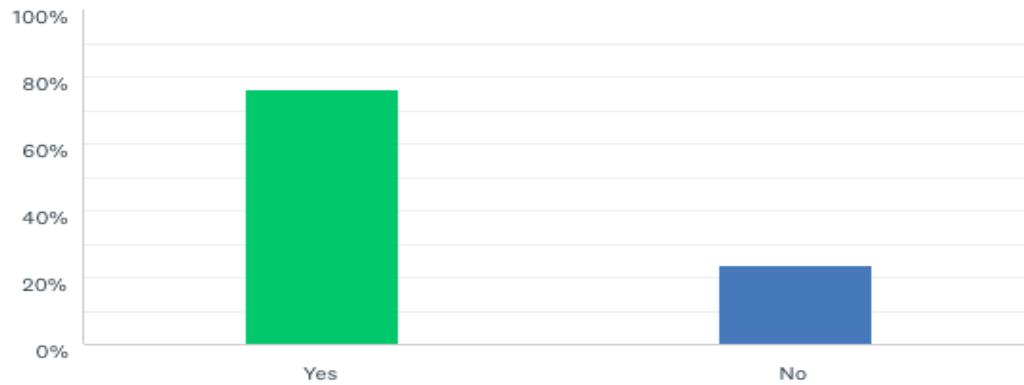
ANSWER CHOICES	RESPONSES	
Yes	81.01%	192
No	18.99%	45
TOTAL		237

Q4



I use cookies to collect personal data from my webshop visitors. (click one box)

Answered: 234 Skipped: 23



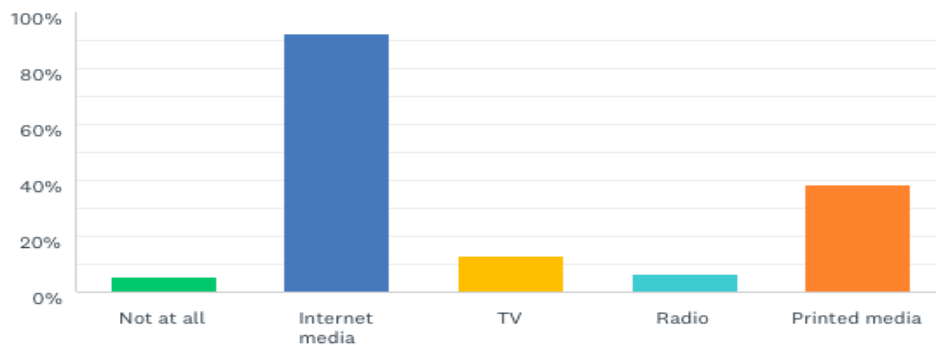
ANSWER CHOICES	RESPONSES	
Yes	76.50%	179
No	23.50%	55
TOTAL		234

Q5



I do advertising (tick one or more boxes)

Answered: 233 Skipped: 24



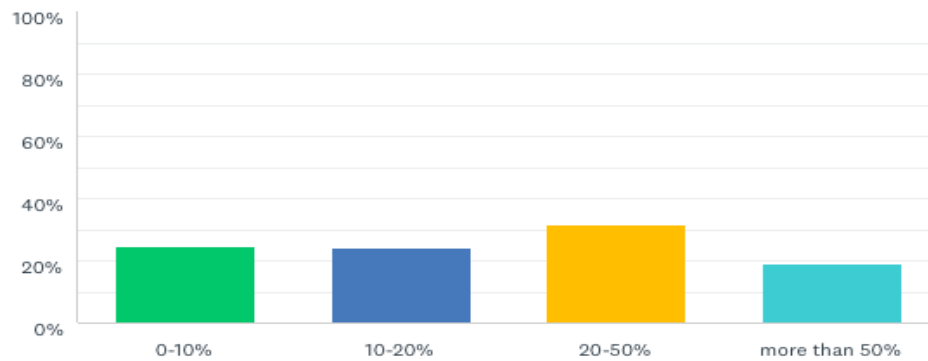
ANSWER CHOICES	RESPONSES	
Not at all	5.58%	13
Internet media	92.27%	215
TV	12.88%	30
Radio	6.44%	15
Printed media	38.63%	90

Q6



I advertise on Internet media through 3rd parties. I estimate that this generates the following proportion of sales: (click one box)

Answered: 226 Skipped: 31



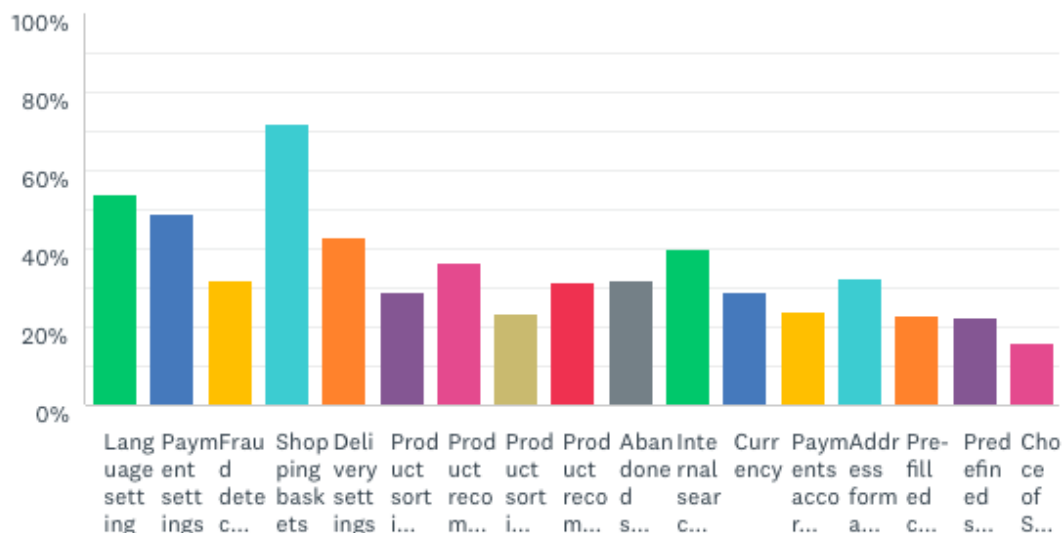
ANSWER CHOICES	RESPONSES	
0-10%	24.78%	56
10-20%	24.34%	55
20-50%	31.86%	72
more than 50%	19.03%	43

Q7



I use cookies for the following purposes (click one or more boxes):

Answered: 211 Skipped: 46



Appendix V: Survey results on Consumers and Data

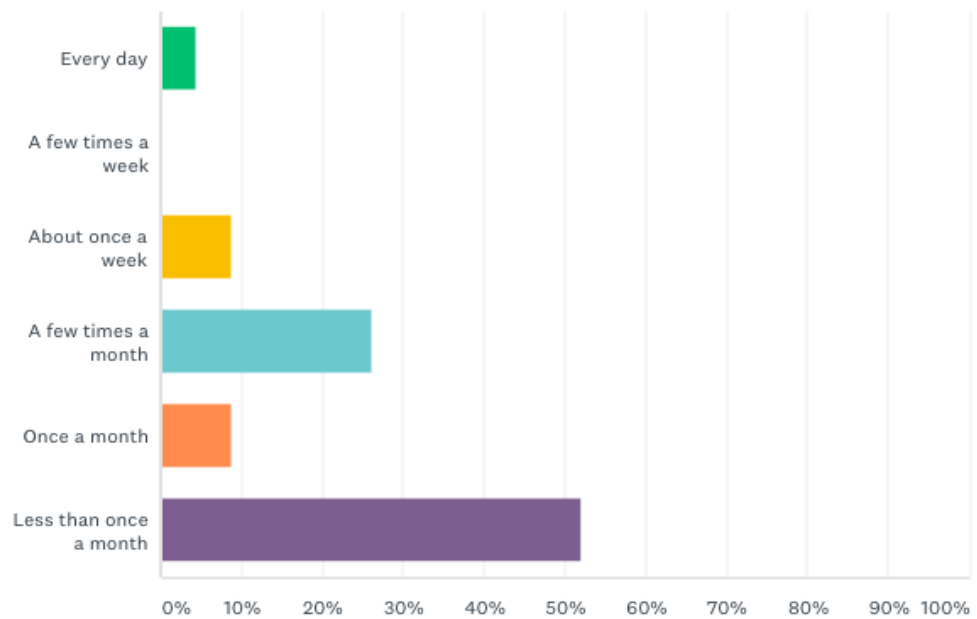
The following depicts the results of the survey that was carried out during this research. It shows the importance of data protection from the perspective of potential consumers.

Q1



How often do you engage in online shopping?

Answered: 23 Skipped: 0



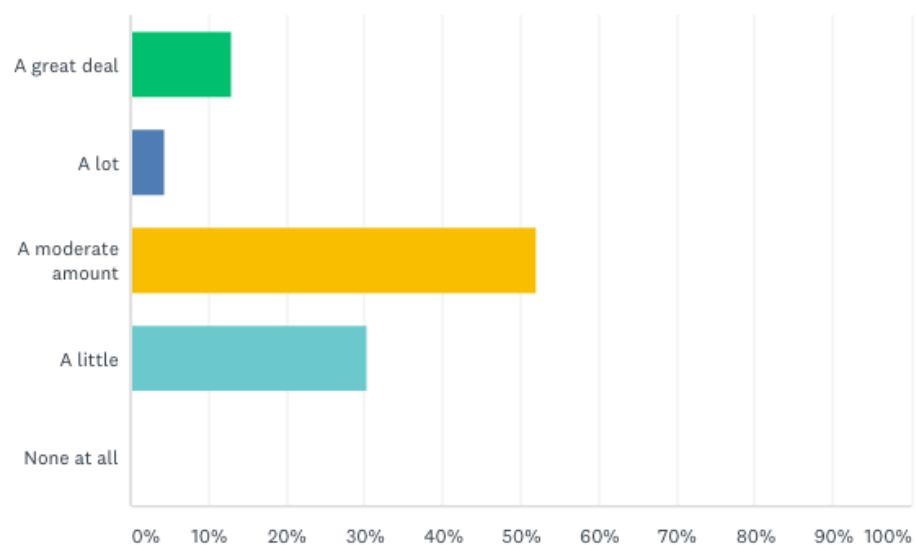
Q2



Cust

How concerned are you about the use of your data by webshops?

Answered: 23 Skipped: 0

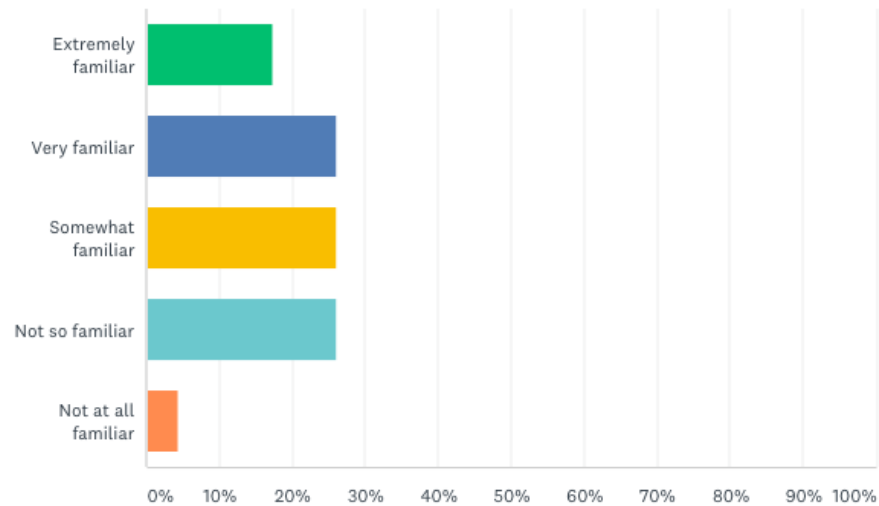


Q3

 [Customize](#) [Save](#)

How familiar are you with the content of a cookie notification on a website before declining or accepting cookies?

Answered: 23 Skipped: 0

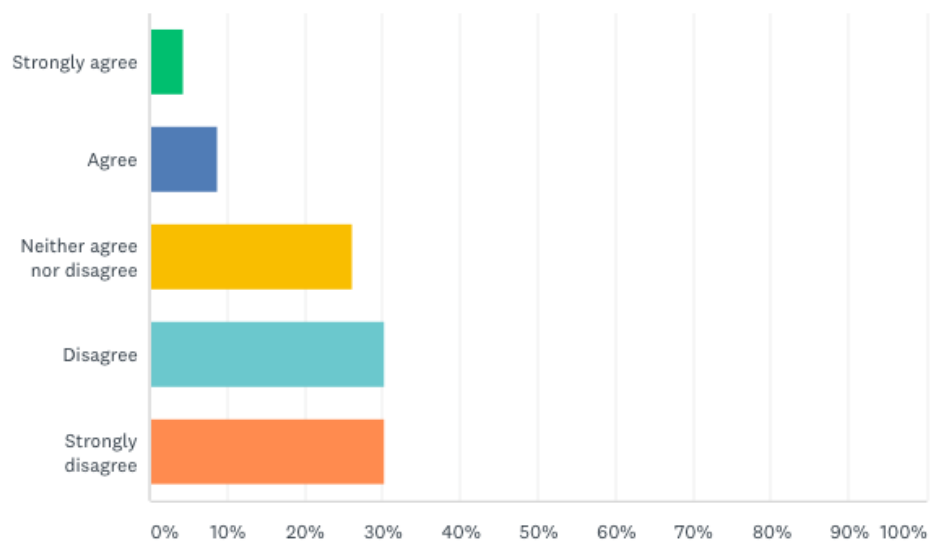


Q4

 [Customize](#)

What is your opinion on the following statement: "Most web shops are transparent regarding the ways my collected data will be used".

Answered: 23 Skipped: 0



Q5

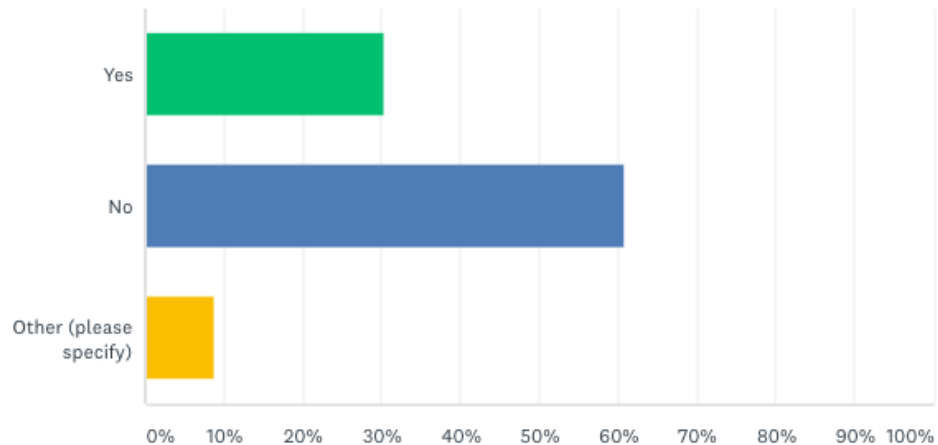


Customize

S

Do you approve of the use of your data for 3rd party advertising by web shops?

Answered: 23 Skipped: 0



Q6

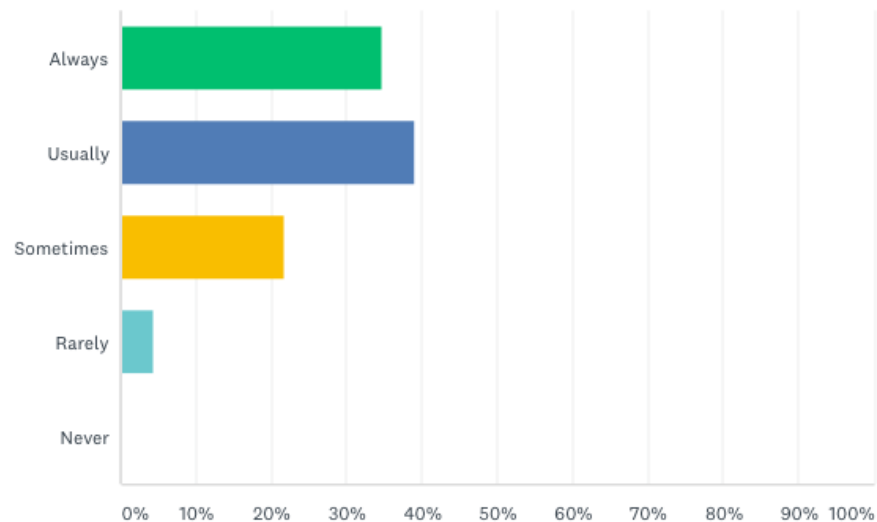


Customize

Save as

How often do you receive tailor-made advertisements while surfing online?

Answered: 23 Skipped: 0



Q7

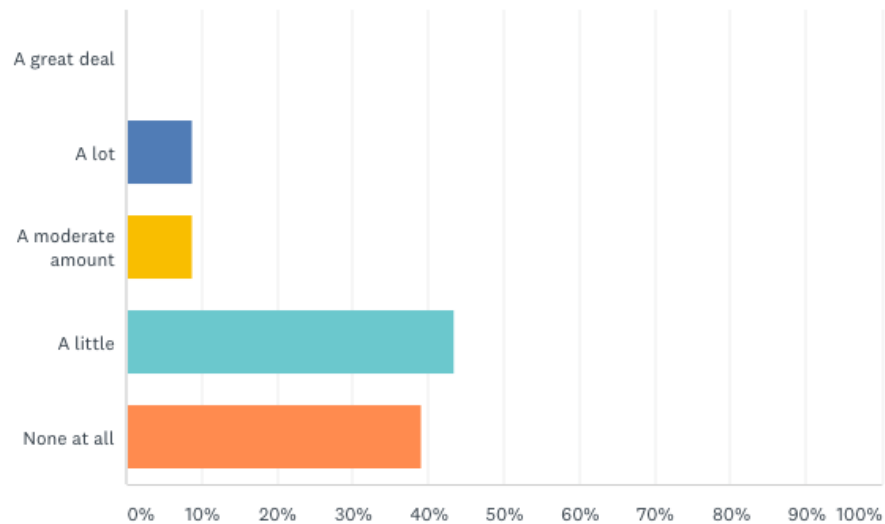


Customize

Save

How much of your purchases are made based on online advertisements?

Answered: 23 Skipped: 0



Q8

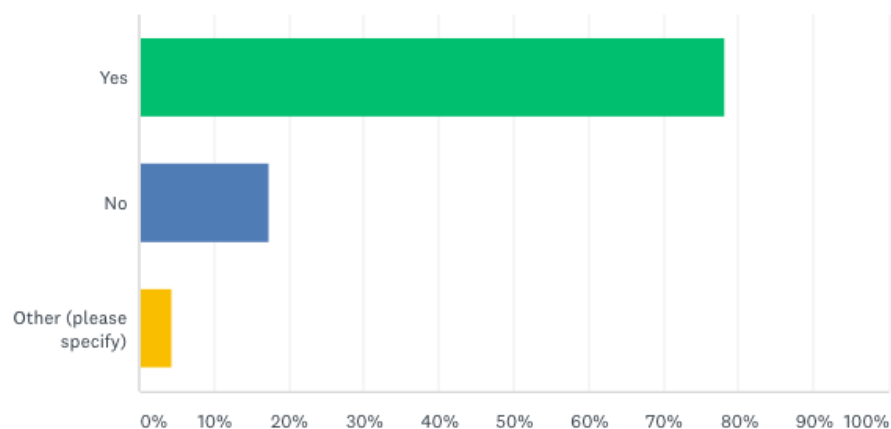


Customize

Save as

In general do you believe that data protection laws for web shops in the EU should be strengthened?

Answered: 23 Skipped: 0



Appendix VI: Survey results on the impact of the GDPR on EMOTA's members

This is a summary of the survey carried out among the members of EMOTA after the implementation of the GDPR. It shows the effect of the General Data Protection Regulation.



Survey on GDPR Implementation

Summary:

- **Successful implementation:** 0-25%
- **Most difficult part for webshops:** Lack of implementation guidance
- Mixed feelings about the **impact on sales due to data that couldn't be used anymore:** In BE and GR they went down by 7.5-15%, in DE and MK they stayed the same
- The **burden webshops carry** differs from member state to member state
- **The burden of compliance with data protection rules increased** between 20 and 50% (except for MK, but it is outside the EU anyway)
- There is not enough data to determine impact on **cross-border sales**
- GDPR has an **impact on international competition** with third countries and worsened the playing field with them for European businesses as third country companies don't comply with the rules in the same way European do
- **SMEs don't have the same means to comply** with the rules as bigger ones, on the other hand they are **less afraid of sanctions** as the authorities are expected to focus on bigger companies due to limited resources

Appendix VII: Code scheme

Comment scope	Comment text
I'm Policy Advisor for data protection, VAT, digital / corporate taxation and postal services at EMOTA since April 2018.	Staff profile
I am a Policy Officer at EMOTA where I primarily follow trade, Brexit and digital taxation. I have had my position for 7 months.	Staff profile
I am Triin Saag, the Director of Government Affairs, 1 year	Staff profile
Maurits Bruggink, Secretary General	Staff profile
Sebastian Schulz, Director PA und Data Protection	Staff profile
EMOTA represents the interests of its members towards the European institutions and keeps its members informed about policy developments at European level impacting the eCommerce industry.	Company profile
EMOTA carries out three main tasks: first of all we gather information on relevant political files which are of interest to our members and developments in areas which are important for them. This could for example be a new piece of legislation which would impact a business in a positive or negative manner. Primarily this information is disseminated through our bi-weekly newsletter. The second main task EMOTA carries out is engaging with policy makers for example Members of the European Parliament (MEPs), Council staff or officials in the European Commission. With these people, we try to raise concerns our members have and feed into the political process. This is classic lobbying. The third main task EMOTA carries out is arranging events and meetings for our	Company profile

members. This can be with other stakeholders or political decision-makers.	
It provides legislative advocacy, monitoring, events and European trustmark for webshops.	Company profile
Information gathering, analysis and recommendations, influencing policy-making, promotion.	Company profile
Yes. Sometimes they send questions about ongoing legislative processes at EU level that I answer, and I inform them in person on certain topics at the committee meetings.	Staff credentials
I do but only rarely. Mostly through email contact.	Staff credentials
Yes. I work with them directly on legislative proposals and events.	Staff credentials
Direct contact through mail, phone, meetings and presentations to conferences.	Staff credentials
I'm familiar with the ongoing legislative process concerning the ePrivacy regulation. As policy advisor for data protection, I'm in charge of monitoring the process, reporting to members about it and to meet with policymakers to inform them about the position of the industry and convince them to take the needs of the eCommerce sector into account. I was not involved in the process concerning the GDPR as I joined EMOTA only shortly before its application date	Staff credentials
I am familiar with the GDPR in a personal capacity but do not follow it at EMOTA. I do follow the ePrivacy regulation at EMOTA and write about the latest changes which are of interest to our members. This is mainly the articles which will set new requirements and burdens on the eCommerce sector: article 8, 10 and 16.	Staff credentials
Yes. It is not directly my area of competence but data protection and e-	Staff credentials

<p>privacy are subjects that affect many areas of e-commerce.</p> <p>Data protection regulation has already been adopted and is more at a consultative and application phase at company level. E.g. how to use data and save it, in which cases it is necessary to delete it etc.</p> <p>E-privacy is still under discussion and has been of interest to e-commerce due to the use of cookies and third party data. E.g. can I continue collecting the data about people who visit my website, how easy it would be to access also third party data for commercial purposes.</p>	
<p>I advise members about the contents of (future) legislation, its impact on business and what steps to take as an online retailer.</p>	Staff credentials
<p>First of all, the two pieces of legislation cover two different European fundamental rights. Whereas the GDPR ensures a common European standard concerning the protection of personal data of all Europeans (Article 8 of the Charter of Fundamental Rights), the ePrivacy regulation ensures the privacy / confidentiality of communications (Article 7 of the Charter of Fundamental Rights). In this sense, the ePrivacy will be <i>lex specialis</i> to the GDPR and applied whenever the GDPR is less precise. Or to put it differently, the ePrivacy legislation will clarify and enhance the GDPR in areas linked to the confidentiality of communication. For eCommerce this concerns e.g. the use of cookies or unsolicited marketing.</p> <p>However, one of the points that are still highly debated in Council and therefore one of the reasons for the proposal to be stuck is that there is still some unclarity concerning some overlaps or duplications between the two pieces of legislation.</p>	Scope of the new legislation

The GDPR is mainly about guarding people's personal data whereas ePrivacy is focused on the commercial aspects of data privacy and regulates how information obtained e.g. via cookies can be used for commercial purposes. The ePrivacy regulation also seeks to cover some of the new technologies which are not currently sufficient covered by EU legislation (such as Whatsapp/skype, Facebook messenger)	Scope of the new legislation
GDPR is overarching and all-entrenching legislation about data collection, preservation and elimination. E-privacy is more specific legislation regarding tracking and monitoring of communication and data most cases machine-read.	Scope of the new legislation
The proposed ePrivacy Regulation will make it more difficult to collect and use data of consumers by introducing stricter and more consistent consent.	Scope of the new legislation
The stakeholders involved are the European legislative institutions (Commission, Council and Parliament) as well as representatives of the civil society and of businesses. At the moment, everyone is waiting for the Council of Ministers to adopt a position on the Commission's proposal. Once this is done, Council and the European Parliament will start negotiations on the final document. But as it seems, negotiations are stuck. It might be the Finns who are taking over the Council Presidency as of July who might finally reach the general approach	Research units
If it ever needs to be implemented then it will be the companies who collect data from websites.	Research units
Those will be online retailer because they would have to adjust the consent settings at their website; the online marketing operators as they will have more difficulties in using cookies to collect data; the contents providers because they will	Research units

find it more difficult to get advertising revenues from interactive marketing; the consumers because their surfing experience will be frustrated with random and therefore not useful advertising and search results.	
<p>EMOTA would like to see a very business-friendly approach on cookies so that eCommerce merchants can continue using them first of all to guarantee the functioning of their websites and ensure a smooth customer experience with personalised services and secondly, to be able to compete with their big competitors by using third party advertising to generate traffic to their webshops. (Article 8)</p> <p>Moreover, EMOTA would like to see Article 10 deleted. This article basically requires that consumers make a general privacy choice for tracking and third-party advertising in their browsers, which will turn them into gatekeepers and risks giving even more power to big companies. Moreover, it is very hard for small players to convince consumers to go through a whole consent procedure. Instead consumers will prefer to buy from big operators who can offer log-in models. This is disadvantageous for small webshops and will further consolidate the market position of big players.</p> <p>The provisions on unsolicited marketing is another point that could have an impact on the eCommerce sector. At the moment the wording of the proposal as discussed in Council would undermine a harmonised digital single market as it allows every Member State to set their own period of time after the sale of a product or service within which a webshop is allowed to contact its clients for direct marketing purposes (Article 16.2a).</p>	Company concerns
That the provision under Article 6; 8; and 16 are damaging the eCommerce sector and can cause many companies to face	Company concerns

financial difficulties while also being so restrictive that it will stifle innovation in a sector which is undergoing rapid change.	
Companies should have to be able to access data via cookies.	Company concerns
Do not frustrate the digital (data) economy with further restriction on the use of data.	Company concerns
<p>Yes, they are. Implementing all the obligations of the GDPR was already very burdensome for them. Another regulation that will come on top of these GDPR obligations is obviously frightening for them.</p> <p>Their concerns are reflected in EMOTA's main position. They mostly fear that without the way they are using cookies right now, they will lose competitiveness and clients coming to their website as third-party advertising is very important especially for small online shops.</p> <p>Moreover, the legislation will, as described above, have a lasting effect on the way eCommerce merchants do business.</p>	Member concerns
<p>Important: Data about potential customers</p> <p>Concern: If data collection will be prohibited or limited.</p>	Member concerns
Online retailers will be restricted in targeted marketing and advertising and will have to spend more resources to get to the consumer.	Member concerns
<p>This depends obviously on the final text. Whereas the Parliament has taken a rather restrictive position, Council has so far opted for a more business-friendly approach. But as for probably all pieces of legislation, the burden is usually heavier for small businesses. In this case not only because they have less employees who can deal with the implementation of the legislation, but also because it is much harder for them to convince a potential client to e.g. create an account for a small webshop where he or she might only buy</p>	Consequences for members

<p>one item. It is very likely that the potential client would then rather go to Amazon where he or she already has created an account and try to find the item there. In addition, it is mainly the small shops who really rely on cookies for third party advertising to generate traffic on their websites. According to an EMOTA survey from 2017, 50% of online retailers would lose around 20% of their sales if they can't use third party advertising anymore</p>	
<p>The smallest online webshops some of which are dependent on cookies for up to 40% of their revenue from online advertising.</p>	Consequences for members
<p>The online retailers will be most affected and lose substantial revenues as a result of the proposed law.</p>	Consequences for members
<p>Extensive financial costs up to >1 Million EUR, decrease of webtraffic not in Germany so far</p>	Consequences for members
<p>Review of all compliance obligations (e.g. information obligation, new processes to fulfill the rights of data subjects, new and more detailed documentation, ...)</p>	Consequences for members
<p>No, they don't. In Germany, tracking and targeting is still based on the legitimate interest.</p>	Consequences for members
<p>EMOTA itself would be less impacted as it is not an online seller itself. Obviously, depending on the final outcome, it would need to ensure that the website, the services and communications it provides itself to members comply with the new regulation. However, the impact will be much bigger for the members of EMOTA's member associations as described above.</p>	EMOTA's role
<p>EMOTA published several guidance documents issued by the Commission and national governments / associations on its website and informed about their existence in its policy updates as far as I know (as I said before, I only joined EMOTA in April 2018).</p>	EMOTA's role

<p>EMOTA itself would not be heavily impacted by the ePrivacy regulation, however our members would. The impact would then be very different whether the member is a postal operator, a large company like Amazon or a national eCommerce association representing small online businesses which could be heavily impacted by new restrictions on the use of data obtained via cookies which allows them to use advertisement space and better service their customers.</p>	EMOTA's role
<p>EMOTA would be affected because of its Members that it represents. EMOTA is seeking to ensure that companies can collect data via cookies. This is obtained by lobbying activities – meetings with permanent representations and cooperation with other associations.</p>	EMOTA's role
<p>It helped Members to draft their guidelines. EMOTA has a position paper on the matter, which contains both data and policy statements. It also has a survey on the use of data, used in advocacy. On the basis of these positions, EMOTA has met with many policy makers in order to influence their position.</p>	<p>EMOTA's role EMOTA's role</p>
<p>EMOTA advised members in writing about the GDPR and its effects on online retail. It also referred to the various official EU sources on the matter. National associations have organized a variety of events for their members to inform and advise.</p>	EMOTA's role
<p>A favourable outcome would be if the final piece of legislation would be formulated in a way to avoid the potential negative impacts described above. So ideally, Article</p>	Expertise on Data regulation

<p>10 would be deleted, and the use of cookies would still be permitted to the largest extent possible.</p> <p>In case of an unfavourable outcome, EMOTA could still try to influence the Commission's implementing act that will possibly need to be adopted to ensure the uniform application of the regulation in all Member States. In this process, the Commission asks stakeholders for their input in order to shape the new piece of legislation in a workable and enforceable way.</p> <p>Moreover, the Commission is obliged to monitor and evaluate the regulation within three years (according to the current version of the Council text) to detect a potential need to amend or repeal the regulation in view of potential legal, technical or economic changes. These review processes also offer another opportunity for stakeholders to inform the Commission about their concerns and to try to incite policymakers to amend the legislation in a favourable way.</p> <p>No matter the exact outcome, the adoption of the ePrivacy legislation will mean more complex rules for online sellers. EMOTA will support the Commission in issuing and disseminating guidance documents / legislation for further clarification to make it easier for webshops to comply with the new obligations.</p>	
<p>A complete deletion of Article 8 and 16. However, this is very unlikely so new language which could ensure that for instance small webshops could be excluded from the scope of the regulation would be welcome.</p>	<p>Expertise on Data regulation</p>
<p>That companies can continue collecting data via websites to reach potential customers.</p> <p>In case of unfavourable outcome, EMOTA would need to push for a new legislative change.</p>	<p>Expertise on Data regulation</p>

A favourable outcome would be if the consent procedures would be less demanding and certainly no provisions dealing with browser setting.	Expertise on Data regulation
Hard to say. Usually, businesses do not have any audiences on the first stage (besides Facebook and Google of course). So at least all SMEs depend on DMPs and Ad networks (3rd parties).	Online marketing
Without cookies or comparable technologies, online marketing will cease to exist. Online marketing will take place like 15 years ago (no targetedthe so-called watering cann principle).	Online marketing