



*Model European Union Conference 2017*

## **The Republic of Ireland**

### *Position Paper*

*Concerning the proposal of a European Charter of Digital Fundamental Rights aimed at safeguarding democratic principles, protecting against state agencies and private actors with the goal of laying a foundation for a constitutional order in the digital age.*

### **I. Introduction**

The influx of information stored online in the last decade due to the success of mobile technology and its benefits has led to a greater demand for fundamental rights when it comes to such information. Technology is no longer an extension of human behaviour, rather it has become an integral part of our daily lives. The Internet as of 2017 is made up of over 1200 Petabytes (1,200,000 Terabytes) of information.

This proposed Charta is essential is addressing not only the storage of such information but also the ever-increasing power imbalance between individuals, state authorities and private enterprises.

Although this Charta is heavily aimed at protecting individuals ('Content Providers'), it is incredibly important these rights not hinder corporations from future innovation and advancements aimed at benefiting mankind as a whole. Furthermore, State Powers should not be overly hampered in their ability to conduct surveillance with the goal of public security. This has become increasingly more important in the wake of a number of terror attacks across member states in the last number of years.

### **II. Position & Critic**

Ireland is in a unique position among member states, acting as the legal and administrative hub for 29 of the top 30 technology companies in the world and their European Operations. As previous data protection debates within the EU have shown, Ireland is firmly against increasing regulations from the national level as seen in France and Germany to that of a European Level. Our national Data Protection Regulator, The Irish Data Protection Commissioner has advised against such



changes. Ireland seeks not to be hindered in its ability to act as a “one stop shop” in regulatory capacity towards Multinational Companies. To do so would not only damage Ireland’s appeal to such companies, it would more importantly damage the European Union’s ability to compete at an International level. As clearly and frequently outlined by the Trump Administration in the United States, the current executive in his capacity will have no issues in removing regulations which impact the overall trade. This must be considered if the European Union is to remain competitive on the global stage.

We believe a compromise should be reached. We seek not to impose the overly harsh regulatory requirements imposed by member states in France and Germany nor do we condone the weaker requirements as set out in a large fraction of eastern bloc countries. We believe our current national regulations act as a positive framework, striking a fair and equitable balance of rights between data controllers and data providers.<sup>1</sup>

We feel strongly about the following articles and the rights proposed therein:

#### **Article 9 (Transparency)**

We believe that the Transparency set out in Article 9 is far too broad and should be amended to a more restrictive and precise right. There should be no right to state agency held information, so far as the information in question does not relate to that of a classified national security interest.

Furthermore, the fact that private individuals could be granted such a transparency right, is in our opinion, contrary to the entire objective of Data Protection within the European Union. No private individual should be expected to give up their information to another private individual in the interest of transparency.

#### **Article 12 (Informational self-determination)**

We believe that the Informational Self Determination as set out in Article 12 Paragraph 2 does not go far enough in solving the current right of encryption which plagues the member states. Encryption is only as effective as it’s security level. The major issues within the EU is that there is a lack of understanding as to the true need for encryption.

Large Technology companies who offer their services free of charge to the consumer earn money by acting as a platform to advertisers. Advertisers often seek to target consumers based on search history and interests. It is important not to completely prevent such practices, however it is important to limit this practice when it comes to certain online services, namely Cloud Storage Solutions. Cloud Storage is a relatively new and incredibly convenient way to create, store and backup files.

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<sup>1</sup> Data Protection Act 1988 and The Data Protection (Amendment) Act 2003 (EU Data Protection Directive 95/46/EC).



However, the vast majority of these services do not employ a vitally important standard of encryption, specifically end-to-end encryption. End-to-end Encryption prevents companies from accessing user data. They only “encryption key” aka a Password, is held by the user.

We believe there should be a strong foundation set in this charter for end-to-end encryption.

#### **Article 14 (Elections)**

We agree with this article completely. According to Eurostat only 85% of Irish homes had to digital media in 2016. Making elections and voting contingent on access to digital media would not only alienate 15% of the population but also vulnerable members of society, such as the elderly or other such people without the IT skills needed to use the internet, from the democratic process.

#### **Article 15 (Free Access)**

Although we in Ireland fundamentally agree that everyone should have the right to free, equal and anonymous access to the internet it must be noted that we as a country will not be able to immediately guarantee this right. As previously stated only 85% of Irish homes had access to the internet in 2016. Only 35% of Irish premises have broadband speeds of 10MB per second or higher. More significantly, only 69% of Irish homes have broadband that is faster than a very modest 4Mbps. Commercial companies advertise broadband speeds of 240Mbps in cities and towns while rural areas subsist on speeds of 1-2Mbps or no broadband at all. This would indicate that Ireland has one of the most pronounced two-tier coverages in Europe.

#### **Article 16 (Net Neutrality)**

We in Ireland have unfortunately suffered from a net neutrality issues in the past, particularly in reference to a single internet service provider which has dominated the country’s infrastructure. Until recently, foreign companies seeking to expand into Ireland were often influenced by the initial monopoly company, quite often using its infrastructural dominance to throttle and limit such competition. We believe this Article is paramount to this Charter.

#### **Article 18 (Right to be forgotten)**

Article 17 of the General Data Protection Regulation (EU) 2016/679, adopted on the 27<sup>th</sup> of April 2016 and due to be implemented from the 25<sup>th</sup> May 2018 seeks to replace an older directive from 1995 with the goal of addressing current legal right overlooked in that 1995 directive, in particular the right to be forgotten. We are in favour of such a right also appearing in this Charter. It is important that this right is not recognised as an absolute right. Information should only be removed if it was inaccurate, inadequate, irrelevant or excessive, and it had to be balanced with the right to freedom of expression on a case by case balance.



Data protection rights would have to prevail over the economic interest of data controllers/host providers.

### **III. Conclusion**

Overall, we agree with the vast majority of the articles put forward in this Charter. We believe such articles will provide a strong foundation for member states of the European Union and their citizens.

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