Brussels, 12 January 2016

Mr Satya Nadella
Chief Executive Officer of Microsoft
Brendon Lynch
Chief Privacy Officer of Microsoft
Microsoft Privacy
Microsoft Corporation
One Microsoft Way, Redmond
Washington 98052, USA
By e-mail:
satyan@microsoft.com
brendonl@microsoft.com

Dear Mr Nadella and Mr Lynch,

During 2013 and 2014 the Article 29 Working Party reviewed the Microsoft Services Agreement and related documents (including the privacy policy) under the leadership of the Luxembourgish and French data protection authorities. Following this review, Microsoft made some changes to the MSA and privacy policy in advance of Windows 10, a new version of your Windows operating system.

Following the launch of Windows 10 a number of concerns have been made in the media and directly to European data protection authorities by concerned individuals.

The Working Party has significant concerns with some of the personal data collected and further processed by Microsoft within the Windows 10 operating system and specifically the default settings or apparent lack of control for a user to prevent collection or further processing of such data.

As a result the Working Party specifically requests further explanatory information from Microsoft, as data controller for this personal data, as to how the opt-outs, default settings and other available control mechanisms presented during the installation of Windows 10 operating system provide a valid legal basis for the processing of personal data under the Data Protection Directive 95/46/EC.

This is especially of concern where Microsoft would rely on consent as a legal basis for the processing of personal data. The Working Party has previously published Opinion 15/2011 on the definition of consent which highlights that for consent to be considered valid it must be fully informed, freely given and specific.

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental Rights and Union Citizenship) of the European Commission, Directorate-General for Justice and Consumers, B-1049 Brussels, Belgium, Office No MO-59 02/013.

Website: http://ec.europa.eu/justice/data-protection/index_en.htm

In light of these concerns the Working Party was informed that relevant EU national data protection authorities will follow-up with more detailed inquiries into this and any other topics of interest on this matter with their national Microsoft representatives. I am of no doubt that you will ensure that they are provided full assistance as necessary.

Yours sincerely,

On behalf of the Article 29 Working Party,

Isabelle FALQUE-PIERROTIN
Chairwoman

cc:

Microsoft Ireland Operations Limited, Data Protection, Carmenhall Road, Sandyford, Dublin 18, Ireland

Skype Software Sàrl
Data Protection, 23-29 Rives de Clausen, L-2165 Luxembourg, Luxembourg

Microsoft Mobile Oy (Suomi)
Data Protection, Keilaranta 7, 02150 Espoo, Finland