



One-to-One Public Affairs Bulletin

July-Sep 2014



Data Protection

- EU Data Protection Regulation

The EU Data Protection Regulation is currently with the Council of Ministers. The Justice Ministers of each member state attend meetings to agree on the Council version of the text. The EU Parliament has already agreed their version. The Council process takes some time as there is politics at play, the interests of the 28 member states are quite varied and so negotiating an agreement is a laborious process.

Once the Council text is agreed then the trilogue negotiations begin, a way of speeding up the legislative process in the EU. The trilogue negotiations are where the Commission, Council and Parliament enter secret negotiations and debate what the final version of the text will look like.

The DMA finds the Council text preferable but there are aspects of the Parliament text which are better than the Council version. As such, it is our mission to ensure that our preferred parts of the text from both the Council and the Parliament make it into the final version. We will be lobbying various stakeholders in the EU to achieve this objective.

- European Parliament – Baroness Ludford lost her seat at the Parliament and as a vital ally on the Civil Liberties, Justice and Home Affairs Committee (LIBE) was a counterweight to Jan Albrecht, who is not sympathetic to business. She has been replaced by Sophia in t’Veld, a Dutch Liberal MEP, known for her tough stance on data protection issues.
- Draft Timetable
The Council text is scheduled to be completed towards the end of 2015. The MoJ cautioned that the beginning of 2016 is perhaps more likely as the Council negotiations drag on. The negotiations should not be rushed, getting the regulation right is far too important to the European economy.
- Council of Ministers – Italy currently holds the Council Presidency (the Council Presidency rotates every 6 months). The state holding the presidency is in charge of setting the agenda and the Italians have advanced the risk-based approach. This represents a better balance between the legitimate interests of data processors and the rights of the data subject, in essence a more business-friendly perspective.

The broad approach of the Italian presidency is to be welcomed but it risks complicating matters by requiring the prior consultation of national data protection authorities (DPA). It should be up to business to advance a risk based approach with intervention from DPAs where there are mistakes and therefore necessary.

- UK Ministry of Justice
 - Dan Johns who has taken over from John Bowman at the MoJ as the lead negotiator for the UK at the Working Group on Information Exchange and Data Protection (DAPIX) with us at Advertising Association (AA) Data Protection Group, which Chris Combemale, executive director at the DMA, chairs.
 - The Council is currently processing a new proposal from the Italian Presidency on the risk-based approach to data processing and profiling. The aim is to help SMEs by removing obligations where there is no likelihood of high risk.
 - Dan Johns told how the MoJ are in contact with Latvians who take over the Presidency next year. The Latvian position is similar to that of the UK.
 - Dan Johns is happy to continue meeting with the AA Data Protection Group.
- The DMA recently visited Brussels to coordinate its lobbying resources there. The DMA will be lobbying UK MEPs and key Commission contacts in late January to early February 2015 with the aim to influence future negotiations.

- E-Privacy Directive – Possible revision of the E-Privacy Directive

- The introduction of the EU Data Protection Regulation will necessitate a revision of the so called ‘cookie’ directive.
- The move to explicit consent will mean that no longer can cookies operate on the basis of implied consent as is currently the case in the UK and other EU states.
- This may also affect telemarketing, the directive currently leaves it up to member states to decide whether telemarketing is opt-in or opt-out. The introduction of explicit consent in the EU Data Protection Regulation will mean re-examining the directive.

- Information Commissioner's Office (ICO) Announcements
- The ICO highlights the need for businesses to update their IT security after a flaw was discovered that affects Linux and OS X operating systems. The flaw potentially allows any system with a vulnerability to be taken over remotely.
- The Article 29 Working Party made up of European data protection authorities met in September and the headline discussion points were big data and the internet of things. See link: http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp221_en.pdf

Consumer Protection

- Midata Project – The Government scheme works with business so as to give consumers better access to electronic data held about them. It aims to get more private sector businesses to release personal data to consumers electronically, among other aims. The Government will not use powers under the Enterprise and Regulatory Act 2013 to compel companies to do so though the decision was due to be revised in September 2014 however, we are still awaiting the Government's decision.
- Consumer Rights Bill – this will simplify consumer law provisions currently contained in 8 pieces of legislation which has built up over 40 years. The Bill is currently working its way through Parliament and is likely to come into force late 2016/early 2017. The Bill will bring new rules on digital products and will clarify the remedies available for faulty goods and services. Unfair contract terms provisions will also be updated.
- The Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013 came into effect 13 June 2014. This implemented into UK the remaining parts of the Consumer Rights Directive. The Regulations bring in, among other things, new provisions with regard to the information to be provided for an off premises, on premises and distance contract, cancellation rights in respect of distance contracts and a ban on using premium rate numbers for customer service lines.
- New Consumer Redress powers – The Law Commission consulted UK business on proposals to reform consumer redress for breaches of The Consumer Protection from Unfair Trading Regulations 2008. The DMA responded to the consultation. The Consumer Protection (Amendment) Regulations 2014. These Regulations allow consumers to seek redress if they have been the victim of a misleading or aggressive practice under the 2008 Regulations. They came into force on 1 October 2014.
- Misleading and Advertising Directive – under review by the European Commission. The DMA is working with the Federation of European Direct and Interactive Marketing (FEDMA) on this.

Financial Services

- Financial Conduct Authority (FCA) social media guidelines for financial services promotions – the new guidance is relatively uncontroversial and is generally positive as it provides clear cut examples demonstrating compliant promotions. The guidance reinforces previous FCA messaging. The DMA will be responding to the consultation, the deadline is 6 November.
- Implementation of the EU mortgage credit directive- The current directive outlines the obligatory inclusion of a representative example in ads where there is any reference to specific interest rates or explicit figures relating to the cost of credit.

Environment

- The Welsh Conservative Party is proposing a 'junk mail' tax as it says 'junk mail' is responsible for causing environmental harm. The consultation quotes unreliable statistics such as, "*It takes 17 trees and 7,000 gallons of water to produce a tonne of junk mail*" but without explaining how this constitutes environmental harm or how the statistics were calculated. The DMA responded to the consultation with a firm rebuttal disputing the environmental claims made by the Welsh Conservatives and highlighting that a 'junk mail' tax would hit legitimate marketing companies and not those rogue firms which are the root cause of the problem. <http://www.welshconservatives.com/news/consultation-junk-mail-launched>

Postal Issues

- HMRC has promised to provide new guidance on whether a single sourced supply can be zero rated - Keith Parnell, senior policy advisor HMRC, promised to respond by the end of September; this has not happened.

The DMA is liaising with Charity Tax Group and the Institute of Fundraising to discuss next steps. It is likely that HMRC's current interpretation of the rules will result in a legal challenge in the courts.

Telemarketing

- Nuisance Calls The issue remains high on the agenda for Ed Vaizey, Minister of State for Culture and the Digital Economy, the promised consultation on lowering the legal threshold for fining companies who make nuisance calls should be announced soon.
- Claims Management Companies – The Government has announced plans to allow consumers to get financial compensation through the Legal Ombudsman Service.
- Ofcom and TPS – Ofcom conducted research into the effectiveness of the TPS service and found that TPS reduces the number of unsolicited live marketing or sales calls consumers receive by around a third.
- TPS Assured – So far two organisations have signed up, a further two are in preliminary stages of doing so. A meeting has been setup with Virgin Media and with other service providers to follow. Mike Crockart MP, chair of the nuisance calls all-party parliamentary group (APPG), criticised the telemarketing industry for its failure to take-up TPS Assured but he reserved his strongest criticism for Government departments, none of which has signed to TPS Assured.

General Marketing Issues

- Payday loans – Amendments have been tabled for the Consumer Rights Bill which is currently being debated in the Lords. Lord Alton has proposed an amendment that would prevent payday loan ads targeting under-18s, while the Labour front bench has proposed an amendment stating that all ads for age-restricted products should reflect this.
- Alcohol
 - The EU Action Plan on Alcohol which focuses on reducing youth consumption and binge drinking, is being finalised by the civil service with the Committee on National Alcohol Policy and Action (CNAPA) on 15 September. There is a lack of clarity around age definitions and the evidence continues to cite a heavily discredited RAND Europe study. The Action Plan may form the basis of the next EU Alcohol Strategy.
- Gambling – The Remote Gambling Association has submitted a response to the Department for Culture, Media and Sport (DCMS) regarding the code review. The review does not propose changes to the watershed, instead focusing on the prominence of Gambleaware messaging. The Advertising Standards Association is using focus groups to gain an understanding of the public's perception to gambling advertising and this will be useful in the public debate.

Upcoming Consultations

- Financial Conduct Authority (FCA) financial promotions in social media consultation: <http://www.fca.org.uk/static/documents/guidance-consultations/gc14-06.pdf> Deadline: 6 November 2014.
- Ofcom review of how it uses its persistent misuse powers with a focus on silent and abandoned calls: <http://stakeholders.ofcom.org.uk/binaries/consultations/review-persistent-misuse-powers/summary/condoc.pdf> Deadline: 7 November 2014.

Political

- The main battleground for the three main parties is the manner in which they will tackle the deficit – all parties are committed to doing so and not increasing borrowing.
- Pollsters are showing a narrowing of the gap between the Conservative and Labour parties – the likelihood of another hung Parliament in 2015 has increased substantially over the last few months.
- The DMA sent letters to MEPs, MPs and Peers promoting the new DMA Code, as well as copies of the Code.
- Ukip won the by-election in Clacton-on-Sea and may well repeat their success in the upcoming Rochester and Strood by-election. Labour won the Heywood and Middleton by-election by a whisker with UKIP in second place.
- The Scottish independence referendum was won by the 'no' vote and the better together campaign.

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