



One-to-One Public Affairs Bulletin

Jan-Mar 2015



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, the DMA will lobby to have our preferred parts of the text from both the council and the parliament make it into the final version. The DMA along with other groups has briefed the Ministry of Justice (MOJ) on what parts of the parliament version should be incorporated into the council text.

- Draft timetable – The council text is scheduled to be completed by June 2015, at the end of the Latvian council presidency. That leaves six months to conclude the trilogue negotiations if the regulation is to be finalised in 2015. The view of most commentators that the regulation will not be formally concluded until early 2016. There is a grace period of two years for businesses to adjust and so on this timetable the regulations would be enforced from early 2018 onward.
- Council of ministers – Latvia currently holds the council presidency (the council presidency rotates every six months). The state holding the presidency is in charge of setting the agenda and so the Latvians will be undertaking work on pseudonymous data, enforcement/fines, profiling and the one-stop shop mechanism.

The council needs to reach an agreement on chapter III, VIII and on definitions in chapter I in order to reach a general agreement. Thus far the council negotiations have been based on the 'nothing is agreed until everything is agreed' principle, the so called partial general approach. This means that even if a general agreement is reached in June the council will still be able to review parts of the text. The last council meeting is on the 15 June 2015 and so a general agreement will be reached on this date, if the Latvians succeed on securing an agreement.

- The DMA met with commission official Bruno Gencarelli, who is Head of Data Protection, in late-January to highlight the DMA's concern with parts of the regulation and to introduce the DMA Code to the commission.

- E-Privacy Directive

- The introduction of the EU Data Protection Regulation will necessitate a revision of the directive.
- Commissioner Gunther Oettinger is tasked with leading this work within six months after the approval of the Data Protection Regulation.
- 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 some other EU states.
- This will 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.

- EU commission – Commission president Jean-Claude Juncker has re-organised the structure of the commission. He has put in place a system of Vice-Presidents, there are six of them and each is responsible for a broad policy area, commissioners report into their respective Vice-Presidents. Andrus Ansip, former prime minister of Estonia, is responsible for the digital economy, this includes the Data Protection Regulation and the E-Privacy Directive. Further to this, all new policy initiatives must be vetted by Frans Timmerman, who is in charge of ensuring that new regulation does not increase the overall burden of red tape, a promising development.

Budget 2015

- In March the chancellor announced his pre-election budget, which included a few sweeteners. This was due to an economic boost from tax receipts that was better than expected and inflation reducing interest costs for the government. Headline announcements:
 - Personal tax allowance rise to £10,800 in 2016 and £11,000 in 2017.

- Leeds and other northern areas to be granted new powers in attempt to invigorate growth in the north. This 'Northern Powerhouse' will attempt to emulate the success of London.
- Investment in the internet of things.
- A £3.5 million investment package to protect consumers from nuisance calls.
- Employer's national insurance contributions abolished for under-21s from April and for young apprentices from April 2016.
- Reducing lifetime allowances for pensions from £1.25 to £1 million.
- A new bank levy of 0.21%, which is forecast to raise £900 million a year.
- Backing home ownership with a first time buyer bonus.
- A new flexible ISA.
- A new personal tax free allowance of £1,000.

Information Commissioner's Office (ICO) Announcements

- The ICO ordered Sweet Media Ltd, a lead generation company to stop sending nuisance texts, in its latest enforcement action.
- The ICO has published its [three-year corporate plan \(2015-2018\)](#).
- ComRes carried out [research](#) on behalf of the ICO that measures public awareness of the Data Protection Act and the Freedom of Information Act. The survey asks people what they feel are the most important social issues facing the country and 21% of respondents chose 'protecting people's personal information'. This placed it 7 out of 11 but was still surprisingly high, data protection issues have greater salience with people every year.

Consumer Protection

- Midata Project – The government scheme works with business 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. The decision was due to be revised in September 2014 however, the DMA is still awaiting the government's decision.
- Consumer Rights Bill – This will simplify consumer law provisions currently contained in eight pieces of legislation which has built up over 40 years. The Bill has received its Royal Assent and will come into force on 1 October 2015. 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 – It came into effect 13 June 2014. This implemented into UK law 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 – It is under review by the European commission. The DMA is working with the Federation of European Direct and Interactive Marketing (FEDMA) on this.

Financial Services

- The Financial Conduct Authority (FCA) has published new [guidance](#), following a consultation, to assist businesses in their use of social media for financial promotions. The DMA submitted a response to the consultation.
- Implementation of the EU mortgage credit directive - The current directive outlines the obligatory inclusion of a representative example in advertisements where there is any reference to specific interest rates or explicit figures relating to the cost of credit.

HM Revenue and Customs (HMRC) and Advertising Mail

- Financial services brands and charities were the two big losers in April 2012 when bulk mail lost its VAT exempt status and postage costs became subject to VAT charges of 20%. As a result, financial services companies and charities began using so called 'single sourcing' to mitigate their VAT costs. However, HMRC said that this was not allowed and so businesses were facing potentially ruinous retrospective penalties.
 - The DMA, working with the Charity Tax Group, has reached agreement with HMRC that there will be no retrospective demands for VAT or penalties to those suppliers and their clients who were including postage as part of a supply of zero-rated print.
 - The DMA had reached agreement on how postage and other services should be treated in future and agreed an implementation date of 1 April 2015 so that the industry has time to put in place alternative arrangements.
 - However, HMRC still hasn't published fresh guidance on the issue and the date of 1 April 2015 was unworkable as businesses need new guidance to follow before they can change their business practices. As a result, the DMA has written to David Gauke MP, financial secretary to the Treasury, asking that business is given at least 3 months adjustment period once new guidance has been published by HMRC and that no retrospective penalties will be pursued after the 1 April 2015.
 - HMRC had stated that revised guidance from 1 April 2015 HMRC would be apply the following:
 - Postage included with zero-rated print as a composite supply will be treated as a supply of advertising at standard rate.
 - Zero-rated print may be supplied with standard-rated postage as part of a multiple supply. Supplying both services separately does not constitute a supply of advertising services.
 - Zero-rated print can also be supplied with postage that is treated as a disbursement, for example under agency agreements.
 - Data processing that is necessary to meet the postal operator's published requirements can be included as part of a zero-rated supply of print. Any data work that is not required for making the print suitable for posting eg selections, targeting, list buying, profiling, should be a separate standard rated supply.

Telemarketing

- Nuisance calls – DCMS decided to remove the legal threshold of significant 'distress' or 'damage' in the PECR legislation in reference to nuisance calls and spam texts. From 6 April 2015 the legal threshold will be removed, which will make it much easier for the ICO to take enforcement action against rogue companies which make nuisance calls and spam texts.

The Telephone Preference Service (TPS) has experienced a five-fold increase in the number of new registrations in March – suggesting companies are tightening their business practices in view of the legislation. In a typical month, around six companies will apply for a TPS license. In March, 31 companies registered – a 417% increase.

- TPS Assured – So far two organisations have signed up, a further two are in preliminary stages of doing so. 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 up to TPS Assured.

General News

- The Commons Health Select Committee has announced the findings of its [report](#) into the impact of exercise and diet on health. The committee recommended that the next government "*takes steps to stop the marketing of unhealthy food and sugary drinks to children*".
- On 27 March Labour published their [independent review](#) of policy options for the UK's creative industries. The report addresses personal data and makes a number of recommendations:
 - *"Detailed policy should be developed by the Government, industry and the Information Commissioner's Office (ICO), that more clearly defines the controls and consents to which citizens should be entitled for different categories of personal data."*
 - *"The Government and industry should develop a more robust framework for the use of personal data. Industry should then implement a voluntary Code of Conduct to give users more meaningful control over personal data."*

- *“The ICO should be reformed with a view to substantially strengthening its powers of enforcement.”*
- *“The range of circumstances in which representative legal actions may be brought in England and Wales should be revised to make the process of collective legal redress easier.”*
- *“The UK Government should engage much more actively at EU level to influence the development of the draft European General Data Protection Regulation and other relevant EU regulations.”*

Consultations

Below is a list of ongoing consultations, which businesses may wish to respond to:

- Ofcom Outbound Contact Centre Survey. Use the following link to submit a response <http://fluidsurveys.com/s/ofcom/> the survey closes on the 24 April 2015.
- CAP and BCAP [consultation](#) on references to obesity in advertisements. The consultation closes on 11 May 2015.

Political

- The general election is going to be the most hotly contested for a generation. The rise of UKIP, SNP and the Greens is making the work even harder for the pollsters. It is increasingly likely that there will be another hung parliament, adding uncertainty for business.

Party	2010 Votes	2010 Seats	Pred Votes	Pred Seats
CON	37.0%	307	33.2%	275
LAB	29.7%	258	32.1%	286
LIB	23.6%	57	9.6%	17
UKIP	3.2%	0	13.9%	2
Green	1.0%	1	4.9%	1
SNP	1.7%	6	3.8%	48
PlaidC	0.6%	3	0.6%	3
Minor	3.4%	0	1.9%	0
N.Ire		18		18

* Prediction based on opinion polls from 08 Mar 2015 to 06 Apr 2015, sampling 16,323 people.

- Parliament was officially dissolved on 30 March for the general election campaign. The general election will take place on 7 May.

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