



One-to-One Public Affairs Bulletin

April-June 2015



Data Protection

- EU Data Protection Regulation

The Council of Ministers have reached a general agreement on the Data Protection Regulation, which means three-way negotiations between the Council, Parliament and Commission can begin. The first three-way negotiation, otherwise known as trilogue, took place on 24 June. The Commission want to have an agreement on the final version of the text by the end of 2015. However, this timetable seems somewhat ambitious and so it is more likely that agreement will be reached at some point in Q1 2016 but perhaps even later than that.

The Council and the Parliament positions are at loggerheads in some areas and so discussions will need to be pragmatic in order accommodate both the Council and Parliament.

Rapporteur Jan Philip Albrecht from the German Greens said,

“There are clearly differences, notably on consumer rights and the duties of businesses. However, if we can negotiate constructively and pragmatically, it should be possible to deliver a compromise acceptable to both sides within the timeframe. This outcome would benefit everyone and show that the EU takes the concerns of its citizens in the digital age seriously.”

Overall, the Council text is preferable to the Parliament text it is a better balance of the legitimate interests of business and the rights of consumers. Particularly in these key areas:

- **Definition of Personal Data:** The Justice and Home Affairs Council definition is preferable to the European Parliament's one as in the Council definition online identifiers are only personal data if they can be linked to an individual. In the Parliament version of the text all online identifiers were personal data regardless of whether they could be linked back to an individual.

- **Consent:** The Council text is preferred. Both other texts refer to explicit consent, whereas the Council text has removed the word 'explicit'.

- **Legitimate Interest:** The Council text makes it clear that organisations can process personal information based on their legitimate interests provided they respect the rights of individuals in particular children and certain other caveats. This is much better than the Parliament text which gave a strong emphasis that processing based on legitimate interests was inferior to getting the individual's consent. In the Parliament version of the text, Legitimate Interest including specific clauses for B2B marketing and postal direct marketing only. However, the new Council text includes the following: "The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest," which is broader.

- **Automated Decision Making and Profiling:** The Council have gone back to a definition of automated decision making (including profiling) which only applies where the decision is based solely on automated processing. If there is any review of the automated decision by an individual then this will fall outside the definition of an automated decision. This is much more similar to the current definition in the 1995 Directive/Data Protection Act 1998 than the Parliament's version.

- **Right to be Forgotten:** Once again, the Council text seems preferable. The Parliament text reads that subjects should have the right to obtain erasure, "when a data subject objects to the processing of personal data". The Council text adds the words, "and there are no overriding legitimate grounds", which is preferred.

The DMA met with Timothy Kirkhope MEP, member for the ECR Group on the Civil Liberties, Justice and Home Affairs Committee (LIBE), the committee responsible for the Data Protection Regulation in the Parliament. Mr Kirkhope takes a pro-business approach and agreed with many of the issues that the DMA has with the regulation. However, he was concerned that MEP's with sway over the regulation such as, Jan Philip Albrecht, have a much stronger privacy agenda.

- 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.
- 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 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.

Digital Single Market

- The digital single market strategy has been announced by the European Commission and it is priority for Mr Juncker's presidency.
- The strategy intends to get rid of barriers to trade across Europe and guarantee citizens the same digital rights no matter where they are, ending unjustified geo-blocking for example.
- The E-Privacy Directive will also be reviewed as a part of the digital single market strategy. This is the piece of the legislation that informs the Privacy and Electronic Communications Regulation otherwise known as PECR.
- The strategy is made up of three pillars:
 - Better online access.
 - Investing in digital infrastructure and creating the right conditions for entrepreneurialism and innovation to thrive in the digital arena.
 - Maximising economic growth.
- It is estimated that the digital single market could create €340 billion in additional growth, 3.8 million jobs and potential savings of €100 billion per annum if all public procurement could be carried out online.
- The digital single market is in its infancy, so far a roadmap for action has been set for the next two years including, a review of geo-blocking and copyright laws.
- You can find out more [here](#). The [view of the UK government](#) is also particularly helpful when trying to understand the aims of the digital single market.

Competition and Markets Authority (CMA) report on the commercial use of consumer data

- The CMA, following a call for information in January, has published a report on the commercial use of consumer data. The DMA met with CMA officials to explain how the one-to-one marketing industry uses consumer data and how both businesses and consumers benefit.
- The main findings of the report were summarised by the CMA as:
 - There is scope for a wide range of benefits for both firms and consumers from the use of data. Firms can gain from better customer targeting, service improvements, logistical and transaction efficiencies and fraud prevention. Consumers can receive more personalised services, wider choice, and more relevant advertising and targeted offers.
 - These benefits will only be realised if consumers provide data and firms use this data in transparent and competitive markets, where firms compete over the provision of services including the protection they offer to consumers' data.
 - All kinds of data about consumers is routinely collected by businesses. However, many consumers do not fully understand what data is collected and how it is used. Many have concerns about data being lost or misused.
 - There are concerns about the effectiveness of privacy policies, terms and conditions and cookie notices in enabling consumers to control the collection and use of their data. The CMA also heard concerns about whether the current regulatory regime is effective in promoting consumer trust.
- This is likely the beginning of CMA work in this area with more to follow in the future.

Information Commissioner's Office (ICO) Announcements

- In May the ICO hosted the European Conference of Data Protection Authorities in Manchester. The conference brings data protection authorities from various countries and international bodies. Head of the ICO, Christopher Graham, spoke about the immense changes that digital revolution has brought with it and remarked upon the importance of cooperation between data protection authorities.
- The ICO raided a Manchester call centre, which is accused of using an automated dialer to send 100,000s of calls per day. The calls were supposed to be an automated message relating to PPI, debt management or delayed flight compensation.

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.

HM Revenue and Customs (HMRC) and Advertising Mail

Following extensive negotiations with the DMA and the Charity Tax Group (CTG) HMRC has published updated versions of their guidance notes VAT Notice: 701/10 zero-rating of books and other forms of printed matter and VAT Notice 700/24: postage and delivery charges.

The updated guidance clarifies HMRC's position on the VAT treatment of other services that may be provided together with zero rated print and as we've previously advised will come into effect from the 1st August 2015.

The DMA is pleased that despite initial reluctance HMRC have accepted the arguments that the DMA and CTG made to widen the scope of data services that can be included as part of a zero rated supply of print to include suppressions such as MPS in addition to address correction. The significance of this is that the costs of all the data work required to meet postal operators' requirements – including Advertising and Responsible Mail – can also be zero rated if supplied with zero rated print.

The updated guidance however also highlights that under certain circumstances a supplier providing Direct Marketing services such as list buying or targeting together with zero rated print could be assessed as providing a "single supply" of a Direct Marketing service. This would mean that the whole supply – including the zero rated print – would become subject to VAT at the standard rate of 20%.

The DMA guidance to revised guidance be found [here](#).

Telemarketing

- Nuisance calls – BBC's the One Show came to DMA House to interview Telephone Preference Service head, John Mitchison, Angela Rippon conducted the interview. There has been a recent spate of news articles on nuisance calls, mainly by the Daily Mail, but also the BBC and various local radio stations.
- £3.5 million was made available in the pre-election budget to tackle the problem of nuisance calls. Some of the money will be spent research and raising awareness of the issues but £1.5 million will be set aside for trialling call blockers. The government haven't made any announcement about when they intend to trial call blockers.

General News

- Ed Vaizey MP, Minister of the Digital Economy, gave a speech outlining his digital priorities for this Parliament, you can read a full update [here](#). The government are committed to supporting the digital economy, it is seen by government as a key driver of economic growth. Much of the speech focussed on ensuring that young people have digital skills and that non-digital natives are taught how to be competent and safe online. Furthermore, many of jobs created in the future will be highly skilled and so the government

needs to support schools, colleges and employers to give young people the skills they need to thrive in the digital economy.

- The summer budget had more action on nuisance calls, claims management companies will have the amount they can charge capped. It is intended that the cap will reduce the number of nuisance calls relating to PPI claims and other similar services. The Chancellor will also cut corporation tax to 18%, he is doing this as he plans to raise the minimum wage to £9, the so called living wage, by 2020 and he hopes the cut in corporation tax will lessen the burden on businesses from the rise in labour costs.

Consultations

The DMA submitted evidence to the CMA while it was researching the commercial use of consumer data but there are no ongoing consultations that the DMA is responding to.

Political

- On the 17 June MPs voted for the House of Commons select committee chairs. The two committees of importance to DMA members are:
 - Business, Innovation and Skills Committee – Iain Wright MP
 - Culture, Media and Sport Committee – Jesse Norman MP
- May 7th general election resulted in a Conservative Party victory with a 12-seat majority. The biggest shock of the night was the near total collapse in Liberal Democrat support coupled with the rise of the Scottish National Party.

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