



# One-to-One Public Affairs Bulletin

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## Oct-Dec 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, 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, this was the target set by the Commission. 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 onwards.
- 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 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 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.

- 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.

## Information Commissioner's Office Announcements

- The MOJ is reviewing the working practices of the ICO in the Triennial Review, a consultation. The DMA has submitted a response.
- In response to the 'right to be forgotten' decision the ICO has developed criteria in tandem with other European data protection authorities that they will take in to consideration when a person asks for information to be de-listed from a search engine. <https://ico.org.uk/for-organisations/search-result-delisting-criteria/>
- The ICO's annual Data Protection Practitioner Conference is being held at the Manchester Central conference centre on 2 March 2015. The DMA will be hosting a stall at the conference.

## 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 finished its final readings in the House of Lords. It returned to the House of Commons where MPs agreed every suggested amendment apart for one relating to secondary ticketing platforms. The Bill is returning to the House of Lords on this issue. The Bill is due to 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 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 – 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 DMA responded to the consultation and is currently awaiting the FCA's response.
- FCA – The DMA will be meeting with the FCA to discuss collaborative work on the upcoming pension changes as it is expected that financial scammers will be targeting those pensioners drawing down large cash sums after April 2015.
- 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.

## 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 has also 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. HMRC will be issuing revised guidance but for the sake of clarity from 1 April 2015 HMRC will be applying 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 – The issue remains high on the agenda for Hon Ed Vaizey MP, Minister of State for Culture and the Digital Economy, the consultation on lowering the legal threshold for fining companies who make nuisance calls is currently with DCMS who are collating comments received.
- Which? Taskforce – The group was launched at the request of DCMS to bring together various stakeholders to tackle the problem of nuisance calls. The taskforce is complementary to ongoing efforts by DCMS to deal with nuisance calls. The taskforce came up with 15 recommendations for businesses, regulators, industry bodies and for government. <http://www.which.co.uk/documents/pdf/nuisance-calls-task-force-recommendations-388317.pdf>
- Claims Management Companies – The Government has announced plans to allow consumers to get financial compensation through the Legal Ombudsman Service.
- 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 Marketing Issues

- Food advertising and Labour's Public Health Paper – Labour announced its new public health strategy. Proposals include setting maximum limits on the amount of sugar, fat and salt in food marketed "substantially" to children, and reviewing the promotion of alcohol particularly in relation to children. Labour says it is committed to basing its actions on the evidence, but would consider legislative action if progress was not achieved through the self-regulatory route. Link to paper: [http://www.yourbritain.org.uk/uploads/editor/files/Public\\_Health.pdf](http://www.yourbritain.org.uk/uploads/editor/files/Public_Health.pdf)
- Gambling – Sports Minister Helen Grant MP still intends to push ahead with her plan to force gambling operators to agree to a pre-watershed ban on sign-up incentives in broadcast advertising imposed through their 'voluntary' code. Gambling operators are divided over this proposal. The Advertising Association (AA) has written to Helen Grant and Ed Vaizey, challenging the evidence behind a move which goes further than the reviews by ASA, CAP and the Remote Gambling Association. However, it appears that a political decision has been taken by DCMS and Ministers and they are proceeding with plans to get wider Ministerial consent.

## Consultations

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

- CAP/BCAP – Distance Selling. <http://cap.org.uk/News-reports/Consultations/~media/Files/CAP/Consultations/CAP%20Distance%20Selling%20consultation%204%20November%202014.ashx>
- CAP - Sales Promotion Rules. <http://www.cap.org.uk/News-reports/Consultations/~media/Files/CAP/Consultations/Sales%20Promotion%20consultation%204%20November%202014.ashx>
- ICO – Three Year Plan. <https://ico.org.uk/media/about-the-ico/consultations/1043177/ico-plan-2015-2018.pdf>
- CMA - Commercial use of Consumer Data. <https://www.gov.uk/government/consultations/commercial-use-of-consumer-data>

## 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.

- Jean Claude-Juncker has for the first time said that the EU will survive without the UK. The principle of free movement within the EU is a redline policy for the Commission.

Zach Thornton  
External Affairs Executive  
e zach.thornton@dma.org.uk  
t 020 7291 3346