



Privacy Flash – Issue 22

Privacy at your fingertips

Privacy is becoming increasingly important to everyday business. Legal developments and regulators' increasing attention to privacy are two of the key drivers behind this.

The aim of the Privacy Flash is to provide monthly updates on global regulatory developments, as well as relevant news and information on upcoming events in the field of data protection and privacy.

Previous issues are available on our [website](#), via the [2015](#) | [2016](#) | [2017](#) | [2018](#) archive.

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Highlights

- New data protection rules for the EU institutions and bodies
- WP 29* revised guidelines on consent
- Facebook after the Cambridge Analytica revelations

News

New data protection rules for the EU institutions and bodies coming soon...



The EDPS (the EU's independent data protection authority responsible for the monitoring and ensuring the protection of personal data in all EU institutions and bodies) [published](#) a press release stating that a [political agreement](#) has been reached by the EU lawmakers on the adoption of **equivalent rules on data protection with those of the General Data Protection Regulation (GDPR) for the EU institutions and bodies.**

Currently, the processing of personal data by the European institutions and bodies is subject to special Regulation 45/2001. The revised data protection rules for EU institutions and bodies should bring [Regulation 45/2001](#) in line with the provisions of the GDPR. The objective of the new rules is to offer EU citizens the same rights as the ones they enjoy under the GDPR when they are interacting with EU institutions.

European Data Protection Supervisor Giovanni Buttarelli calls out for *"a swift adoption and publication of the equivalent rules, to ensure their applicability without further delay."*

The EDPS claims to be ready to support the EU institutions with the implementation of the equivalent rules as from day one, as they have been anticipating and working closely together with DPOs and other relevant representatives of EU institutions to prepare for the changes. Next to the DPO meetings organised every two years, the EDPS aims at targeted visits, training sessions and conferences as part of their awareness-raising campaign.

As is the case for the GDPR, the EDPS claims that, in the light of the principle of accountability, the focus of the legislative revision should be put on providing *"practical safeguards for individuals rather than bureaucratic procedures"*.

Progress to be monitored closely as it seems that the revised Regulation will be in place nearby September.

WP 29* revised guidelines on consent

On 16 April 2018, the Article 29 Working Party [revised](#) its guidelines on consent, which were adopted on 28 November 2017. While most of the content of the previous guidelines remains unchanged, a few – important – novelties can be underlined.

FREELY GIVEN CONSENT – The revised guidelines now place more emphasis on the importance of the analysis of the specific situation in which the consent is given, whereby *"in general terms, any element of inappropriate pressure or influence (...) which prevents a data subject from exercising their free will, shall render the consent invalid"*.

In our [previous](#) Privacy Flash, two bottlenecks were described: the possibility of an imbalance of power and the presence of conditionality. The revised guidelines now discusses two other "bottlenecks": the granularity and the detriment.

1. Granularity: A data subject shall have the possibility to consent separately to different data processing purposes. This is closely linked *“to the need of consent to be specific”*.
2. Detriment: A data subject shall have the possibility to not consent, as well as being able to withdraw his/her consent without any costs, *“deception, intimidation, coercion or significant negative consequences”*.

UNAMBIGUOUS INDICATION OF WISHES – The Article 29 WP specifies that merely continuing the ordinary use of a website should not be considered as a conduct from which one can infer an indication of wishes by the data subject to have his data processed for a proposed processing operation. Therefore, continuing surfing on a website does not mean *per se* that the person accepted the installation of the non-necessary cookies (for which he must give his opt-in, currently commonly obtained through a website cookies' banner).

EXPLICIT CONSENT – Whilst the UK's data protection authority (ICO) suggests that explicit consent should be expressly confirmed in words rather than by another positive action, the Article29 WP has added an example differentiating from this viewpoint. It states that a data controller may also obtain explicit consent from a website visitor by offering a screen containing 'Yes' and 'No' check boxes, accompanied by the words *“I hereby consent to the processing of my data”*.

WITHDRAWAL OF CONSENT – If no other purpose exists to retain and further process personal data after the consent of a data subject has been withdrawn, controllers are obliged to delete those data.

CHILDREN – While most of the section in the guidelines on consent relating to children remains the same, the Article 29 WP stresses that, if it is a parent who is supposed to consent for the child, *“a set of information may be required that allows adults to make an informed decision.”* A big turnaround can be noticed when it comes to children turning 16, declaring that: *“if the child does not take any action, consent given by a holder of parental responsibility or authorized by such holder (...) prior to the age of digital consent, will remain a valid ground for processing.”* Yet, after reaching the age of digital consent (16), the child should have the possibility to withdraw the consent previously given for his account.

* Important note: As from 25 May 2018, the [European Data Protection Board](#) (EDPB) has been set to succeed the Article 29 Working Party, as established in the General Data Protection Regulation (GDPR).

Facebook after the Cambridge Analytica revelations

Since the revelations about the Cambridge-Analytica scandal, where it was discovered that user data from millions of Facebook users collected from an app called MyPersonality, had been uploaded by researchers from the University of Cambridge onto a shared portal accessible to anyone with online access, Facebook has –even more than before – been the center of attention.

In response to the scandal, Facebook CEO Mark Zuckerberg was summoned to testify before the US Congress and recently, [before the European Parliament](#), answering questions in person about the data sharing revelations. - though the hearing before the EU Parliament was not as fruitful as expected. Next to testifying about the scandal, Facebook assured that it has started taking internal initiatives to ensure that its users' personal data will not be subject to such misuses in the

future. One of those initiatives is the conduct of an internal investigation after which Facebook suspended [at least 200 apps](#) it was working with in order to verify whether they have misused any personal data of Facebook users.

The EU Commissioner for Justice Věra Jourová has [emphasized](#) the important relationship between the Cambridge Analytica incident and GDPR. She stated that the data breaches related to the use of Facebook users' data revelations does not only highlight the importance of the GDPR and protecting personal data but also make citizens realize that the GDPR is a necessary tool: *"We have been providing the information about our private life, about our identity, about the intimate things. It goes to the black box. And we don't have a clue what is happening there."*

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