

Monitoring Report – 08 /02/2019 (No. 4 of 2019)

The efamro monitoring report covers selected legal and regulatory developments and events in data protection and privacy of particular interest to the research sector.

Regulatory enforcement

Antitrust authorities continue to muscle into data protection territory with German competition authority the [Bundeskartellamt](#) taking compliance action to place restrictions on Facebook's data-processing activities. Germany's Federal Competition Authority has decided that the company is abusing its dominant position by collecting users data from third-party sources (Like and Share button) and assigning them to users accounts. Irish DPC has also commenced seven different data protection investigations against Facebook. Clearly these data intensive global giants are in the sights of both competition and data protection authorities. Regulators are likely to continue to closely monitor organisations active in large scale data intensive activities i.e. Big Data with segmentation/profiling being singled out as a riskier activity.

European Commission [GDPR in numbers infographic](#) provides interesting statistics on compliance with and enforcement of the GDPR between May 2018 and January 2019 including high level of marketing complaints and increased data breach notifications.

Policy developments and legislative initiatives

Attachés/Counsellors of the WP on Telecommunications and Information Society met on 7 February. Agenda items included proposal for a Regulation on ePrivacy - Discussion on possible compromise solutions.

The EU Council approved a deal on wider reuse of publicly funded data for the creation of new products and services, as well as for the development of data-based society. The new rule in the [Draft Directive on Open Data and re-use of public sector information](#) also cover publicly funded research data that is already available in public repositories.

Research, artificial intelligence and data ethics

Various stakeholder responses on the draft AI principles developed by the High Level Expert Group (HLEG) welcomed the initiative. Insurance Europe highlighted that in order to be able to enjoy the benefits of AI, it is crucial for the HLEG to ensure that any rules relating to AI design, development and deployment are future-proof and innovation-friendly, and allow European companies to be global competitors.

Regulatory enforcement

Bundeskartellamt prohibits Facebook from combining user data from different sources

The Bundeskartellamt has imposed on Facebook far-reaching restrictions in the processing of user data.

According to Facebook's terms and conditions users have so far only been able to use the social network under the precondition that Facebook can collect user data also outside of the Facebook website in the internet or on smartphone apps and assign these data to the user's Facebook account. All data collected on the Facebook website, by Facebook-owned services such as e.g. WhatsApp and Instagram and on third party websites can be combined and assigned to the Facebook user account.

The authority's decision covers different data sources:

- (i) Facebook-owned services like WhatsApp and Instagram can continue to collect data. However, assigning the data to Facebook user accounts will only be possible subject to the users' voluntary consent. Where consent is not given, the data must remain with the respective service and cannot be processed in combination with Facebook data.
- (ii) Collecting data from third party websites and assigning them to a Facebook user account will also only be possible if users give their voluntary consent.

If consent is not given for data from Facebook-owned services and third party websites, Facebook will have to substantially restrict its collection and combining of data. Facebook is to develop proposals for solutions to this effect.

Facebook - Why We Disagree With the Bundeskartellamt

Today, Germany's Bundeskartellamt (FCO) issued an order in the inquiry it began in March 2016. While we've cooperated with the Bundeskartellamt for nearly three years and will continue our discussions, we disagree with their conclusions and intend to appeal so that people in Germany continue to benefit fully from all our services. The Bundeskartellamt underestimates the fierce competition we face in Germany, misinterprets our compliance with GDPR and undermines the mechanisms European law provides for ensuring consistent data protection standards across the EU.

The protection of personal data is a fundamental right in the EU and everyone gets equal protections as part of the GDPR regardless of the size of the company involved. Over the past year, lawmakers and data protection regulators have put in place new safeguards over people's information, raised fair questions about the practices of many companies, including Facebook, and initiated investigations when warranted. We support the GDPR and take our obligations seriously. Yet the Bundeskartellamt's decision misapplies German competition law to set different rules that apply to only one company.

Popularity is not dominance. The Bundeskartellamt found in its own survey that over 40% of social media users in Germany don't even use Facebook. We face fierce competition in Germany, yet the Bundeskartellamt finds it irrelevant that our apps compete directly with YouTube, Snapchat, Twitter and others.

Facebook complies with the GDPR and is accountable for protecting people's information. The GDPR went into effect less than a year ago and imposed new requirements on all companies operating in the EU, including Facebook. As part of complying with the GDPR, we revamped the information we provide people about their privacy and the controls they have over their information. We've introduced new and improved privacy experiences for everyone on Facebook, including asking everyone around the world to make choices about the ads they see and more. We'll soon introduce Clear History, a tool where you'll be able to see the information we receive from the websites and services who use our business tools and disassociate it from your account. The Bundeskartellamt has overlooked how Facebook actually processes data and the steps we take to comply with the GDPR.

The GDPR specifically empowers data protection regulators – not competition authorities – to determine whether companies are living up to their responsibilities. And data protection regulators certainly have the expertise to make those conclusions. The GDPR also harmonizes data protection laws across Europe, so everyone lives by the same rules of the road and regulators can consistently apply the law from country to country. In our case, that's the Irish Data Protection Commission. The Bundeskartellamt's order threatens to undermine this, providing different rights to people based on the size of the companies they do business with.

Using information across services helps to make them better and protect people's safety. Facebook has always been about connecting you with people and information you're interested in. We tailor each person's Facebook experience so it's unique to you, and we use a variety of information to do this – including the information you include on your profile, news stories you like or share and what other services share with us about your use of their websites and apps. Using information across our services also helps us protect people's safety and security, including, for example, identifying abusive behavior and disabling accounts tied to terrorism, child exploitation and election interference across both Facebook and Instagram.

Every day, people interact with companies that connect and use data in similar ways. And all of this should be – and is – a legitimate area of focus for regulators and policymakers around the world. Yet the Bundeskartellamt is trying to implement an unconventional standard for a single company.

This is the point we'll continue to make to the Bundeskartellamt and defend these important arguments in court, so that people and businesses in Germany can continue to benefit from all of our services. We'll also continue finding ways to improve the controls we offer and safeguard people's information. is not given for data from Facebook-owned services and third party websites, Facebook will have to substantially restrict its collection and combining of data. Facebook is to develop proposals for solutions to this

European Commission statistics on GDPR enforcement activities

The European Commission [GDPR in numbers infographic](#) provides interesting statistics on compliance with and enforcement of the GDPR between May 2018 and January 2019. These include:

- 95,180 complaints made to EU national data protection authorities (DPAs) by individuals. Majority of complaints were on telemarketing, promotional emails, and video surveillance/CCTV.
- 41,502 data breaches have been notified to EU DPAs which was an increase in breach notifications to EU DPAs to comply with the 72 hour GDPR breach notification deadline.
- 255 cross-border investigations initiated by EU DPAs based on both individuals' complaints and their own initiative.
- 3 fines issued by EU DPAs under the GDPR. Germany imposed €20,000 fine on a social network operator for failing to protect users' personal data; Austria imposed €5,280 fine on a sport betting café for unlawful video surveillance; France imposed a €50 million fine on Google for lack of consent to personalised ads.
- 23 EU Member States adapted their national legislation to ensure compliance with the GDPR. 5 Member States are still in the process of doing so, including Bulgaria, Greece, Slovenia, Portugal and the Czech Republic.

Source: EU Commission

URL: https://ec.europa.eu/commission/sites/beta-political/files/190125_gdpr_infographics_v4.pdf

Policy developments and legislative initiatives

ePrivacy Regulation – Working Party on Telecommunications and Information Society

Attachés/Counsellors of the WP on Telecommunications and Information Society met on 7 February. Agenda items included proposal for a Regulation on ePrivacy - Discussion on possible compromise solutions. Please access [here](#) to access information by the Presidency on possible compromise solutions for the Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications).

EU boosts its data economy as Council approves deal on wider reuse of publicly funded data

Vast amounts of **data held by the public sector**, such as meteorological and environment data, will be **more quickly and easily available** for the creation of new products and services, as well as for the development of data-based society in general. Today, member states' ambassadors confirmed the agreement between the Romanian presidency and the European Parliament on a reform which will bring EU rules on the reuse of public-sector data up to date with advances in digital technologies. The new rules will further stimulate digital innovation, especially in the field of artificial intelligence. A provisional agreement was reached on 22 January.

"This reform is a major step in providing key raw material for artificial intelligence and other applications which rely on the availability of large amounts of data. It creates great opportunities for all sectors of the economy, stimulating new jobs and growth." Alexandru Petrescu, Minister for Communications and the Information Society of Romania, President of the Council

The agreement **extends the scope** of the rules on re-use of public sector information (PSI) beyond public sector bodies, to **include public undertakings in the transport and utilities sectors**. There will be no obligation on these sectors to make data available unless required in national or Union law or the PSI directive itself, but if they decide to release data, they will have to respect the same principles as public sector bodies, including on transparency, non-discrimination and exclusive arrangements. A safeguard against a competitive disadvantage will protect public undertakings which operate in direct competition with private companies.

The reform introduces the concept of **high-value datasets** which are to be made available for free through an application programming interface (API). The text lays down six broad categories of high-value datasets: geospatial, earth observation and environment, meteorological, statistics, companies and company ownership, and mobility. This list will be updated and specific datasets from within those categories (e.g. maps and postcodes from the geospatial category) will be selected through secondary legislation. The rules will also cover publicly funded **research data** that is already available in public repositories, and encourage the dissemination of **dynamic data**, such as real-time transport or weather data coming from sensors or satellites. Overall, public sector data will normally be available either for **free or at marginal cost**. However, as some public sector bodies need to generate revenue, limited charges for data are allowed in certain situations. As the new directive also promotes the use of **open data** (data in open formats that can be freely used and shared for any purpose), the notion of open data has been added to its title to reflect this.

Member states will have two years from the directive's entry into force to incorporate its provisions into national law. As the directive only lays down minimum standards, member states are free to go beyond them in their national rules.

The proposal is a key component of the 'data package' published by the Commission in April 2018 under the digital single market strategy. After today's endorsement in the Permanent Representatives

Committee, the text will be checked from the legal and linguistic point of view. The legal act then needs to be formally adopted by the European Parliament and the Council. This is expected to take place this spring.

- [Draft directive on Open Data and the re-use of public sector information –text subject to revision](#)

Research, artificial intelligence and data ethics

Stakeholder responses to ICDPPC public consultation on Ethics and Data Protection in Artificial Intelligence

DIGITALEUROPE welcomes the International Conference of Data Protection and Privacy Commissioners' (ICDPPC) Declaration on Ethics and Data Protection in Artificial Intelligence as well as the establishment of the related permanent working group.

Please click [here](#) to access the full Digital Europe policy paper.

Eurosmart strongly supports AI-HLEG's big step forward to define a common understanding for trustworthy AI. This initiative paves the way to AI development in respect of the European values in terms of data protection, privacy and cybersecurity. Eurosmart highlights the need to mention and to recognise the work on ESOs for a real EU added-value in terms of AI standardisation. Based on these standards, a real effort shall be made to assess the upcoming AI solutions. The European Union is currently deploying trustworthy certification mechanism through the Cybersecurity Act and the GDPR and should rely on it.

Please click [here](#) to access Eurosmart's answer to the public consultation on the Draft AI Ethics Guidelines of the High-Level Expert Group on Artificial Intelligence (AI HLEG).

Insurance Europe has published its response to a consultation by the European Commission's High-Level Expert Group (HLEG) on draft guidelines for trustworthy artificial intelligence (AI). Insurance Europe welcomed the HLEG's acknowledgement that Europe already has regulation in place that applies to AI. Insurance Europe stressed that the insurance industry is a highly regulated and supervised sector at national and European level. Consequently, a responsible use of trustworthy AI by insurers is already guaranteed. Moreover, for society to be able to enjoy the benefits of AI, Insurance Europe said it is crucial for the HLEG to ensure that any rules relating to AI design, development and deployment are future-proof and innovation-friendly, and allow European companies to be global competitors. Finally, Insurance Europe said it would welcome the opportunity to further comment on the final draft guidelines.

Please click [here](#) for Insurance Europe submission.

Upcoming Events

February 2019

Council of Europe - High Level Conference on artificial intelligence in Helsinki

26 – 27 February 2019, Helsinki

The conference is co-organised by the Finnish Presidency of the Council of Europe Committee of Ministers and the Council of Europe. The overall aim of the Conference is to engage in a critical, open and inclusive discussion on how to address AI development to maximise benefits for society and minimise risks to human rights, democracy and the rule of law. The conference will bring together high-level experts from governments, international organisations, businesses, technology, academia and research, civil society and the media. From the perspective of the Council of Europe's core mandate and values, the debates will explore ways to ensure that emerging technologies are designed, developed and applied to create value for individuals, democratic societies and the viability of legal and institutional frameworks.

- [Concept note](#)
- [Programme](#)

[Background Information](#)

March 2019

Forum Europe - 9th Annual European Data Protection and Privacy Conference

20 March 2019, Brussels, Belgium

The 9th European Data Protection and Privacy Conference will explore how the power of data can truly be harnessed through trust and responsible use, in order to deliver economic growth and societal benefits.

It will also debate how an international system based on shared principles and ethics might be developed – all in the context of increasing technological innovation, on-going regulatory discussions in the EU around digital evidence and ePrivacy, and other global political developments that either distract from or give focus to such developments.

- [Conference Programme & Speakers](#)
- [Registration](#)