Monitoring Report – 22/03/2019 (No. 8 of 2019)

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

Against the background of upcoming European Parliament elections the European Data Protection Board (EDPB) issued a statement on the use of personal data in political campaigns highlighting key points to be respected by political parties, candidates and other political actors using personal data in political activity. The EU Council has also adopted rules aimed at preventing misuse of personal data.

Focus on tech giants by regulators continues with the recent European Commission fine on Google of €1.49 billion for breaching EU antitrust rules. Commission found that Google abused its market dominance by imposing a number of restrictive clauses in contracts with third-party websites which prevented Google's rivals from placing their search adverts on these websites.

Opinion of Advocate General Szpunar confirmed that requiring a user to untick a pre-ticked check-box does not constitute a valid consent for cookies under the ePrivacy Directive and the GDPR. As always important to note that the Opinion is not binding on the court but it is line with generally accepted interpretations on this.

The Romanian Presidency of the Council is moving forward with the ePrivacy file with recent meetings held on the dossier by the Telecommunication working group (TELEWG) of the Council.

European Commission's High-Level Expert Group on Artificial Intelligence is expected to release the final version of its non-binding guidelines for the ethical use of AI in early April signalling an EU approach to securing competitive advantage through trustworthy AI. UK ICO has announced an initiative to develop an auditing framework for Artificial Intelligence (AI) to provide a solid methodology to audit AI applications and ensure they are transparent, fair; and to ensure that the necessary measures to assess and manage data protection risks arising from them are in place

Regulatory enforcement

European Commission – Fine on Google for abusive practices in online advertising

The European Commission has fined Google €1.49 billion for breaching EU antitrust rules. Google has abused its market dominance by imposing a number of restrictive clauses in contracts with third-party websites which prevented Google's rivals from placing their search adverts on these websites.

Commissioner Margrethe Vestager, in charge of competition policy, said: "Today the Commission has fined Google €1.49 billion for illegal misuse of its dominant position in the market for the brokering of online search adverts. Google has cemented its dominance in online search adverts and shielded itself from competitive pressure by imposing anti-competitive contractual restrictions on third-party websites. This is illegal under EU antitrust rules. The misconduct lasted over 10 years and denied other companies the possibility to compete on the merits and to innovate - and consumers the benefits of competition." Information Commissioner's Office (ICO) has fined Vote Leave Limited £40,000 for sending out thousands of unsolicited text messages in the run up to the 2016 EU referendum.

Source: EU Commission

URL: http://europa.eu/rapid/press-release_IP-19-1770_en.htm?mkt_tok=eyJpIjoiWWprMU56QmpPVEZsWkRrMCIsInQiOiJsK1NsSzMrcmRWbEludU1WVENDMGpackZjd3ZoKopncHNJTjJ2c1pMUDFOY2oxWjA1eW5LbFlhZmp3R3M4S3gzZjlGWFwvanZVS2JQTVo2MHUxQ2ZPQm1zQlpldzBEcDlBKzVVVVNWaVM2YXYySkxYTmNsMUVzZDhKckN4YlJlTXYifQ%3D%3D

Legislative Initiatives

ePrivacy –Report by FEDMA on Romanian Presidency moving forward

The Romanian Presidency of the Council is moving forward with the ePrivacy file. The Telecommunication working group (TELEWG) of the Council has met on the 12th and 14th of March to discuss the file. Now that the review of the Public Sector Information Directive and the Platform to business proposal are done, the Working group can focus on the ePrivacy. The Romanian Presidency seems to be hoping to send the file from the TELEWG to COREPER for an agreement by late Spring. However, there are still a number of issues where Member States haven't reached an agreement.

During the 2 meetings last week, the discussion have focused on browser privacy settings as well as the role of the regulatory authority, and the need for coordination with Data Protection Authorities, in the case where DPA would not be main regulatory authority for the enforcement of the ePrivacy Regulation in some member States. ON the latter, the EDPB has published earlier this week a new opinion on the relation between GDPR and ePrivacy regarding the competence of DPAs, which has given plenty of food for thoughts to Member States. With regard to privacy settings in browser, or any software providing access to the internet, the latest text on the table continues to suggest the deletion of article 10. There is still no consensus behind this approach, which is quite the opposite to the one taken by the European Parliament. However, Member States have discussed changes in recitals to encourage browser and other software provider to offer user friendly and transparent privacy settings in order to help them manage their consent by easily setting up and amending whitelists and withdrawing consent at any moment.

Prior to the last Telecom Council of Minister which took place in Bucharest, FEDMA, together with 10 other associations send a letter to the Romanian Presidency of the Council and to all Member States calling for a new impact assessment of the ePrivacy files, identifying the need to take into consideration latest technological development, as well as the concrete implementation of the GDPR among other issues.

Regulatory authority initiatives

UK ICO AdTech – Summary report AdTech Fact Finding Forum

The Fact Finding Forum was designed to help the ICO better understand the key data protection issues around adtech, and in particular around Real Time Bidding (RTB) in programmatic advertising, by listening to stakeholders' ideas, concerns and challenges.

The day was structured around three discussion themes: transparency, lawful basis and security. Each session began with short presentations by guest speakers holding different viewpoints to facilitate an open discussion from the floor.

A blog by Simon McDougall, ICO Executive Director – Technology Policy and Innovation, was published shortly after the event available here: https://ico.org.uk/about-the-ico/news-and-events/blog-adtech-fact-finding-forum-shows-consensus-on-need-for-change/

Summary report available here: https://ico.org.uk/about-the-ico/research-and-reports/adtech-fact-finding-forum

Full research report commissioned by ICO with advice provided by Ofcom available here: https://ico.org.uk/media/about-the-ico/documents/2614568/ico-ofcom-adtech-research-20190320.pptx

Data protection and political activities

EDPB: Statement on the use of personal data in political campaigns

The European Data Protection Board (EDPB) issued a statement on the use of personal data in political campaigns Council adopted rules aimed at highlighting key points to be respected by political parties, candidates and other political actors using personal data in political activity.

Source: EDPB

URL: https://edpb.europa.eu/sites/edpb/files/files/file1/edpb-2019-03-13-statement-on-elections_en.pdf

EP elections: EU adopts new rules to prevent misuse of personal data by European political parties

The Council adopted rules aimed at preventing European political parties from misusing personal data in EP elections.

The new rules take the form of amendments to the 2014 regulation governing the statute and funding of European political parties and foundations. They will allow for financial sanctions to be imposed on European political parties and foundations that deliberately influence, or attempt to influence, the outcome of EP elections by taking advantage of breaches of data protection rules.

A verification procedure will be put in place for determining whether a breach of the EU's General Data Protection Regulation, established by a national supervisory authority, is linked to the political activities of a European political party or foundation in the context of EP elections. It involves referring the matter to the committee of independent eminent persons established under the 2014 regulation. The sanctions are imposed by the Authority for European Political Parties and Foundations after receiving an opinion from that committee. They would amount to 5% of the annual budget of the European party or foundation concerned. In addition, the European party or foundation subject to a sanction would not be able to receive funding from the EU budget the following year.

The new rules will enter into force on the day of their publication.

Background

European political parties are political alliances registered under EU law. They can have national and regional parties, as well as individuals, as members and they must meet a number of requirements and conditions, including representation in at least a quarter of the member states. The EU funding is intended to help them finance their activities at European level and their campaigns in the EP

elections. In 2018, 10 European political parties and 10 European political foundations received funding from the EU budget.

See further Regulation amending regulation 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of EP elections

UK ICO – Vote Leave campaign fined £40,000 for sending unlawful text messages

The Information Commissioner's Office (ICO) has fined Vote Leave Limited £40,000 for sending out thousands of unsolicited text messages in the run up to the 2016 EU referendum.

An ICO investigation found that Vote Leave sent 196,154 text messages promoting the aims of the Leave campaign with the majority containing a link to its website. The investigation also found that Vote Leave was unable to provide evidence that the people who received the messages had given their consent; a key requirement of electronic marketing law.

ICO Director of Investigations, Steve Eckersley, said: "Spam texts are a real nuisance for millions of people and we will take action against organisations who disregard the law. Direct marketing is not just about selling products and services, it's also about promoting an organisation's aims and ideals. Political campaigns and parties, like any other organisations, have to comply with the law."

Vote Leave claimed the information it had used to contact people was obtained from enquiries which had come through their website; from individuals who had responded via text to promotional leaflets; and from entrants to a football competition. However, the organisation said that following the conclusion of the referendum campaign it had deleted evidence of the consent relied upon to send the messages. Also deleted were details of the phone numbers the messages were sent from, the volume of messages sent, and the volume of messages received.

The ICO publishes detailed guidance on political campaigning and direct marketing explaining the legal obligations organisations have to comply with the Privacy and Electronic Communications Regulations (PECR).This latest fine is part of the ICO's ongoing investigation into the use of data in political campaigns. As a result of the investigation the ICO has taken action against a number of different organisations engaged in

Research, artificial intelligence and data ethics

Artificial Intelligence: Ethical Concerns

On March 19, the European Parliament organised a seminar on ethical concerns for Artificial Intelligence gathering the leaders of religious communities and non-confessional organisations under Article 17 of the Treaty on the Functioning of the European Union. The positions expressed during the discussion gravitated around the main theme of maintaining the human person at the centre of AI development in order to avoid its possible negative ramifications: from monopolies of technological giants and 'surveillance capitalism', geopolitical ramifications with regards to Big Data and AI based on the values and principles of different regions of the world, to discussions on what essentially constitutes the difference between human and machine and the consequences this has for the development of Artificial Intelligence.

Furthermore, Members of the European Commission's High-Level Group of Experts on Artificial Intelligence gave an exclusive preview of the ethical guidelines that will be published on April 8, signalling both its strengths and its weaknesses, but also underlining that it will be the most advance ethical guidance document on Artificial Intelligence in the world.

Documents:

- Programme
- Position Papers of Article 17 Dialogue Partners
- EPRS Briefing on Artificial Intelligence ante portas
- EPRS Briefing on Artificial Intelligence works

EPRS Briefing on Why Artificial Intelligence matters

Artificial intelligence Building the ICO's auditing framework for Artificial Intelligence

Simon McDougall is Executive Director for Technology Policy and Innovation at the ICO writes:

Applications of Artificial Intelligence (AI) are starting to permeate many aspects of our lives. I see new and innovative uses of this technology every day: in health care, recruitment, commerce . . . the list goes on and on. We know the benefits that AI can bring to organisations and individuals. But there are risks too. And that's what I want to talk about in this blog post. The General Data Protection

Regulation (GDPR) that came into effect in May was a much-needed modernisation of data protection law. Its considerable focus on new technologies reflects the concerns of legislators here in the UK and throughout Europe about the personal and societal effect of powerful data-processing technology like profiling and automated decision-making.

The GDPR strengthens individuals' rights when it comes to the way their personal data is processed by technologies such as AI. They have, in some circumstances, the right to object to profiling and they have the right to challenge a decision made solely by a machine, for example. The law requires organisations to build-in data protection by design and to identify and address risks at the outset by completing data protection impact assessments. Privacy and innovation must sit side-by-side. One cannot be at the expense of the other. That's why AI is one of our top three strategic priorities. And that's why we've added to our already expert tech department by recruiting Dr. Reuben Binns, our first Postdoctoral Research Fellow in AI. He will head a team from my Technology Policy and Innovation Directorate to develop our first auditing framework for AI. The framework will give us a solid methodology to audit AI applications and ensure they are transparent, fair; and to ensure that the necessary measures to assess and manage data protection risks arising from them are in place.

The framework will also inform future guidance for organisations to support the continuous and innovative use of AI within the law. The guidance will complement existing resources, not least our award winning Big Data and AI report. But we don't want to work alone. We'd like your input now, at the very start of our thinking. Whether you're a data scientist, app developer or head up a company that relies on AI to do business, whether you're from the private, public or third sector, we want you to join our open discussion about the genuine challenges arising from the adoption of AI. This will ensure the published framework will be both conceptually sound and applicable to real life situations. We welcome your thoughts on the plans and approach we set out in this post. We will shortly publish another article here to outline the proposed framework structure, its key elements and focus areas. On this new blog site you will be able to find regular updates on specific AI data protection challenges and on how our thinking in relation to the framework is developing. And we want your feedback. The feedback you give us will help us shape our approach, research and priorities. We'll use it to inform a formal consultation paper, which we expect to publish by January 2020. The final AI auditing framework and the associated guidance for firms is on track for publication by spring 2020.

Upcoming Events

April 2019

Center for Data and Innovation: Coordinated Plan on AI

4th April, Brussels, Belgium

To remain competitive in the global race for artificial intelligence (AI), the European Union will need more investment, more workers trained in AI-relevant skills, more shared resources including data, and a regulatory environment that will foster the development and use of AI. To that end, in December the European Commission released a " Coordinated Plan on AI" which encourages all member states to develop their own national AI strategies by mid-2019 and to work with the Commission to develop common metrics to measure AI adoption.

While some member states have already created national AI strategies, others have not or have only included dimensions of AI within broader digital strategies. Moreover, every member state is different, so the policies, priorities, and financial commitments in each national AI strategy will vary.

Join the Center for Data Innovation for a discussion that will take stock of the progress achieved so far across member states; compare targets, priorities, and dimensions; and assess the extent to which these national strategies will support Europe's goal of becoming a global leader in AI.

Registration details here: https://www.eventbrite.com/e/european-ai-strategies-where-do-member-states-stand-and-where-are-they-headed-tickets-56188139237