DEAL STRUCK ON THE EU GENERAL DATA PROTECTION REGULATION

On 15 December the Council, the EP and the European Commission finally concluded a deal in the last trialogue discussions to adopt the EU General Data Protection Regulation, that will tighten privacy laws and determine how companies handle consumers' personal data. The data protection regulation was hit with thousands of amendments and branded one of the top lobbied draft bills during its four-year stint in the legislative pipeline.

Following the October European Court of Justice decision that knocked down the Safe Harbour data transfer agreement between the EU and US, Europe's tough privacy rules have been under the spotlight. Technology companies and privacy lawyers are saying the new regulation will make Europe's data protection rules a lot stricter. Current EU privacy legislation stems from the 1995 data protection directive.

General overview

There are new concepts and new rules, enforcement will certainly be a major issue and there will be more sanctions at a higher level. It's overall more severe but some Council proposals were adopted that will make it easier to work out to adapt for the credit reporting sector. Under the new regulation, users can request companies to apply the right to erasure (art 17) and delete personal data if it’s no longer relevant. A right to portability (art 18) is also put in place.

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Compared to the 1995 directive, more kinds of personal information, including genetic data about health, are grouped as 'sensitive' and demand stricter privacy handling (art 9). A requirement on firms to employ a Data Protection Officer if they handle large scale data or collect information on a large number of consumers (article 35) and in terms of sanctions, companies can face fines of up to 4% of a firm’s global turnover for breaches of the rules (article 79).

Talks over the regulation drew criticism in their final stretch for a provision that allows member states to require parental consent for minors aged 16 or younger before they agree to give up their personal data.

Privacy lawyers bemoaned that as one difference between how member states can implement the regulation. “You have certain provisions that will not be tackled in the document itself but will be at the discretion of the national authorities. That will create a lot of discrepancy, which ultimately will not be beneficial to anybody,”

The final draft of the regulation to come out of negotiations has been approved by the Parliament's Civil Liberties, Justice and Home Affairs Committee (LIBE) on Thursday 17 December, it will still need formal adoption by plenary vote in early 2016. EU member states have two years to implement the regulation once its approved.

One-stop-shop

The regulation will also reform how national data protection authorities deal with consumer complaints. A so-called 'one-stop-shop' measure will allow EU residents to file complaints in their home countries and avoid the bureaucratic hurdle of dealing with authorities in other member states. An independent oversight group, the European Data Protection Board, will be set up to coordinate national authorities that jointly address complaints from consumers in a country outside where a company is based. The board is more broadly tasked with making sure the regulation is applied around the EU.

Specific points for the sector

- An exemption from the consumer’s right to erase their personal data – known as ‘right to erasure (originally called the ‘right to be forgotten’) – for ‘compliance with a legal obligation [under] Union or Member State law’ (**Article 17(3b)).** <u>This could presumably permit a creditworthiness assessment</u> as required under the Consumer Credit Directive (a footnote attached to the Council’s text in December 2014 specifically mentioned creditworthiness in this regard). This does not cover off data processed for the purposes of fraud prevention but we can make a strong case that this is done ‘in the public interest’ which benefits from the same exclusion.

- **Article 20**, named ‘Automated individual decision making, including profiling’ which gives the data subject the right not to be subject to ‘a decision based solely on automated processing, including profiling.<u>’ However, this does not apply if the [credit] decision is ‘necessary for entering into, or performance, of, a contract between the data subject and a data controller</u>.’ This is a huge improvement on the EP’s First Reading which banned profiling based on the automated processing of data. The consumer’s right to request human intervention remains in place.

- The data subject’s <u>consent having to be ‘freely-given, specific informed and unambiguous’</u> rather than ‘explicit’ as MEPs and the Commission had wanted (**article 4(8)).**

- Data protection principles in article 5, which include data minimisation (‘limited to what is necessary’). The current Directive states that data must be ‘adequate, relevant and not excessive.’

- No reference to the data subject having to give his ‘explicit’ or ‘unambiguous’ consent’ which had been under discussion earlier (article 6(1a)). This is helpful.

- The processing of data to be deemed lawful if it is ‘necessary for compliance with a legal obligation’ (article 6(1c) as laid down by Union or Member State law (**article 6(3).** This does not address the issue of regulatory obligations such as fraud prevention which are not defined by law. We will work with the FCA to ensure that this issue is resolved during the implementation process.

- **The retention, under article 6(1f) (lawfulness of processing) of a reference to third parties**, enabling credit references agencies to process data on behalf of lenders. The Commission and European Parliament had removed the reference to ‘a third party’ which appears in the existing Directive.

- Similar special categories of personal data as per the current legislation (article 9(1). MEPs failed to ban the processing of data relating administrative sanctions, judgments, criminal or suspected offences.

You can find the agreed compromise text of the GDPR here and a more extensive analysis will be done for FEBIS at the beginning of 2016.

ECB REPORT SAYS ACCESS TO FINANCE GETS BETTER FOR EUROPEAN SMES

The European Central Bank (ECB) has published its 13th report on the results of the “Survey on the Access to Finance of Enterprises”. The report provides evidence on changes in the financial situation, financing needs and access to financing of small and medium-sized enterprises (SMEs) in the euro area in the six months from April to September 2015, as well as comparing the situation of SMEs with that of large enterprises.

The 3 major takeaways from this report are:

- SMEs reported a further improvement in the availability of external sources of finance
- Willingness of banks to provide credit to SMEs increased across most countries
- Securing demand for their products remains the dominant concern for SMEs

Euro area SMEs considered access to finance to be the least important problem that they faced (11% of respondents, unchanged from the previous round), although results differ across countries. Instead, finding customers remains their main concern (25% of respondents, down from 26% in the previous round). **The report most notably makes several mentions of the importance of trade credit and the fact that access to finance (and especially trade credit) is made easier with better credit information.**

On balance, a net 1% of SMEs reported an increase in their need for bank loans (down from 3% in the previous survey round). For the second consecutive period, SMEs reported, on balance, an improvement in the availability of bank loans, a further fall in interest rates and an increase in the available size and maturity of loans and overdrafts. The net percentage of SMEs indicating a tightening in banks’ collateral and other requirements remained positive, but declined. Of the 30% of SMEs that had applied for a loan, 66% received the full amount requested and 9% of them reported that their loan application had been rejected.

This survey round was conducted from 21 September to 26 October 2015. The total euro area sample size was 11,226 firms, of which 10,238 (91%) had fewer than 250 employees.

The full report on the results of the survey can be found at

HTTP://WWW.ECB.EUROPA.EU/PUB/PDF/OTHER/ACCESSTOFINANCESMALLMEDIUMSIZEDENTERPRISES201512.EN.PDF?2C146594DF6FE424C7ADB001E1306C73

DG FISMA GREEN PAPER CONSULTATION ON RETAIL FINANCIAL SERVICES OPEN UNTIL 18TH MARCH 2016

On 10th December 2015, DG FISMA unveiled a new public consultation in the form on a Green Paper on retail financial services, consultation which is open until mid-March 2016. Though this seems more targeted to global payments and financial services, it would be important for FEBIS to contribute as there is a section on improving access to and usability of financial data which inter-alia tackles credit-worthiness assessments. The FEBIS Regulatory Committee will work out a draft submission to insist on the importance of getting data to have valuable credit-worthiness assessments for the benefit of the SMEs.

ECB ADOPTS THE ANACREDIT PROPOSAL, COMMENTS POSSIBLE UNTIL END JANUARY

The ECB has released its proposed project for analytical credit datasets called ***AnaCredit***, which aims at setting up a dataset containing detailed information on individual bank loans in the euro area, harmonised across all member states. The project was initiated in 2011 and data collection is scheduled to start in 2018. The Governing Council of the ECB will decide on a statistical regulation that will set out the details.

The draft Regulation on the collection of granular credit and credit risk data sets out the reporting requirements and defines the reporting population is available on the ECB web site, together with the explanatory note.

The rationale of the ECB behind this project is as follows: the financial crisis showed that aggregate statistics are not sufficient for an adequate understanding of the underlying developments, given that a number of economic and financial indicators have diverged significantly across different segments of the economy, such as sectors of activity, firm size or geographical areas. This new dataset will fill this data gap supporting the ECB in performing its central banking functions, such as monetary policy analysis and operations, risk management, financial stability, economic research, statistics and banking supervision. AnaCredit wants to make it possible to identify, aggregate and compare credit exposures and to detect associated risks on a loan-by-loan basis.

At first, banks will only report information on loans to corporations and other legal entities, mostly on a monthly basis. Should the ECB's Governing Council decide to extend the AnaCredit project at a later stage, e.g. including housing loans to private households, these would be reported anonymously to the ECB.

The dataset is designed for the following users: The ECB and all national central banks of the participating countries, National and European supervisory authorities, National and European resolution authorities, European Systemic Risk Board, European Commission and to some extent, reporting agents. Some users will only have access to part of the dataset at an aggregated level to ensure confidentiality.

CONSULTATIONS

Consultation title	Subject	Deadline	Web site
Call for evidence: EU regulatory framework for financial services:	The Commission is looking for empirical evidence and concrete feedback on: • Rules affecting the ability of the economy to finance itself and growth; • Unnecessary regulatory burdens; • Interactions, inconsistencies and gaps; Rules giving rise to unintended consequences.	06/01/2016	http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm
Draft ECB regulation on AnaCredit		29/01/2016	Comments to send to statistics@ecb.europa.eu Link to text : https://www.ecb.europa.eu/stats/money/aggregates/anacredit/html/index.en.html
Green paper on retail financial services	seeks the views on how to improve choice, transparency and competition in retail financial services to the benefit of European consumers and how to facilitate true cross-border supply of these services, so that financial firms can make the most of the economies of scale in a truly integrated EU market. It is also looking at and discussing the impact of digitalization on retail financial services with a view to allow for growth of innovative solutions in this area in the EU.	18/03/2016	http://ec.europa.eu/finance/consultations/2015/retail-financial-services/index_en.htm

FEBIS– Federation of Business Information Services

Benefiting from the opening of markets within Europe and overseas, world-wide business has experienced substantial growth. As business grows so does the demand for business information, in particular, intelligence for cross-border business activities.

In 1973, leading European credit information agencies joined forces to form the Federation of Business Information Services FEBIS (initially known as FECRO), with its registered office in Frankfurt. Today, FEBIS has developed into a sizable organization comprising more than 60 full Members from all over the world involved in providing Business Information and Debt Collection services of National and International importance.

Supported by a combined workforce of more than 20,000 staff, FEBIS Members generate over 180 million Business Information and Consumer reports annually for over 500,000 organizations, providing these clients with invaluable business support. Aggregate sales turnover of FEBIS Members is in excess of €2.5 Billion.

As the industry association, FEBIS strives to look after common interests of its members. While monitoring new legislation like data protection laws and insolvency laws, FEBIS also oversees and the application of public sources and information.