



April 2018 EU affairs newsletter

Data	2
Free flow of data : adoption of the ITRE opinion report and first compromise amendments for the lead IMCO report	2
Data protection	2
G29 guidelines on consent and transparency published	2
Public Sector Information.....	3
European Commission ‘Building Data Economy package” and revision of the PSI directive	3
Access to finance	4
European Parliament working on an own-initiative report on late payments directive application	4
European Central bank comments on Fintech licence applications regarding scoring	4
ECB April survey stresses that Loan growth continued to be supported by easing credit standards and increasing demand	4
Consumers.....	5
European Commission outlines its New Deal for Consumers package	5
Digital.....	7
Commission unveils new proposal on transparency and fairness for online platforms (platforms -to-business proposal) ...	7
ICCR.....	8
FEBIS represented at the ICCR meeting in Washington	8
Consultations.....	8
About FEBIS– Federation of Business Information Services	9



Data

Free flow of data : adoption of the ITRE opinion report and first compromise amendments for the lead IMCO report

On 24 April 2018, the Industry Committee of the European Parliament (ITRE) adopted the opinion report from MEP Krasnodębski on the regulation on free flow of non-personal data (FFOD). All compromise amendments have been adopted (available on request, email stephanie@svmconsult.com). The opinion rapporteur therefore pushes for removal of data localisation obligations, the only exception would be for national security. On data portability, Codes of Conduct should be on a voluntary basis but the Commission should further assess if regulation is needed. Interoperability should also be encouraged. On mixed datasets, the rapporteur favours the consensus opinion that the GDPR should apply to the personal data part of the set and the FFOD to the non-personal part. Where personal and non-personal data are inextricably linked, the FFOD regulation shall apply without prejudice to Regulation (EU)2016/679 (GDPR).

The lead IMCO Committee also held an exchange of views on free flow of data end April, and the rapporteur MEP Corraza-Bildt has made some steps towards the other parties to get workable compromise amendments. The latter would keep the ITRE compromise amendment on exception to data localisation being only for national security purposes.

As regards mixed data sets, the rapporteur clearly states that nobody wants to downgrade the GDPR and she therefore favours the same compromise amendment proposal ie stating that for mixed data sets, **where personal and non-personal data are inextricably linked, the FFOD regulation shall apply without prejudice to the GDPR.**

On de-anonymisation, the rapporteur asks that the question be examined in the review of the regulation which is set to take place 3 years after its publication. She is of the opinion that the GDPR applies as soon as data is de-anonymised.

Data protection

G29 guidelines on consent and transparency published

The Article 29 Working Party has adopted its [final guidance on consent](#). It inter alia defines better freely given consent by reinforcing that any imbalance or pressure means leading to imbalance would jeopardize the freely given consent. The guidelines also clarify which legal ground of processing should apply, emphasizing that if a controller seeks to process personal data that are in fact necessary for the performance of a contract, then consent is not the appropriate lawful basis. Article 7(4) is only relevant where the requested data are not necessary for



the performance of the contract, (including the provision of a service), and the performance of that contract is made conditional on the obtaining of these data on the basis of consent.

They also make it clear that one consent should be tied to one purpose of processing and that if a controller processes data based on consent and wishes to process the data for another purpose too, that controller needs to seek additional consent for this other purpose. And it is not possible to from consent to other lawful bases. For example, it is not allowed to retrospectively utilise the legitimate interest basis in order to justify processing, where problems have been encountered with the validity of consent.

On the [transparency](#), the guidelines reinforce the principle of fairness under Article 5.1 of the GDPR. Data subjects should be able to get all information related to the processing of their data in one single place. the general principle that data subjects should not be taken by surprise by the processing of their personal data equally applies to profiling generally

Public Sector Information

European Commission ‘Building Data Economy package’ and revision of the PSI directive

On 25 April, the European Commission published the overarching "Building a European data economy" package which contains inter alia a [proposal for a review of the Directive](#) on the re-use of public sector information ([PSI Directive](#)). It also contains an [update of the 2012 Recommendation](#) on access to and preservation of scientific information, and [guidance on sharing private sector data](#) among companies and with public sector bodies for public interest purposes.

The proposal seeks to:

- Stimulate the publishing of dynamic data and the uptake of application programming interfaces (APIs);
- Limit the exceptions that allow public bodies to charge for the re-use of their data more than the marginal costs of dissemination;
- Expand the scope of the Directive to certain data held by public undertakings in the utilities and transport sectors and research data resulting from public funding;
- Strengthen the transparency requirements for public–private agreements involving public sector information, avoiding exclusive arrangements.

FEBIS will analyse the impact and make position proposal. FEBIS is also liaising with the PSI Alliance, which is on welcoming members on a project -based participation on PSI review. More information and a separate letter on PSI Alliance is available.



Access to finance

European Parliament working on an own-initiative report on late payments directive application

The Internal market Committee (IMCO) of the European Parliament has appointed MEP Lara Comi to work on an [own-initiative report](#) on the implementation of the Directive 2011/7/EU on combating late payment in commercial transactions. Work is just starting but this could be a way to stress again the issue of late payments and the importance of getting accurate financial and company information to enable trade credit and fight against insolvencies.

FEBIS will monitor the development of this initiative and contribute when needed.

European Central bank comments on Fintech licence applications regarding scoring

The European Central Bank (ECB) published [its guide to assessments](#) of [fintech credit institution](#) licence applications. With regards the assessment of licence applications for new fintech banks and for the establishment of specialised subsidiaries of existing credit institutions applying a fintech business model, the ECB confirms that they *will review an applicant's internal process for assessing loans, which should establish minimum criteria for information on which to base the analysis. The supervisory assessment will consider how the applicant will verify customers' income, and what systems (e.g. credit bureaus) and data (e.g. credit history records and customers' net debt level based on individual or peer data) it will use to obtain credit scores'.*

The guidance also says that 'the ECB and NCAs will assess the feasibility of the applicant's credit-scoring model'. The ECB says that 'if a fintech bank uses credit scores provided by a third-party vendor (outsourcing of credit scoring) and the vendor uses alternative data sources to build the scorecards, the ECB and NCAs will assess the adequacy of the fintech bank's risk controls. The ECB moreover confirms its interpretation of alternative data as data other than information on credit history and indebtedness, including payments of medical bills and social media profiles.

ECB April survey stresses that Loan growth continued to be supported by easing credit standards and increasing demand

An April 2018 report by the European Central Banks stresses that

- Loan growth continued to be supported by easing credit standards and increasing demand



- Credit standards eased considerably for loans to enterprises and housing loans
- ECB asset purchases and negative deposit facility rate have a positive impact on lending volumes

Credit standards for loans to enterprises eased considerably in net terms in the first quarter of 2018, according to the April 2018 bank lending survey (BLS). The net easing (-8%) of credit standards – i.e. banks' internal guidelines or loan approval criteria – follows on from unchanged credit standards (0%) for loans to enterprises in the previous quarter and was stronger than anticipated by banks in the previous survey round. In addition, credit standards on loans to households for house purchase eased further (net percentage of reporting banks at -11%, after -6%), and credit standards on consumer credit and other lending to households eased somewhat (-3%, after -1%)

For more information click [here](#).

Consumers

European Commission outlines its New Deal for Consumers package

On 11 April 2018, the European Commission published its New Deal for Consumers to ensure that all European consumers fully benefit from their rights under Union law.

It empowers qualified entities to launch class actions on behalf of consumers and introduce stronger sanctioning powers for Member States' consumer authorities. It will also extend consumers' protection when they are online and clarify how EU law to clarify that dual quality practices misleading consumers are prohibited.

The New Deal for Consumers will mean:

1. Strengthening consumer rights online

- It sets out more transparency in online market places –When buying from an online market place, **consumers will have to be clearly informed about whether they are buying products or services from a trader or from a private person**, so they know whether they are protected by consumer rights if something goes wrong. The package also gives the [following definitions of consumers and traders](#) in article 3 of the proposal for a directive on representative actions for the protection of collective interest of consumers:

Art 3 (1) consumer' means any natural person who is acting for purposes which are outside their trade, business, craft or profession;

Art 3 (2)'trader' means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in their name or on their behalf, for purposes relating to their trade, business, craft or profession;



- It calls for more transparency on search results on online platforms, stating that **consumers will be clearly informed when a search result is being paid for by a trader**. Moreover, **online marketplaces will have to inform the consumers about the main parameters determining the ranking of the results**.
- When paying for a digital service, consumers benefit from certain information rights and have 14 days to cancel their contract (withdrawal right). The New Deal for Consumers will now extend this right **to 'free' digital services for which consumers provide their personal data, but do not pay with money**. This typically would apply to cloud storage services, social media or email accounts.

It also sets up the **possibility for grouped actions of qualified entities** (e.g. consumer organisations but not law firms) - a little different than the US class action system- and to obtain remedies collectively. It ensures that consumers in all Member States have the right to claim individual remedies (e.g. financial compensation or termination of contract) when they are affected by unfair commercial practices, such as aggressive or misleading marketing.

The proposal also aims at ensuring that national consumer authorities will have the power to impose effective, **proportionate and dissuasive penalties** aligned with the GDPR maximum fine will be 4 % of the trader's annual turnover in each respective Member State.

The New Deal will also **remove unnecessary burden for businesses**, including by lifting obligations on companies as regards the consumer's withdrawal right. For instance, consumers will no longer be allowed to return products that they have already used instead of merely trying them out, and traders will no longer have to reimburse the consumers before actually receiving the returned goods.

The new rules also introduce more flexibility in the way traders can communicate with consumers, allowing them to also use web forms or chats instead of e-mail, provided the consumers can keep track of their communication with the trader.

The package will now be examined by the Council and the European Parliament, MEP Daniel Dalton has been appointed rapporteur for the IMCO Committee on the issue.

For More information

[Proposal & legal documents on the New Deal for Consumers](#)

[MEMO: A New Deal for Consumers: Frequently Asked Questions](#)



Digital

Commission unveils new proposal on transparency and fairness for online platforms (platforms -to-business proposal)

The new proposal published on 26 April 2018 aims at **setting up new rules for the online platforms providing small businesses with a safety net in the digital economy**. In particular it flags out the following items:

Increasing transparency: Providers of online intermediation services must ensure that their terms and conditions for professional users are easily understandable and easily available. This includes setting out in advance the possible reasons why a professional user may be delisted or suspended from a platform. Providers also have to respect a reasonable minimum notice period for implementing changes to the terms and conditions. If a provider of online intermediation services suspends or terminates all or part of what a business user offers, this provider will need to state the reasons for this. In addition, the providers of these services must formulate and publish general policies on (i) what data generated through their services can be accessed, by whom and under what conditions; (ii) how they treat their own goods or services compared to those offered by their professional users; and (iii) how they use contract clauses to demand the most favourable range or price of products and services offered by their professional users. Finally, both online intermediation services as well as online search engines must set out the general criteria that determine how goods and services are ranked in search results.

Resolving disputes more effectively: Providers of online intermediation services are required to set up an internal complaint-handling system. To facilitate out-of-court dispute resolution, all providers of online intermediation services will have to list in their terms and conditions the independent and qualified mediators they are willing to work with in good faith to resolve disputes. The industry will also be encouraged to voluntarily set up specific independent mediators capable of dealing with disputes arising in the context of online intermediation services. Finally, associations representing businesses will be granted the right to bring court proceedings on behalf of businesses to enforce the new transparency and dispute settlement rules.

Setting up an EU Observatory to monitor the impact of the new rules: The Observatory would monitor current as well as emerging issues and opportunities in the digital economy, with a view to enabling the Commission to follow up on today's legislative proposal if appropriate. Particular attention will be paid to developments in policy and regulatory approaches all over Europe.

For More Information

[Q&A](#)

[Useful links](#)



ICCR

FEBIS represented at the ICCR meeting in Washington

As commented during the Madrid spring meeting, FEBIS was represented in the last ICCR - International Credit Committee on Credit Reporting in Washington, early April.

As main highlights of the meeting:

FEBIS contributions on the next *Policy guidance on the use of alternative data for SME finance*, being developed, have been significant and helped in concluding a sensible outcome that considered our perspective on how alternative data should be defined.

In addition, FEBIS will take part in the subcommittee: credit scoring - innovative approaches used in credit reporting. Ultimately, the purpose of the subcommittee will be to define credit scoring standards.

As a starting point, a document extracted from the FEBIS' white paper on scoring, developed in the past, will be distributed among the ICCR members to clarify concepts and facilitate discussion from appropriate grounds.

The subcommittee on cybersecurity is also interesting. FEBIS will be watching and may decide to join, only, if it finds the appropriate resources.

Consultations

Title	Subject	Open until	link
EU consultation on SME definition	SME definition	6 th May 2018	https://ec.europa.eu/info/consultations/public-consultation-review-sme-definition_en
EU consultation on public reporting by companies	Accounting and public reporting/Access to data	21 July 2018	at https://ec.europa.eu/info/consultations/finance-2018-companies-public-reporting_en



About 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 100 members from all over the world involved in providing Business Information and credit information services of national and International importance.

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.