

Privacy & Data Protection

Volume 14, Issue 1

October / November 2013

Headlines

- Spammer successfully appeals against ICO fine, p.16
- US spying on German Chancellor threatens major diplomatic spat, p.17
- Belgium Privacy Commission seeks a more active role, p.20

Contents

<i>Expert comment</i>	2
<i>The path to a new EU data protection framework</i>	3
<i>New rules on breach notification by telecoms and ISPs — clarity at last?</i>	4
<i>Augmented reality — a leap into a new world</i>	7
<i>Employees' use of social media — navigating the potential pitfalls</i>	9
<i>Ireland's direct marketing laws — a burden on businesses?</i>	12
<i>News & Views</i>	15

LIBE approves Compromise Text; ball now with Member States

The European Parliament has voted to approve its Compromise Text of the proposed EU General Data Protection Regulation, following months of negotiations between the various parliamentary committees.

The European Parliament's Committee on Civil Liberties, Justice and Home Affairs ('LIBE') spearheaded the agreement on the Compromise Text. Immediately after the vote, LIBE lead Rapporteur, Jan Philipp Albrecht, commented: "Parliament now has a clear mandate to start negotiations with EU governments. The ball is

now in the court of member state governments to agree a position and start negotiations, so we can respond to citizens' interests and deliver an urgently-needed update of EU data protection rules without delay."

Although the Compromise Text has not yet been officially published, the key amendments have been leaked. The amendments include: extended territorial scope; changes to the definition of pseudonymous data; restrictions on consent; changes to the role and responsibility of Data Protection Officers; changes to breach notification

rules; increased fines; and provisions concerning European Data Protection Seals.

The proposed territorial scope has been extended to include the processing of personal data in the context of the activities of a controller's or processor's establishment, even if the processing does not take place in the EU. This would clearly cover cloud computing and may have wider effect.

There is an additional category of 'pseudonymised' data being proposed at Article 4(2a). This is

[\(Continued on page 15\)](#)

Working Party gives new guidance on cookie consent

The Article 29 Working Party has issued a Working Document providing guidance on how to obtain consent for the use of cookies and similar technologies in compliance with EU legal requirements.

The advice in the document pertains to Article 5.3 of the revised e-Privacy Directive (2002/58/EC), which imposes an obligation

to obtain web users' consent for the storage of, or access to, cookies and similar technologies.

Under EU data protection law, consent must satisfy certain conditions in order to be valid, as explained in the Working Party's previous Opinion of July 13, 2011 on the concept of consent. Consent must be unambiguous, specific, informed and freely given, before

processing starts.

The latest Working Document specifies all of the elements that should be present in cookie consent mechanisms, in order that they satisfy the legal requirements in all Member States.

One of these elements is 'specific consent'. When consent is sought, users

[\(Continued on page 15\)](#)