

Isabelle Falque-Pierrotin
Chairman
Article 29 Data Protection Working Party

Brussels, 23 January 2018

Re: Guidelines on consent and transparency for the purposes of Regulation 2016/679

Dear Ms. Isabelle Falque-Pierrotin,

Eurofinas, the voice of consumer credit providers at European level, welcomes the opportunity to respond to the Article 29 Data Protection Working Party's (WP29) call for comments on its Guidelines on consent and transparency.

Eurofinas supports the work of the WP29 in ensuring further clarity in the application of the General Data Protection Regulation (GDPR). The consumer lending industry views the Regulation as a vital step and tool enabling the Digital Single Market and reinforcing data subjects' trust in their lenders' use of their data through a consistent framework in which the data subjects may exercise effective control over their personal data. We trust that our comments will be taken into account and remain at the disposal of the WP29 should any further questions arise.

As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, universal banks, specialised banks and captive finance companies of car or equipment manufacturers. The products sold by Eurofinas members include all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, furniture, electronic appliances, education etc. It is estimated that together the Eurofinas members financed almost 427 billion euros worth of new loans during 2016 with outstandings reaching 1024 billion euros at the end of the year¹.

¹ This includes 320.4 billion euros in new consumer loans in 2016. Of that amount, 108 billion euros was consumer vehicles. Outstanding portfolio reached 709.5 billion euros.



I. Consent

Opt-out consent

In relation to the requirement of an unambiguous indication of wishes, the draft guidelines state that “the GDPR does not allow controllers to offer pre-ticked boxes or opt-out constructions that require an intervention from the data subject to prevent agreement (for example ‘opt-out boxes’)”.

However, the related recital 32 of the GDPR does not include the latter reference. The issue of opt-out boxes was subject to in-depth consideration in the legislative process and it was the choice of the legislators not to include such a reference in the final version of the regulation.

We believe that the proposed guidelines thus extend beyond the restrictions laid down by the legislators and that the proposed guidelines should be amended on this point.

Explicit consent for special categories of data

The draft guidance suggests that verbal consent may be insufficient and that it should be followed up with a written consent for the processing of special categories of data. However, this may prove difficult in a number of situations, e.g. when dealing with vulnerable customers.

Lenders may obtain details of vulnerabilities that affect a customer’s ability to pay, e.g. situations connected to physical and/or mental health problems. Depending on the nature of the customer’s vulnerability, it can be very difficult to communicate with the customer and some customers may not respond to letters.

In such cases, it could prove challenging to obtain written consent. This may lead to confusion as to whether valid explicit consent has been obtained or whether the vulnerable details should subsequently be deleted. The latter would breach requirements laid down by competent financial and consumer protection authorities.

Existing consent

We welcome the proposed guidance on how to treat existing consents provided under the current data protection framework. However, we would welcome further direction as to how to update non-GDPR compliant consents. Data subjects may face a situation where they need to react to a large number of requests from a variety of controllers in a relatively short time span. This may result in a consent fatigue where data subjects just accept all requests for consent. This would go against the very purpose behind seeking consent in the first place.

Details of data recipients

The draft guidelines require that, in order for consent to be informed, all recipient controllers are to be named. However, we believe that this requirement goes beyond the obligation laid down in article 13 of the GDPR, which provides that information should include the recipients or the categories of recipients. This flexibility should in our view be made clear in the final guidelines.

II. Transparency

Information fatigue

As noted by the WP29, avoiding information fatigue is a key issue for data controllers. In this context, we welcome the WP29’s recommendation on the utilisation of layered privacy statements/notices, which allow for concise and agile information provision and enable the data subject to access additional, more detailed information if desired.

However, we believe that a number of the proposed recommendations in the guidelines go beyond the provisions laid down in articles 13 & 14 of the GDPR and that they may risk to lead to information fatigue. This could especially be the case when a data subject may have to be repeatedly approached.



For example, when a data subject is to be provided with:

- The full set of information when additional data is collected, e.g. a phone number, rather than only the supplementary information on the processing which is mandated by the GDPR
- The name of all recipients of data instead of the categories of recipients required by the GDPR

Appropriate measures

In relation to the assessment of appropriate measures to inform data subjects, we welcome the WP29's guidance that "the data controller should take into account all of the circumstances of the data collection and processing when deciding upon the appropriate modality and format of the information provision".

As noted by the WP29, the appropriate form and manner information is provided must be assessed in light of the product/service user experience. Certain sorts of communication may indeed be more appropriate than others in certain situations and the data controller should be allowed to assess this in the specific context as well as due to technological developments.

I remain at your disposal, should you be interested in discussing any specific issue. Alternatively feel free to contact my colleague Isak Bengtzboe (i.bengtzbøe@eurofinas.org - tel: + 32 2 778 05 73).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Leon Dhaene', with a stylized flourish underneath.

Leon Dhaene
Director General

Eurofinas is entered into the European Transparency Register of Interest Representatives with ID n° 83211441580-56