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## EU Updates - News on ePrivacy, the SCC Irish case and cookie consent enforcement

1 message

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To: FPF - Europe &lt;europe@fpf.org&gt;

Dear all,

Here is a round-up of noteworthy developments in the EU data protection world:

### ePrivacy

- There is uproar in Brussels concerning the ePrivacy file. The rapporteur of the European Parliament [took a tough stance](#) against the Austrian Presidency of the Council after it announced that its goal for the end of this year is to publish a progress report (instead of adopting the Council's position).
- At the same time, a coalition of several EU-based civil society organisations issued a [public letter](#) addressed to the Council's Working Group, urging it not to water down the text of the proposal, with a focus on newly introduced amendments that would allow metadata to be further processed for compatible purposes.
- For an overview of the latest text published by the Council, [here](#) is a round-up published by EDRI.
- The German government published its [position](#) on key issues of the ePrivacy file.

### Cookies and other tracking technologies

- The CNIL published a [formal notice](#) (FR) addressed to two location-based mobile advertising companies, Teemo and Fidzup. The CNIL found that these companies are violating the GDPR by collecting certain information (mobile advertising identifier/IDFA, geo-location, and MAC addresses) **without appropriate user consent**, and **without appropriate retention periods**. The companies were given three months to comply. FPF translated into English the summary of the formal notice, and it is available upon request.
- The French *Conseil d'Etat* [confirmed](#) the conclusions of the CNIL in a decision sanctioning Croque Futur for not complying with rules on cookie consent. The company's website used different types of cookies, which the company considered to be "necessary for the economic viability of the website" and therefore exempted from the consent requirement. The judges rejected this argument, reaffirming that the real test for the consent exemption is that the cookies are strictly necessary for the provision of the service, and not for its economic viability. The Court also sanctioned the fact that the website did not allow visitors to either clearly distinguish the different categories of cookies used, nor object only to those cookies subject to their prior consent. Read a summary in English [here](#).
- The EDPB [was persuaded to implement changes](#) into the notice and consent practices for placing cookies through its website.
- Here is an [ad tech-specific take](#) of the Facebook fan pages decision of the CJEU from earlier in June, proposing that marketers are now exposed to significant legal risks since they can be identified as joint controllers with ad tech companies in the online advertising system.

## GDPR

- Romania adopted its GDPR implementing law. Here is a [brief overview](#) in English of all derogations.
- You can find background on the Danish GDPR implementation law and the Dutch GDPR implementation law [here](#) and [here](#).
- Microsoft, Facebook, Google and Twitter [introduced](#) the [Data Transfer Project](#), an open source initiative that aims to facilitate data portability rights.
- Forbes published a very interesting take on "[Personal data and the next subprime crisis](#)", linking fluctuations on the market due to how personal data are used, by [Chiara Rustici](#). The piece of published a couple of days before Facebook and Twitter announced their second quarter earnings.
- Spain adopted [an emergency ordinance](#) (ES) to give powers to the Spanish DPA required by the GDPR. The national law implementing the GDPR is still under debate.

## DPA's

- The CNIL [closed the formal notice procedure](#) against Genesis Industries concerning their connected toys without any charges, being satisfied by the changes implemented. In particular, "the speech recognition, a necessary technology allowing the toys to answer the questions asked by the children, was not used anymore by the company. The conversations held with the toys are no longer transferred to the servers of a third company in charge of the speech-to-text conversion processing".
- The Dutch DPA [started an investigation](#) (NL) into how 30 randomly selected companies from various industries comply with their obligation to keep a Register of processing activities under the GDPR.
- The ICO is [looking for input](#) from all stakeholders to inform its drafting of the "Age Appropriate Design Code". The Code will provide guidance on the design standards that the Commissioner will expect **providers of online 'Information Society Services' (ISS), which process personal data and are likely to be accessed by children**, to meet. Deadline: September 19, 2018.
- At the end of June, the CNIL published a [Guide for processing data, including health data, by physicians](#) (only FR). **The guide also refers to research using patient data (see p. 21 - 24)**, but it does not go into enough detail on lawful grounds for processing. It primarily points at the administrative procedures that need to be engaged with for conducting such research.
- The ICO made available a [recording](#) of the recent data breach webinar it organized.
- The draft program of the **International Conference of the Privacy Commissioners** (October 22 - 26, Brussels) is available [here](#). The focus of the debate will be digital ethics. Keynotes are expected from the President of the Court of Justice of the EU, Koen Laenerts and the founder of the WWW, Tim Berners-Lee. Check out the list of [speakers](#) and the [early bird registration](#).

## Adequacy

- The European Commission announced that this Fall it [plans to adopt an adequacy decision](#) for Japan's data protection law. EU and Japan **concluded their talks on reciprocal adequacy in July**, but there are still additional steps to take before the Commission can adopt the adequacy decision, including an Opinion from the EDPB (non-binding).

## Courts

- In what seems to be an unprecedented decision, **the Supreme Court of Ireland decided to hear Facebook's appeal over the High Court's referral to the CJEU of the Standard Contractual Clauses case**. Read more of the background [here](#). Whatever the Supreme Court will decide on points of law during the appeal proceedings, it will not mean that the CJEU will not be able to continue with the preliminary ruling procedure in this case. All national courts of a Member State, even a first instance Court, have the right to stay proceedings and ask the CJEU to give an interpretation of EU law. The High Court's questions are already registered with the CJEU under Article 267 TFEU procedure. The appeal could nonetheless impact the facts of the case established by the High Court.
- The German Federal Court of Justice [decided](#) (DE) that the **heirs have a right to access a deceased's Facebook account based on the deceased's contract with the platform**, under German inheritance law. The case concerns the Facebook account of a 15 year old girl that died in a metro station (it is unclear if it was a suicide or an accident). If it was a suicide, the metro driver would be entitled to receive damages from heirs. The family of the victim wants access to her Facebook account to find clues on whether this was a suicide, if any abuse is involved or if there was nothing wrong. The mother has the password, but the account is already in "commemoration mode". The Court decided that digital content of communications should be treated the same as letters and other correspondence, which under German inheritance law go to heirs.
- The Finnish National Non-Discrimination and Equality Tribunal [has determined](#) that a **person was discriminated against because there was no human involvement in assessing the person's solvency by a financial institution**. The creditor only assessed solvency on the basis of background information such as native language, gender, age and postal code area. The creditor was fined 100.000 EUR by the Non-Discrimination Ombudsman. The [decision](#) is available in EN.

## Research

- Mireille Hildebrandt published "[Primitives of Legal Protection in the Era of Data-Driven Platform](#)" in the Georgetown Law Technology Review. She argues that "we need a small set of primitives of legal protection to shoot holes in the semantic continuity that is generated by the backend systems of data-driven platforms; competition law, consumer law, and tort law cannot contribute to the effective contestability of algorithmic decision-making by themselves".

As always, your input is welcome at [gzanfir-fortuna@fpf.org](mailto:gzanfir-fortuna@fpf.org), especially if you would like to share something with the group.

We also would like to invite you and your colleagues to participate in our inaugural **Privacy War Games** event on November 12th in San Jose, California. You can learn more and register by visiting [www.privacywargames.com](http://www.privacywargames.com)!

Kind regards,  
Gabriela

FPF Europe Archive is available [HERE](#) (password: FPFEurope)

**UPCOMING EVENTS IN EUROPE (for an updated list of events, check out our [Privacy Calendar](#)):**

Valencia, September 26-28: [Privacy in Statistical Databases 2018](#)

Amsterdam, October 5: [Amsterdam Privacy Conference 2018](#)

Brussels, October 22-26: Privacy Commissioners Conference

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We relaunched the [Privacy Calendar](#)! Check it out to find an event near you or [add an event](#).

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