

Privacy & Data Protection

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- Audit of Facebook Ireland published, p.18
- Smart meter technology invades users' privacy, p.20

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Draft Regulation on track but Directorates may scupper plan

According to sources within the European Union, the new EU Data Protection Regulation is still on track for publication in late January. Viviane Reding's spokesman has told *Privacy & Data Protection* that "the Commission will adopt the legislative texts during the week of 23rd January."

The only way that publication might be delayed is due to the 'inter-service consultation' process, which involves Commission departments (Directorates General) reviewing the current version of the draft

(available at www.pdpjournals.com/docs/87976.pdf) and giving feedback. The current version of the draft has caused considerable concern due to the breadth of the changes to the existing regime, with at least four of the Directorates General having already responded to the consultation unfavourably.

The Information Society and Media ('INSFO') Directorate-General in particular stated that the whole draft Regulation would have "significant negative effects" on the development of the digital

economy and jeopardise the Commission's Digital Agenda. INSFO said in its response, in a 22-page document, that the Regulations would place "a heavy and at times unreasonable burden" on controllers and processors without bringing corresponding advantages to data subjects. The right to be forgotten is singled out as an example of excessive burden. "The risk of empty regulation and of unintended negative consequences are both correspondingly high," INSFO stated.

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OBA industry's self-regulation plan 'not adequate', says Working Party

The Article 29 Working Party has rejected the Online Behavioural Advertising Self-Regulatory Framework proposed by the European Advertising Standards Alliance (EASA), as "not adequate to ensure compliance with the current applicable European data protection legal framework."

The applicable legal framework is the so-called 'cookie clause' in Article

5.3 of the revised e-Privacy Directive (2009/136/EC), which was required to be transposed into national legislation in the 27 Member States by 25th May 2011.

The EASA Framework (or 'Code') was established by the OBA industry in order to meet the requirements of the Directive after it was passed in May 2011.

The recent Opinion would not have come as a shock to EASA who had already received an Open Letter from the Working Party in August 2011, in which the Working Party outlined its data protection concerns with respect to the Code. The Opinion gives further detail on why the Code fails to comply with Article 5.3.

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