

# GDPR Is Now Live! Guidance, Compliance Tips and Likely Enforcement Priorities

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## Overview

- CLE housekeeping
- Overall status following full legal effects of GDPR (since May 25, 2018)
- Results of the meeting of the supervisory authorities on May 24/25, 2018, including setup of the European Data Protection Board
- Available and announced official guidance documents
- Enforcement priorities of regulators, and legal risks resulting from actions taken by individuals and data protection organizations



## Overall status following full legal effects of GDPR

- Since May 25, 2018: Directive 95/46/EC is repealed
- GDPR has full legal effects, directly applicable in the European Union
- Several member states of the EU have adapted national law to GDPR, several have not (yet)
- Incorporation of the GDPR into the EEA agreement has not been completed yet (Norway, Iceland, and Liechtenstein)
- Brexit: Current EU position: UK will be a “third country” after Brexit, needs to apply for an adequacy finding
- Ongoing political discussions regarding the ePrivacy Regulation (which would replace the “cookie”-Directive 2002/58/EC)



## Meeting of the Supervisory Authorities on May 24/25

- The European Data Protection Board (“EDPB”) has replaced the Article 29 Working Party
- The first plenary of the EDPB was held on May 25 in Brussels
- The EDPB website is live at: <https://edpb.europa.eu/>
- The EDPB has adopted rules of procedure and guiding principles
- Chair of the EDPB: Andrea Jelinek (Austria)
- Vice-chairs: Ventsislav Karadjov (Bulgaria) and Willem Debeuckelaere (Belgium)
- A number of Article 29 Working Party documents were “endorsed”



# Endorsed Documents of the Article 29 WP

- Guidelines on consent under Regulation 2016/679, **WP259 rev.01**
- Guidelines on transparency under Regulation 2016/679, **WP260 rev.01**
- Guidelines on Automated individual decision making and Profiling for the purposes of Regulation 2016/679, **WP251rev.01**
- Guidelines on Personal data breach notification under Regulation 2016/679, **WP250 rev.01**
- Guidelines on the right to data portability under Regulation 2016/679, **WP242 rev.01**
- Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is “likely to result in a high risk” for the purposes of Regulation 2016/679, **WP248 rev.01**
- Guidelines on Data Protection Officers (‘DPO’), **WP243 rev.01**
- Guidelines for identifying a controller or processor’s lead supervisory authority, **WP259 rev.01**
- Position Paper on the derogations from the obligation to maintain records of processing activities pursuant to Article 30(5) GDPR
- Guidelines on the application and setting of administrative fines for the purposes of the Regulation 2016/679, **WP 253**



## Endorsed Documents of the Article 29 WP

- Working Document Setting Forth a Co-Operation Procedure for the approval of “Binding Corporate Rules” for controllers and processors under the GDPR, **WP 263 rev.01**
- Recommendation on the Standard Application for Approval of Controller Binding Corporate Rules for the Transfer of Personal Data, **WP 264**
- Recommendation on the Standard Application form for Approval of Processor Binding Corporate Rules for the Transfer of Personal Data, **WP 265**
- Working Document setting up a table with the elements and principles to be found in Binding Corporate Rules, **WP 256 rev.01**
- Working Document setting up a table with the elements and principles to be found in Processor Binding Corporate Rules, **WP 257 rev.01**
- Adequacy Referential, **WP 254 rev.01**



## Guidance Documents – Current Pipeline of Topics

- Interpretation of Art. 3 GDPR
- Privacy Shield
- Cooperation in cross-border cases
- Video surveillance



# Enforcement/Litigation Since Friday

## Schrems ([www.noyb.eu](http://www.noyb.eu))

- Google/Android (France)
- Instagram (Belgium)
- WhatsApp (Hamburg, Germany)
- Facebook (Austria)

## La Quadrature du Net ([www.laquadrature.net](http://www.laquadrature.net))

- Facebook (France)
- Google (Gmail, YouTube, Search) (France)
- Apple (France)
- Amazon (France)
- LinkedIn (France)

Privacy International [www.privacyinternational.org](http://www.privacyinternational.org)





## Enforcement/Litigation Since Friday

- ICANN lawsuit regarding WHOIS (Germany)
- First wave of warning letters under unfair trade practices laws in Germany
- Publication of several “blacklists” for purposes of Art. 35/36 GDPR by various authorities, EDPB alignment is pending
- Blog posts and press releases by various regulators regarding enforcement priorities



# ICO, Draft “Draft Regulatory Action Policy”

<https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/draft-regulatory-action-policy/>

For the coming year, we have identified the following areas as priorities for our action.

1. Large scale data and cyber security breaches involving financial or sensitive information
2. AI, big data and automated decision making
3. Web and cross device tracking for marketing (including for political purposes)
4. Privacy impacts for children (including Internet of Things connected toys and social media / marketing apps aimed at children)
5. Facial recognition technology applications
6. Credit reference agencies and data broking
7. Use and sharing of law enforcement data, including intelligence systems
8. Right to be forgotten/erasure applications



## Some Predictions

- Subject access requests and exercise of data subject rights
- Complaints to regulators first, to be followed by lawsuits (?)
- Alignment within the EDPB
- Litigation



# Thank you for your attention



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