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EU SINGLE DIGITAL MARKET, MOBILE PAYMENTS AND DATA

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SINGLE DIGITAL MARKET STRATEGY

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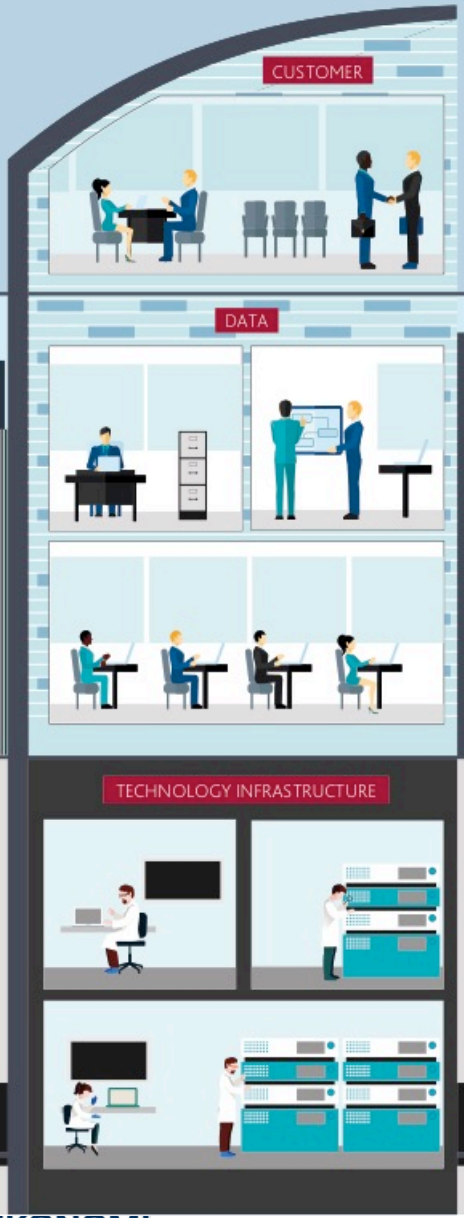
Key themes

- VAT and selling across borders
- Trust and security in digital services
- Boosting competitiveness

OUT-LAW DIGITAL HQ



OUR VIEW OF DIGITAL LEGAL ISSUES

CUSTOMER

- Communications
  - Fairness
  - Keeping the customer in mind
  - Transparency
- Channels
  - Verification
  - Contracting online
  - Authentication
- Providing the service
  - Advice versus guidance
  - Profiling and discrimination
  - Online consumer rights

DATA

- Accessing data
  - Data privacy
  - Anonymisation
  - Consent
- Using data
  - Fairness
  - Sharing
  - Big data
- Data governance
  - Data security
  - Dealing with a data breach
  - Responding to users

TECHNOLOGY INFRASTRUCTURE

- Sourcing strategy
  - Working with partners
  - Data security
  - Cloud
- Technology risk and resilience
  - Security incidents
  - Outages
  - Business continuity
- Managing suppliers
  - Visibility
  - Integration
  - Building trust

OPPORTUNITIES IN REGULATION

Key developments

1. Mobile payments
   - Innovation and customer choice – PSD2
   - A UK Government initiative and access to current account data
2. Using and sharing data
   - GDPR and other initiatives
3. Data Security
   - The Network and Information Security Directive
   - PSD2, GDPR and others

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PAYMENTS

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PAYMENT SERVICES DIRECTIVE II

Key policy initiatives

- Wider consumer choice
- Keep pace with innovation
- Improve security

European Commission's views

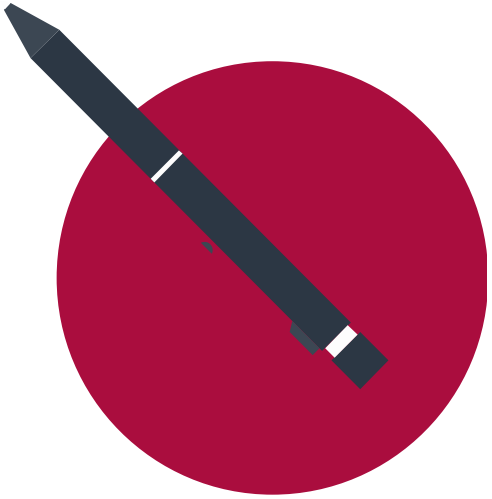
"… online shopping without the need for a credit card"

"... unconditional refund right"

"… stricter approach on security should contribute to reducing the risk of fraud"

CONSUMER CHOICE

Payment initiation service providers (PISPs)
Initiate a payment order from a payment account held at another payment service provider (ie. bank)



"These services offer a low-cost solution for both merchants and consumers and provide consumers with a possibility to shop online even if they do not possess payment cards"

CONSUMER CHOICE

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PISPs

- Customers guaranteed right to use
- Authorisation required
- Reduced minimum own funds requirement (of EUR 50,000)
- Must hold PI or comparable guarantee
- Required to authenticate and communicate securely
- Need **explicit consent** from customers prior to first request for confirmation
- No contracts with banks required to provide service

CONSUMER CHOICE

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PISPs

- Banks must ensure PISP payments handled '**promptly** in a **nondiscriminatory way**'
- Payer can claim a **refund from the bank** even if a PISP has been involved
- PISP liable for unauthorised, non-executed, defectively executed, late transactions – immediately compensate the bank
- Concern - possibility of widespread losses caused by a **thinly capitalised PISP**!

CONSUMER CHOICE

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Account Information Service Providers (AISPs)

- Consolidated information on many payment accounts
- Held with more than one payment service provider (multiple bank account providers, credit card, etc)
- They enable customers "*to have an overall view of their financial situation immediately at a given moment*"
- Online banking guarantee not lost

WIDEN CONSUMER CHOICE

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AISPS

- Consumers guaranteed a right to use AISPs
- Respond to data requests from AISPs in a **non-discriminatory way**
- **Banks prevented** from:
  - **tying AISPs into contracts**, or
  - forcing AISPs to adopt particular business models and practices
- Must hold PI or a comparable guarantee
- Expressly **exempt from authorisation**, but must register
- **Not subject to regulatory capital requirements**

ACCESS TO CURRENT ACCOUNT DATA

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Report Published

'Data Sharing and Open Data for Banks'

Autumn 2014

25 Jan 2015

Call for Evidence:

- How best to deliver an open standard for banking APIs?
- Will more open data in banking benefit consumers?

25 Feb 2015

Consultation closed

- 40 responses

March 2015

Responses published

End 2015

HMT commitment

To deliver 'detailed framework for design of the API standard

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OPPORTUNITIES

- More direct competition with startups
- Opportunities to collaborate
- Challenger banks or alternative finance providers
- Effective decisions who to lend money
- Comparison applications
- Detailed and accurate assessments of how customers can save money
- More informed consumers
- More consumer choice about banking products and who to bank with

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USING DATA

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PROFILING

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Current position

- Right not to be subject to a decision which produces:
  - legal effects
  - 'significantly affects' a person
- based solely on automated processing of data
- intended to evaluate certain personal aspects, such as 'performance at work, creditworthiness, reliability, conduct, etc.'

Exceptions:

"If the decision is taken in the course of the entering into or performance of a contract suitable measures to safeguard consumers legitimate interests or authorised by law."

*"Every data subject must also have the **right to know the logic involved in the automatic processing** of data concerning him, at least in the case of the automated decisions"*

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PROFILING – REGULATORY VIEW

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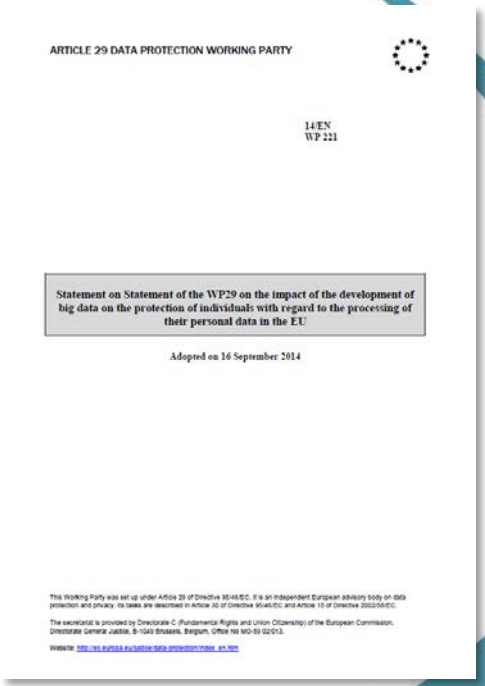
Legitimate interests : Getting to know customers' preferences, better personalise offers, offer products and services that meet customer needs and desires

Balancing privacy: Does not mean monitor all online or offline activities, combine vast amounts of data from different sources collected in other contexts, create complex profiles

Fairness: Privacy impact assessments, anonymisation, reasonable expectations of person involved.


ARTICLE 29 DATA PROTECTION WORKING PARTY

14/EN
WP 221

Statement on Statement of the WP29 on the impact of the development of big data on the protection of individuals with regard to the processing of their personal data in the EU

Adopted on 16 September 2014

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PROFILING - GDPR

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Generally agreed position

- Definition to include performance at work, economic situation, location, health, personal preferences, reliability or behavior
- Right to know about profiling – transparency
- Grounds for processing
  - Necessary for a contract
  - Authorised by law
  - Customer consent

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PROFILING – GDPR

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Remaining issues

- **Generally allowed** plus right to object OR **generally banned** plus derogations
- Generally allowed if '**in the interest of the consumer** or another person'
- Restrictions apply to decisions based 'solely' on automated means OR to decisions based 'solely or predominantly' on automated means
- All profiling to 'include' human intervention OR individuals have the right to obtain human intervention
- Clear derogation for use in 'detecting and preventing **fraud / tax evasion**?
- Extent to which **sensitive data** can be used in profiling
- Further restrictions to **prevent discrimination** / requirement to implement processes to protect against discrimination

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OTHER IMPORTANT ISSUES FOR DEBT COLLECTION - GDPR

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1. **Consent**
   - Loosening restrictions for fraud detection and prevention
   - Clear that consent not necessary were vital interests are at stake

2. **Data portability**
   - Should it be covered by the GDPR? More a competition law issue?

3. **Subject Access Requests**
   - Charge a fee? Only where requests are ‘manifestly excessive’?
   - Sufficient time to respond?
   - Exceptions – exposes other individuals’ personal data , confidential data, IP, commercially sensitive data?

4. **Right to be forgotten / erasure**
   - Automatic obligation v right exercised on request
   - Exception for establishment, exercise, defence of legal claims

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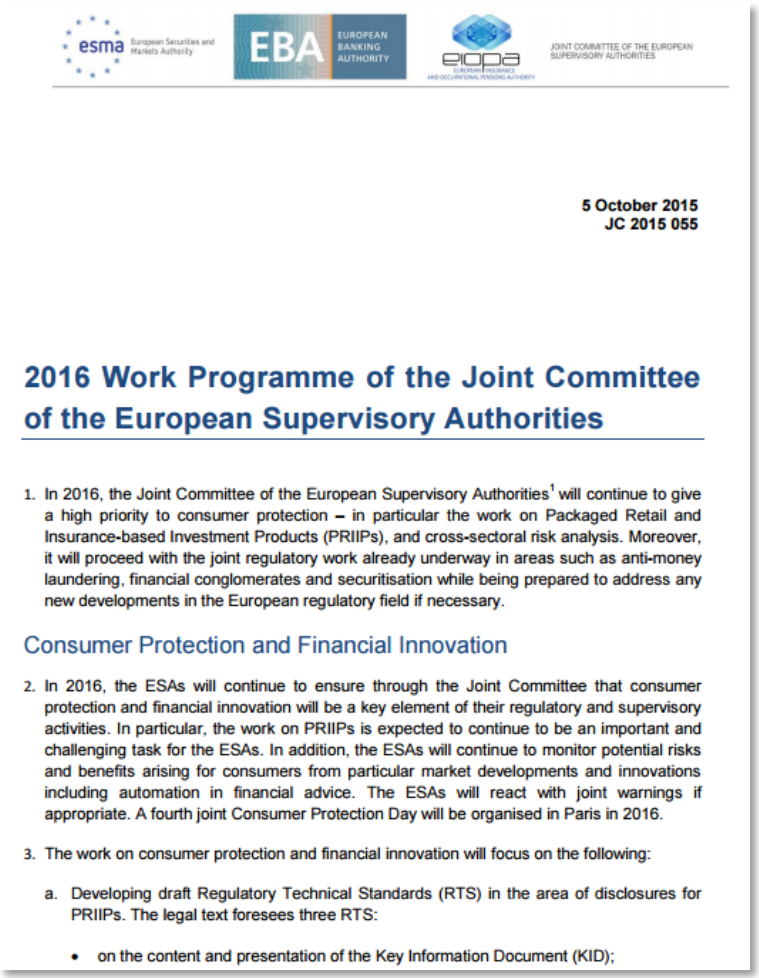
INDUSTRY CONSULTATIONS



esma European Securities and Markets Authority | EBA EUROPEAN BANKING AUTHORITY | eiopa EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY | JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

5 October 2015
JC 2015 055

2016 Work Programme of the Joint Committee of the European Supervisory Authorities

1. In 2016, the Joint Committee of the European Supervisory Authorities[1] will continue to give a high priority to consumer protection – in particular the work on Packaged Retail and Insurance-based Investment Products (PRIIPs), and cross-sectoral risk analysis. Moreover, it will proceed with the joint regulatory work already underway in areas such as anti-money laundering, financial conglomerates and securitisation while being prepared to address any new developments in the European regulatory field if necessary.

Consumer Protection and Financial Innovation

2. In 2016, the ESAs will continue to ensure through the Joint Committee that consumer protection and financial innovation will be a key element of their regulatory and supervisory activities. In particular, the work on PRIIPs is expected to continue to be an important and challenging task for the ESAs. In addition, the ESAs will continue to monitor potential risks and benefits arising for consumers from particular market developments and innovations including automation in financial advice. The ESAs will react with joint warnings if appropriate. A fourth joint Consumer Protection Day will be organised in Paris in 2016.

3. The work on consumer protection and financial innovation will focus on the following:

   a. Developing draft Regulatory Technical Standards (RTS) in the area of disclosures for PRIIPs. The legal text foresees three RTS:

      - on the content and presentation of the Key Information Document (KID);

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DATA SECURITY

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KEEPING DATA SECURE

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1. GDPR
   - Personal data breach reporting
   - High risk or all breaches
   - Notifying customers

2. Network and Information Security Directive
   - Security incidents
   - Regulatory reporting
   - ‘E-commerce platforms’

3. Payment Services Directive II
   - Strong customer authentication
   - Regulatory reporting

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OPPORTUNITIES IN REGULATION

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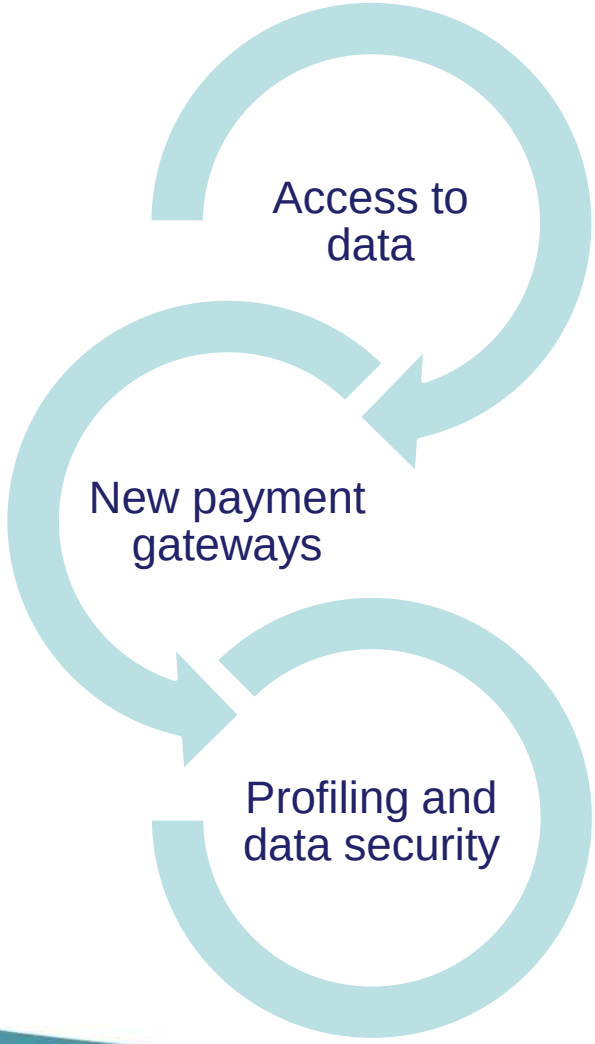

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QUESTIONS

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