



# DPO Newsletter – September 2019



## Quick News for DPOs

September 2019

### 1. Tracking data protection trends



The EDPS presented its second [infographic](#) on key issues and trends in data protection within the EU institutions. Published once every three months, the infographic tracks the trends in the key areas of consultations, complaints and training to help the EU institutions identify potential areas for improvement and to ensure that the assistance we provide is always relevant.

### 2. EDPS lists on mandatory DPIAs

At the end of July 2019, the EDPS published the [lists of personal data processing operations that require a Data Protection Impact Assessment \(DPIA\)](#) and those that do not, following the EDPB Recommendation 01/2019. For more information on this topic, you can also consult the [Accountability on the ground toolkit](#) and the Article 29 Working Party's [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](#).



### 3. Relevant Case law – CJEU



**Judgment in Case C-40/17 Fashion ID GmbH & Co. KG v Verbraucherzentrale NRW eV**

The Court of Justice of the European Union (CJUE) ruled a landmark [decision](#) on 29 July 2019 regarding the concept of joint-controllership. In its judgement, the CJEU held that websites with embedded Facebook "Like" buttons can be considered joint controllers for "the collection and transmission to Facebook of the personal data of visitors to its website".

This court case analysis a German online clothing retailer (Fashion ID), which embedded on its website the Facebook "Like" button. As a consequence, personal data of visitors

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consulting the website of Fashion ID were transmitted to Facebook Ireland without those visitors being aware of it and irrespective of whether they were a member of this social network or had clicked on the "Like" button. However, the Court ruled that Fashion ID responsibility as joint-controller is limited to the collection and transmission of the data to Facebook and it cannot be considered a controller regarding further data processing operations carried out by Facebook for its own purposes.

The CJEU's judgement will possibly impact third-party technologies other than the Facebook "Like" button, such as cookies and pixels.

Despite this case had been launched before the GDPR entered into force, the conclusions are similar in the current legal framework.

### 4. Listen to our latest podcast episode on risk in data protection

Ute Kallenberger interviewed post-doctorate researcher Dr Raphaël Gellert on the risk-based approach in the EU's data protection reform, including the ethical issues raised by data protection. Their conversation addresses many issues, one being vulnerable groups of data subjects, such as refugees. [Listen to the latest podcast episode to find out more!](#)



### 5. Data protection tip of the month: Adopt a risk mind-set – identify, manage and mitigate risks!



- Before starting a new data processing operation, check the EDPS mandatory DPIA list and assess the need to perform one.
- If needed, perform a DPIA, taking into account the risks to data subjects.
- Manage and mitigate the identified risks!

### 6. TechDispatch

The EDPS regularly publishes TechDispatch reports that aim to explain emerging developments in technology. The TechDispatch reports are part of the wider EDPS activities on technology monitoring. Each TechDispatch provides factual descriptions of a new technology, preliminarily assesses possible impacts on privacy and the protection

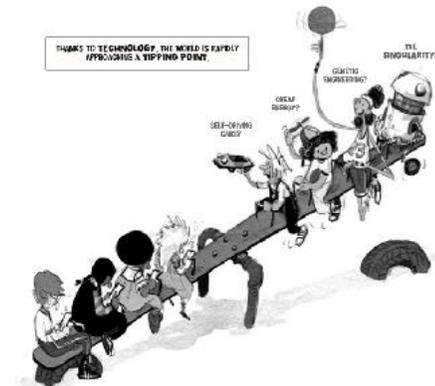


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of personal data, as we understand them now, and provides links to further recommended reading.

To receive future issues of the TechDispatch directly in your mailbox, please subscribe by clicking the link: [Subscribe to TechDispatch](#).

### 7. Have an excellent rentrée!



Feel free to share this newsletter with your DPCs!

For more information on how the EDPS collects your personal data, see [our data protection notice](#).

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## 1. EDPS updates Guidance on Article 25 internal rules



Following our acquired experience and continuous learning process, the EDPS has decided to update its Guidance on Article 25 of the Regulation 2018/1725 and internal rules. The new version will be published by the end of the year.

In this update, we will provide a checklist, a new model for internal rules and additional remarks. Please note that if the EDPS has already provided you with comments and your EUI has subsequently adopted internal rules, there is no need to change them.

## 2. EDPS checklists and flowcharts

To facilitate the role of the DPOs, the EDPS drafted some checklists on the:

- [Duties of the Controller](#)
- [Duties of the Processor](#)
- [Requirements for a processing agreement](#)



Please also see [the EDPS flowchart on the processor, controller and joint-controller](#) and [the flowchart on data transfers in the context of Brexit](#), as well as [useful points and questions on data protection](#).

## 3. Relevant Case law – CJEU



On 1 October 2019, the EU Court of Justice (CJEU) ruled on a case regarding the invalidity of pre-ticked checkboxes when giving consent for the storage of cookies. First, the Federation of German Consumer Organisations (VZBV) challenged at national level the use of pre-ticked boxes for online players to accept cookies, in order to advertise the company's (Planet49) partners' products. Subsequently, the case arrived at the CJEU for interpretation of EU Law on the protection of electronic communications privacy.

In the end, the CJEU supported the opinion of the VZBV and decided that pre-ticked boxes are insufficient. This judgment underlines the fact that consent must be specific and explicit.

In addition, the Court clearly states that information regarding the duration of the operation of cookies and whether or not third parties may have access to those cookies must be given to users (data subjects).

## 4. Digital Ethics

Recalling key messages from last year's International Conference of Data Protection and Privacy Commissioners (ICDPPC):

*"Not everything that is legally compliant and technically feasible is morally sustainable."*

Giovanni Buttarelli



## 5. Data protection recommendation of the month:



During European cybersecurity month, seize the moment to raise awareness on how to report data breaches in your EUI!

## 6. Giving a stronger voice to the DPOs

The first anniversary of Regulation (EU) 2018/1725 is approaching! We are happy to receive your views and concerns, so that we can address them better! Please take 2 minutes to reply to this very [short survey](#) and we will show the statistical results in the next DPOs' meeting.



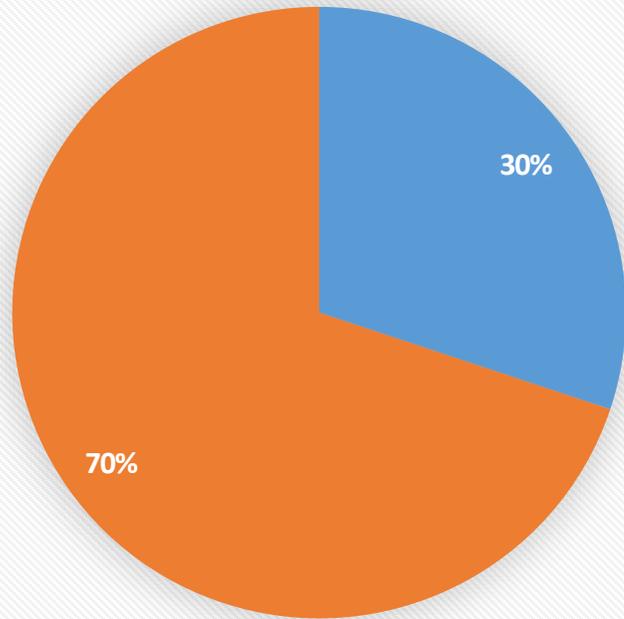
## 7. See you at the DPOs' meeting in Florence!

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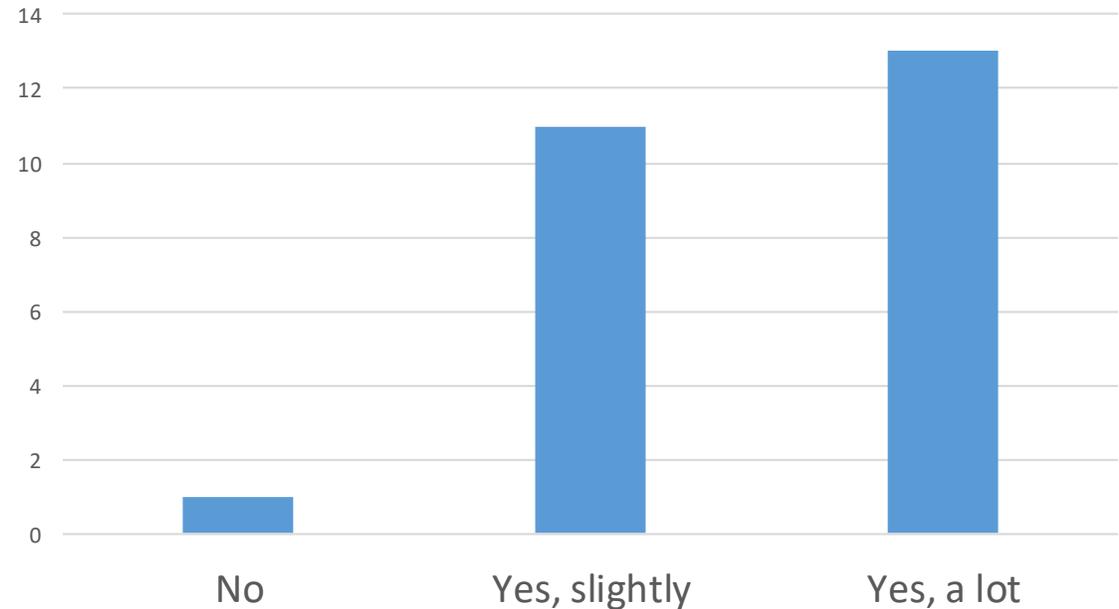
# EDPS Survey to DPOs – results October 2019

Level of participation in the survey



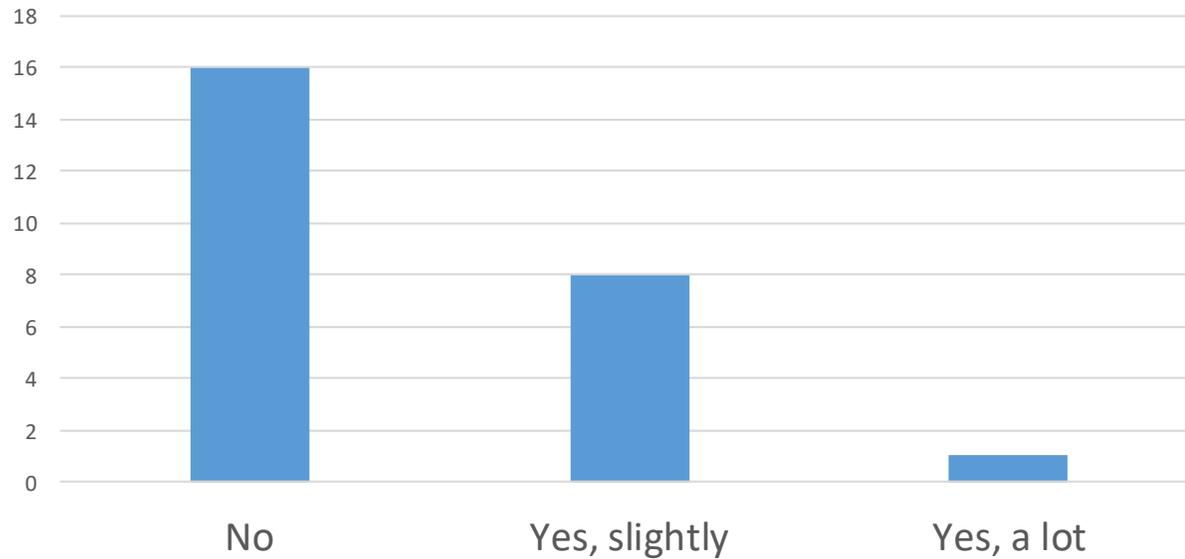
■ answered ■ not answered

1. Has the EUDPR brought a change in the data protection culture from top to bottom in your EUI?



# EDPS Survey to DPOs – results October 2019

## 2. Have the access requests increased since EUDPR entered into force?



# EDPS Survey to DPOs - results October 2019

## 3. What were your main concerns when the EUDPR entered into force? Are they still the same?



# EDPS Survey to DPOs - results October 2019

## 4. What can the EDPS do to help you more?

