

[Redacted]

From: [Redacted]
Sent: 04 November 2016 18:23
To: [Redacted]
Cc: [Redacted]
Subject: RE: GDPR Implementation: European Data Coalition's recommendations

Caro [Redacted]

Giovanni has asked me to thank you for your message. He would be very pleased to have a short discussion with you but it is going to be tricky to find time in the diary between now and Christmas. I know you have also been in touch with my colleague [Redacted]. Please arrange a time directly with her so that you can liaise directly to find a convenient time to meet one or two members of the team.

Saludos

[Redacted]

Da: [Redacted]
Data: mercoledì 19 ottobre 2016 11:51
A: [Redacted]
Cc: [Redacted]
Oggetto: GDPR Implementation: European Data Coalition's recommendations

Dear Mr. Giovanni Buttarelli,
I hope this email finds you well.

The European Data Coalition (EDC) is a group of 21 companies, from SMEs to global multinationals and non-profit organisations operating in a variety of sectors on a national, regional and global scale. We operate across different sectors of the economy, but we are all present in the digital economy both within and beyond the borders of the European Union. With an aggregate turnover (2015) of over 222 billion EUR and some 968.000 employees worldwide, our footprint allows us to bring growth, progress and jobs to the EU's economy.

Before the General Data Protection Regulation (GDPR) becomes fully applicable in 2018, the EDC is keen to participate in the ensuing technical discussions between the Regulators and Industry with the objective of laying the ground to a promising EU data-driven economy. As also stated in our manifesto, attached for your review, we are convinced that in order to fulfill the necessary conditions for a competitive and prosperous EU digital market, we need clear, predictable and practical provisions. To that effect, and in reflection of Article 29 Working Party's priorities for the implementation of the GDPR and its commitment to a culture of engagement with all stakeholders, the EDC has produced a list of recommendations. These are based in our member's concrete experiences and challenges in their process to become GDPR compliant. For each identified uncertainty or challenge, we attach a recommendation on how we believe the new provisions should be interpreted.

We would very much like to have an opportunity to discuss with you and your colleagues. Please, let us know if you would have an opportunity to meet us. We would greatly appreciate to exchange information and discuss these recommendations with the EDPS. As we are located in Brussels, we can easily accommodate to your convenience.

Regards,

A black rectangular redaction box covering the signature of the sender.

[REDACTED]

From: [REDACTED]
Sent: 21 November 2016 10:56
To: [REDACTED]
Subject: RE: GDPR Implementation: European Data Coalition's recommendations

Thank you and best regards,
[REDACTED]

From: [REDACTED]
Sent: 21 November 2016 09:56
To: [REDACTED]
Subject: Re: GDPR Implementation: European Data Coalition's recommendations

Hi [REDACTED]

Thank you so much for meeting us last week, it was incredibly helpful. We will continue to try to also engage with other DPAs. I hope some will be interested in a document like the one we produced. Should you have any questions on the recommendations we produced, please let us know and we would be happy to discuss further. I hope we can maintain an open communication between us going forward, particularly once the first batch of guidelines are adopted by the working party.

Best regards,
[REDACTED]

Background

Article 18 of the draft General Data Protection Regulation introduces the data subject's right to data portability, i.e. to transfer data from one electronic processing system to and into another, without being prevented from doing so by the controller. The concept of access to data is contained within existing data protection regulations. Changes in other legislation (e.g. Directive 2013/37/EU on the reuse of public sector information) have supported efforts to also increase access to information in a form which is reusable (see also Opinion 06/2013).

This topic has been identified in the draft WP29 2016-18 work programme and could also provide practical guidelines to data controllers including consideration of data readability, use of open formats and data reuse. This topic may include advice to comply with subject access requests and thus input from the Key Provisions subgroup has been sought.

The WP29 granted the TS a mandate to draft an opinion on this topic at the 103rd plenary.

Main points of discussion

The Key Provisions Subgroup provided written comments on the draft prepared by the Technology Subgroup and plans to provide further input as necessary, in coordination with the Technology Subgroup rapporteur and coordinator.

■ presented an amended version of the opinion text which would address the topic of data portability which had been re-drafted in light of comments received from the previous meeting.

The text is maturing although there are still examples which need to be developed in order to give data controllers clear guidance. ■ DPA will develop these examples for the next meeting.

Actions requested from the Plenary

- Members are invited to note the state of play and make comments on the current opinion draft

Background

Article 18 of the draft General Data Protection Regulation introduces the data subject's right to data portability, i.e. to transfer data from one electronic processing system to and into another, without being prevented from doing so by the controller. The concept of access to data is contained within existing data protection regulations. Changes in other legislation (e.g. Directive 2013/37/EU on the reuse of public sector information) have supported efforts to also increase access to information in a form which is reusable (see also Opinion 06/2013).

This topic has been identified in the draft WP29 2016-18 work programme and could also provide practical guidelines to data controllers including consideration of data readability, use of open formats and data reuse. This topic may include advice to comply with subject access requests and thus input from the Key Provisions subgroup may be required.

The WP29 granted the TS a mandate to draft an opinion on this topic at the 103rd plenary.

Main points of discussion

presented a table of examples to be discussed within the meeting which included:

- Email inbox
- Contact lists
- Group chats
- Blog posts and comments
- Information provided for an insurance policy
- Banking transactions

Each was discussed in turn indicating the extent to which data portability might apply to each.

Actions requested from the Plenary

- Members are invited to note the state of play and make comments on the current opinion draft

Article 29 Data Protection Working Party
Key Provisions Subgroup
23 June 2016 (10:00 to 16:00)
(46 rue Luxembourg, Brussels,

15:00-15:45 Data portability (assisting Technology subgroup) (EDPS)

- Short presentation by EDPS regarding state of play and next steps
- Suggested deliverable from the subgroup at this stage: practical examples to help interpret the notions of '*provided by the data subject*' and '*shall not adversely affect the rights and freedoms of others*' (GDPR, Article 20(1) and (4))¹

¹ Please come with at least a couple of examples which you feel would fall under the requirement of data portability, and a couple of examples where you are unsure or where you feel strongly they should not fall under the requirements (e.g.: 'raw health and fitness data recorded by Fitbit or similar device'; 'personal collection of photos of family and friends that an individual uploaded and shared with selected contacts on a social network'). We would like to use these contributions as a basis for discussion.

[REDACTED]

From: JUST ARTICLE29WP SEC (EC)
Sent: 24 June 2016 12:29
To:

Subject: Key provisions - To Do list and portability
Attachments: Data portability bulletpoints 2016 06 23 clean.doc
Categories: Important

Forwarded at the request of [REDACTED]

Dear Key Provisions Subgroup Members,

As discussed during the subgroup meeting yesterday, for your review and comments, please see attached a draft contribution (possible examples) to discussions on data portability at the next Technology Subgroup meeting.

Please send any comments to [REDACTED] at [REDACTED] with a copy to [REDACTED] at [REDACTED]

As the next Technology Subgroup meeting will take place in about a week's time, we would be grateful to receive any comments by this coming Tuesday, 28 June, so we can send our contribution in time to the Technology Subgroup.

Data Portability - examples

Contributions (from the Key Provisions Subgroup to the Technology Subgroup)

Draft 23 June 2016

Below are a selection of practical examples to help illustrate how to interpret the notions of 'provided by the data subject' and 'shall not adversely affect the rights and freedoms of others' (GDPR, Article 20(1) and (4)).¹

The purpose of this document is to facilitate further discussions in the Technology Subgroup. Our aim was to make a preliminary list of items where we think it is most likely that we can agree that the right applies, and another where it is most likely that we can agree that the right does not apply. We also made a third list of items 'to be discussed further', with some suggestions for further considerations for arguments for and against the applicability of the right of data portability.

Examples where data portability applies:

- raw health and fitness data recorded by Fitbit or similar device (including metadata such as time and location but not including data further processed such as calories burnt or other statistics about daily or weekly averages)
- raw health data recorded by a medical device at a hospital
- transactions on an individual's bank account (including payments into the account) and transactions on an individual's bank card
- personal documents (e.g. in Word, Excel or PowerPoint format) uploaded or created by the user on a site used to store and edit documents online
- transfer of content from one file sharing service to another (e.g. DropBox to OneDrive)
- personal collection of photos of family and friends that an individual uploaded and shared with selected contacts on a social network² (but how about photos that others posted *about* the individual?³)
- diary entries entered into an on-line diary service (e.g. a generic diary or a more specialised one such as food diary, mood diary, exercise diary, or sleep diary)
- list of items bought using an individual's loyalty card, along with prices and metadata such as time and date of purchase and location
- playlist of songs or videos an individual prepared using an online service (the lists of songs/videos, their order, title of playlist, etc)
- the titles of books purchased by an individual from an online bookstore

Examples where data portability does not apply:

¹ The Key Provisions Subgroup previously provided examples for issues relating to the legal basis of the processing, which also has an influence on whether or not the right applies. These will not be repeated or further discussed here.

² We could clarify that the social networking site is not obliged to redact the photos (e.g. obliterate faces and number plates) to protect third party rights.

³ This would most likely be covered by the right of access.

- an individual's credit score assessed by a credit reporting agency using its own assessment methodology (note: right of access still apply)
- outcome of the assessment of an individual's health for life insurance purposes, assessed by an insurance company using its own assessment methodology (note: right of access still apply)
- an individual's profile created by an organisation for marketing purposes (e.g: 'suburban Mum in affluent neighbourhood with preschool age children') (note: right of access still apply)
- in case of health and fitness data recorded by Fitbit or similar device data further processed such as calories burnt or other statistics about daily or weekly averages

To be discussed further:

- call history of a mobile phone used by an individual? concern: it includes data on third parties listed in the history, which could then be further used contrary to their expectations; consider further if telecoms regulations are also relevant here
- address book (containing names, addresses, email addresses and phone numbers) of an individual? portability enables switching providers and possibly also using additional services such as aggregating and cleaning up address books; portability of address books is becoming common practice; however, it also includes data about third parties, which could here also be further used contrary to their expectations
- smart metering data of a household held by the electricity company? (possibly for raw consumption data with consent of other members of the household?).
- raw data collected from smart connected cars, homes, equipment (possibly with consent in case of shared use?)
- emails, instant messages, tweets sent *and* received by an individual? here also, a large amount of third party-data are used, therefore, consider also risks of incompatible use without consent of all those concerned
- messages posted on social networking site by the individual? how about messages posted *about* the individual? From the policy and feasibility perspective, is this realistic or desirable to provide portability here? (some academics instead suggest an obligation to interconnect social networks, but this also has impact on privacy/data protection side);
- reviews written by the individual on a book review site/reviews written by an individual on eBay, Airbnb, Uber? how about reviews written *about* the individual? Right of access remains applicable.
- internet search history (what if users are not authenticated?)
- contents and purchases made on digital platforms (music, films, eBooks, audiobooks, applications)? whereas this may be desirable from the consumers' perspective, is this primarily a data protection concern?
- an individual's medical records (e.g. blood-test results, X-rays, and results of various other exams, medical history of treatments) held by a hospital in an electronic form? Data are originally generated by the user but processed and analysed to develop additional information, which makes the application of portability disputable. Note from a non-data protection perspective the advantages of portability for scientific research on one hand, but also possible additional costs on healthcare providers on the other hand; (note also that some countries may regulate the possibilities of patient access and transfer to medical records, which may have an influence on portability in practice.

- data collected by mobile phones (e.g. location data) in the back-ground (invisible to the user) as a by-product of providing a service?

[Redacted]

From: [Redacted]
Sent: 29 June 2016 16:40
To: [Redacted]
Cc: [Redacted]
Subject: RE: WP29 Key Provisions subgroup - meeting 23 June 2016 - contributions to data portability draft
Attachments: Data portability bulletpoints 2016 06 29.doc
Importance: High
Categories: Important

Dear [Redacted]

As anticipated, please see attached a few potential examples on data portability. Feel free to circulate to subgroup members, incorporate in the next draft, or use in any other way you find it useful.

Kind regards,

[Redacted]

From: [Redacted]
Sent: 21 June 2016 11:42
To: [Redacted]
Cc: [Redacted]
Subject: WP29 Key Provisions subgroup - meeting 23 June 2016 - contributions to data portability draft

Dear [Redacted]

For info, please see attached the agenda of the next Key Provisions subgroup meeting (Thursday this week).

As discussed, we have kept data portability on the agenda, and we'll try to focus on potential examples. For your convenience, relevant part of the agenda is excerpted below.

15:00-15:45 Data portability (assisting Technology subgroup) (EDPS)

- *Short presentation by EDPS regarding state of play and next steps*
- *Suggested deliverable from the subgroup at this stage: practical examples to help interpret the notions of 'provided by the data subject' and 'shall not adversely affect the rights and freedoms of others' (GDPR, Article 20(1) and (4))*

Please come with at least a couple of examples which you feel would fall under the requirement of data portability, and a couple of examples where you are unsure or where you feel strongly they should not fall under the requirements (e.g.: 'raw health and fitness data recorded by Fitbit or similar device'; 'personal collection of photos of family and friends that an individual uploaded and shared with selected contacts on a social network'). We would like to use these contributions as a basis for discussion.

If you have received any examples from Technology Subgroup members (I think at the last Tech subgroup meeting [Redacted] asked members to send contributions) or have any list of your own (or updated draft opinion), I would be grateful if you could forward these, so we do not need to re-invent the wheel and could build on existing work.

(1)

From: [REDACTED]
Sent: 30 June 2016 15:28
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: WP29 Key Provisions subgroup - meeting 23 June 2016 - contributions to data portability draft
Attachments: Comments on data portability examples
Categories: Important

Dear [REDACTED]

To complete, please also see attached an additional useful contribution from our Estonian colleagues. I would personally agree with them that most of what is listed under 'to be discussed' in the Key Provisions subgroup contribution can be moved (after further nuancing perhaps) to the examples of where data portability applies, but let's see how much of a consensus you will manage to get in the subgroup. Their comments on consent for shared use is also useful food for thought - perhaps we can see what other ways of user control and transparency we can think of for shared use, rather than saying we need 'consent', and what is the best way forward.

Kind regards and see you next week.

[REDACTED]

From: [REDACTED]
Sent: 29 June 2016 16:40
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: WP29 Key Provisions subgroup - meeting 23 June 2016 - contributions to data portability draft
Importance: High

Dear [REDACTED]

As anticipated, please see attached a few potential examples on data portability. Feel free to circulate to subgroup members, incorporate in the next draft, or use in any other way you find it useful.

Kind regards,

[REDACTED]

WP29 Subgroups on GDPR

Guidance provided by the Plenary on the issues raised by the rapporteurs

28th September 2016

On Data Portability

The Rapporteurs will take into account that the notion of data provided by the person should not be unduly restricted. For example, data contained in a person's file should be considered as provided by that person. As a consequence, a mail box is portable even if the emails were sent by another person for instance.

However, the knowledge generated by the data controller (e.g. Analysis based on raw data, to decide in which category a data subject should be classified) is not covered by the right to portability.

From: JUST-ARTICLE29WP-SEC@ec.europa.eu
Sent: 12 October 2016 10:11
To:

Subject: A29 Technology Subgroup - Agenda for the next meeting
Attachments: 2016-07-04 - Minutes - v1- 20160704.pdf, 2016-10-19 - Agenda - Technology Subgroup - 20161019.pdf

Forwarded at the request of [REDACTED]

Dear colleagues,

In preparation for the TS meeting next week, please find attached a draft agenda and minutes of the last meeting.

I will distribute a ToDo list in the next few days.

[REDACTED] will circulate a draft of the data portability opinion shortly.

[REDACTED] will circulate a summary of responses of the questionnaire on risky processing shortly.

Regards,

Article 29 Data Protection Working Party

Technology Subgroup – Minutes

04-05 July 2016

- Agenda item C.4.c - The Technology subgroup will continue its work on [REDACTED] and data portability. [REDACTED]

(5) Data portability

Following a discussion at the previous technology subgroup meeting [REDACTED] and [REDACTED] DPAs agreed to further investigate the topic in order to inform the group about the current state of play and recommend a suitable way to proceed.

A mandate was given to the Technology subgroup during the 103rd plenary meeting to draft an opinion on Data portability.

The group discussed the table of examples prepared by [REDACTED] which included:

- Email inbox
- Contact lists
- Group chats
- Blog posts and comments
- Information provided for an insurance policy
- Banking transactions
-

The dangers of including the personal data of third-parties was also discussed. Recommendations will be made in the opinion to include a "do not port" flag on data provided to a forum etc. and for the data controller to make different version

of download available depending on the purpose but noted that obtaining data is a separate step to onward transfer.

It was agreed that data resulting from a calculation or algorithm by the data controller would be out of scope.

A new draft including comments made will be circulated in advance of the next meeting.