02 CONSENT

What is needed?

Consent is an important legal basis for the use of personal data. As it is one of the six legal bases for processing data, it is important to define "consent" properly.

Consent should be explicit, specific and informed in all circumstances. In practice, this means that consent should always be strictly linked to the processing that the user was informed about and not include other forms of use of personal data.

A user must receive sufficient information to be able to understand the consequences before he or she can give their consent to the processing of their data.

In practice, data controllers should not be able to use "pre-ticked boxes" to gain users' consent for the processing of their personal data, nor infer their consent from other actions such as acceptance of general terms and conditions.

negative amendments

A set of amendments tries to undermine the concept of consent by allowing for the possibility of implicit consent, instead of offering a real choice to data subjects. Amendments 757 (ALDE), 758 (ALDE), 760 (S&D), 762 (ALDE), 764 (ECR) and 765 (EPP) follow this approach. Implicit consent offers less protection, as it can be assumed or included in general terms and conditions. Users will lack a genuine choice about how their data will be processed.

Other amendments introduce a new and unclear concept of "broad consent". This new notion could undermine legal certainty for controllers and would create a loophole, where data subjects agree to something they do not fully understand.

These are for instance amendments:

3066 (EPP), 3067 (ALDE), 3068 (S&D), 3069 (ALDE), 3076 (ALDE), 3079 (ALDE) and 3084 (S&D).

positive amendments

Amendments providing a clear connection between the consent and the purpose are very welcomed and provide more legal certainty. These include: 89 (Greens), 763 (GUE-NGL) and 1000 (EPP).

Clearly specifying that the consent should be both explicit and informed would also be a very good addition. See for example amendment 854 (S&D).

Consent should not only be limited to specific purposes, but also be automatically declared invalid when given in a general and abstract way to unspecified and unpredictable forms of data processing. This is proposed in amendment 1000 (EPP).

LAW ENFORCEMENT ACCESS

Recent revelations, such as in relation to the PRISM programme, show us that the existence of any database generates a risk of abuse of that database. It is therefore crucial for the decision about whether or not to undergo such a risk to lie in the hands of each individual. Consent, in combination with data minimization is essential to allow data subjects to control the collection and use of their personal data.

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