

**The “cookies pledge” project**

**March 2023-2024**

**Summary of the meetings held with stakeholders and documents prepared by Commission services.**

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### RELEVANT ACRONYMS:

- **GDPR:** General Data Protection Regulation - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
- **DMA:** Digital Markets Act - Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828.
- **DSA:** Digital Services Act - Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC.
- **ePrivacy:** Directive 2002/58 concerning the processing of personal data and the protection of privacy in the electronic communications sector.
- **EDPB:** European Data Protection Board.
- **EDPS:** European Data Protection Supervisor, a part of it is ensuring the secretariat of the EDPB.
- **DPA:** Data Protection Authorities.
- **WIKI:** online platform used by the European Commission and participating stakeholders in the framework the Cookies Pledge project.

## I. Introduction and main takeaways

During the [European Consumer Summit of March 2023](#), Commissioner Reynders launched the so called “cookies pledge” project. Under this initiative, the Commission services worked together with stakeholders on voluntary business solutions to better empower consumers in the data economy, in particular in relation to personalisation of advertising and personal data sharing. This project was named the cookies pledge to indicate its voluntary nature, even though it was only an exploratory and participatory work strand.

The project aimed at reducing the need for consumers to constantly accept or reject cookies and other trackers (the source of the so called “cookie fatigue”) in the first place. The initiative was also meant to provide consumers with clear information and better understanding of the business model of the company behind the website/app they use and to empower consumers to choose the advertising model fitting best their privacy preferences.

The initiative must comply with existing legislation and in particular the General Data protection Regulation (GDPR), the ePrivacy Directive, the Digital Markets Act (DMA), competition rules and applicable legislation, in particular the Unfair Commercial Practices.

The cookies pledge process was welcomed by all stakeholders who participated actively in the process. This process offered an unprecedented opportunity to bring together in the same forum all the actors of the digital ecosystems, including representatives of consumers, civil society, big tech, advertising and retail platforms, publishers, social media, search engines, ad tech providers and advertisers. This enabled an open discussion of all the challenges faced by these different actors and of the growing importance of advertising as the main source of revenues for all the businesses in intermediary positions between the consumers and the advertisers.

The Commission involved the European Data Protection Board (EDPB) in the project and consulted it on the envisaged simplifications. The feedback provided by the EDPB in their opinion showed that some room for simplification exists and could be implemented in compliance with the GDPR and ePrivacy Directive.

The pledging principles prepared within the project constitute a set of well-balanced solutions that, once applied, would be of added value to consumers. Applying these principles as best practices is therefore highly recommended.

Overall, the extensive discussions and exchanges with stakeholders within the project confirmed the complexity of digital advertising but also highlighted several concerns which have a merit to be addressed promptly.

## **II. The phases of the project**

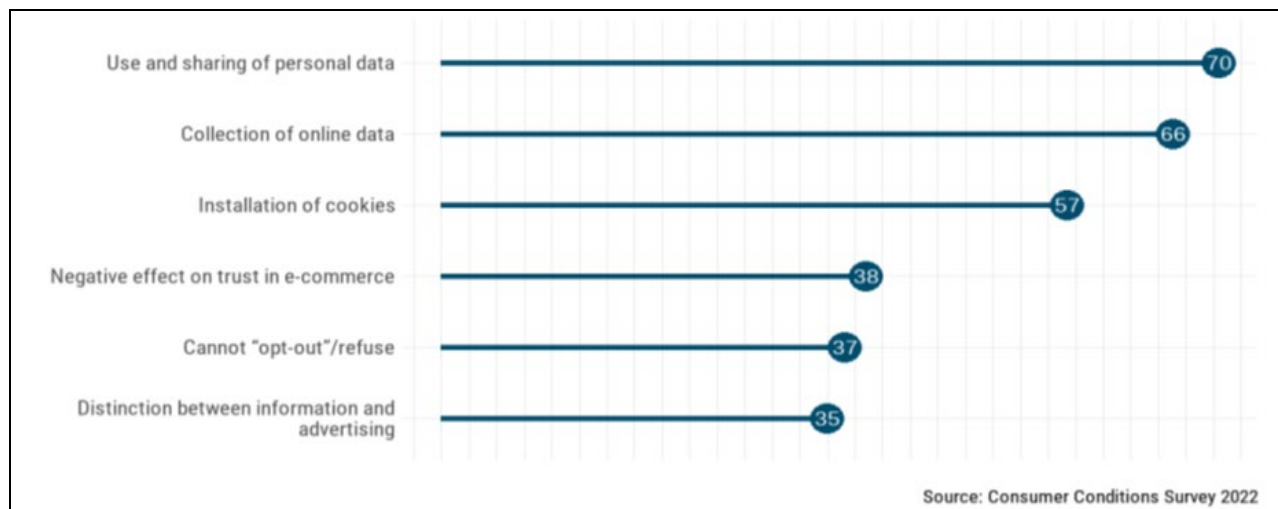
### **2.1. First plenary meeting**

The first plenary meeting with stakeholders took place on 28 April 2023. Over 30 stakeholders participated in the meeting. The aim of this meeting was to explain the general context of the initiative and its goals, as well as to discuss issues which were outlined in the discussion note sent to participants prior to the meeting. In addition to DG JUST, colleagues from other Commission services (DG CNECT, DG COMP) and from the EDPB Secretariat took part in the first plenary meeting and in the subsequent phases.

Stakeholders had the opportunity to express their views on the issues raised in the discussion note. The main topics which emerged during the debate were the following: i) The need to clarify the scope of the initiative (e.g. whether apps will be covered, which cookies) and to define certain concepts (e.g. tracking); ii) The usefulness of cookies for other purposes than tracking such as market measurement, efficiency of ads, users' statistics, fraud prevention, etc.; iii) The importance of establishing clear relations with the existing EU legal framework (competition policy and new initiatives such as DMA and DSA, ongoing negotiations in the field of e-privacy, the GDPR); iv) The importance of including DPAs in the discussions; v) The impact of the pledge on existing investments and additional costs it could entail (particularly in case of smaller players); vi) Concerns about any centralised browser solutions for consent that would favour big players; vii) The importance of advertising revenues for some stakeholders and their inability to be cut off from them; viii) Overall concerns about the solutions that big players in the pledge will adopt and that smaller players will have to follow.

The discussions in the plenary confirmed that the current situation was not satisfactory for consumers who have a lot of cookie banners to review and were losing trust in the capacity of digital markets to protect their data according to their preferences and the data protection and privacy laws. Furthermore, the digital advertising landscape had become rather complex, and consumers were not able to understand what was happening to their data and which businesses had access to it.

In recent Commission EU-wide survey, consumers expressed the following concerns in relation to online advertising (in % of the surveyed persons).



## 2.2. Working groups

With the above considerations in mind and to focus the discussions and the work on specific issues, the Commission created three working groups, focusing on: (1) principles related to consumer information; (2) alternatives to tracking based advertising; (3) technical/automated solutions to simplify consumers' choices. The Commission created a dedicated page on a wiki platform for stakeholders to provide their written contributions, exchange views, and advance in the drafting of the pledge principles within the working groups. Each working group had around 30 to 40 stakeholders who had access to the restricted wiki pages. A public page was also provided on the Commission's Europa [Website](#) and updated regularly.

The Commission shared working documents including a preliminary draft of pledging principles with stakeholders. Stakeholders provided comments on the drafts in confidence on the restricted wiki. Meetings of the working groups took place on 3, 6 and 8 July 2023.

The working group discussions showed that more reflection is needed on how consumers understand the different types of advertising and how they affect their privacy preferences. The feasibility of alternative advertising models (such as contextual advertising) also required more exploration and discussion. For this purpose, a behavioural experiment testing different disclosure models on banners was carried out by a contractor on behalf of the Commission. In October 2023, the Commission also held technical meetings where experts and academics presented their expertise and research related to the field.

## 2.3. Behavioural experiment

The behavioural experiment had two major objectives. First, to test the effectiveness of different cookie banners (defined as the ability to enable consumers to make choices according to their preferences) and second, to assess how well consumers understood the banner text, the implications of their choices, and the impact of different cookie banners on their visual attention. To gain a deeper insight into how the different elements influenced consumers' visual attention

and which parts of the cookie banner they looked at the most, the study also used eye-tracking measurements on a small additional sample of consumers. The results of the study showed that the button position within banners affected users' attention, more specifically: when buttons are placed horizontally left-side buttons receive more focus, while when the buttons are placed vertically those placed on the top are the ones receiving more attention by the user.

Moreover, the cookie banner featuring more informative text and a granular choice with three buttons, proved to be the most effective strategy to enable consumers to make choices according to their preferences (this banner showed an increased understanding between ~5% and ~10% compared to the other banners tested). More importantly, regarding specific choices, when consumers faced the choice between marketing and analytical cookies, a large number of them chose analytical cookies. On publishers' websites over 70% of users chose analytical cookies over marketing cookies and subscription.

Finally, it emerged that cookie fatigue was a major concern for consumers and around 70% of respondents reported cookies fatigue – being frustrated and finding it tiresome to make repeated choices on cookie banners. Privacy concerns were also clear, but actual behaviour showed that users often ignored consent messages for convenience and habit. When looking at preferences for cookie consent frequency, most consumers opposed the practice of giving consent on every website visit, and favoured a model where cookie settings were saved for a specific amount of time, thus reducing the need for repeated consent. The full report on the experiment can be found in [annex I](#).

### **2.4. Technical meetings**

In October 2023, the Commission organised two technical meetings focusing respectively on: 1) contextual advertising and automation of consent (2 October 2023), and 2) different experiments on the behaviour of consumers for requests related to advertising and privacy choices (9 October 2023). Several experts in the field were invited to these technical meetings to present to participants their technical solutions and specific expertise. The presentations and discussions contributed to the work on cookies pledge principles.

The first technical meeting included the following presentations:

- The solutions in the field of contextual advertising by Kobler, followed by the experiences of their partners and clients.
- The role of contextual advertisement and the problematic aspects for publishers by IAB Europe.
- Personalisation based on first party data, contextual advertising work for publishers, and the differences between third-party profiling and publisher profiling by the EPC (European Publishers Council).
- The automation of consent and the IDSIDE platform which allows consumers to set their privacy preferences in a specific application that communicates with websites.
- The Advanced Data Protection Control (ADPC), a proposed automated mechanism for the communication of users' privacy decisions by NOYB (None of Your business).

The second technical meeting included the following presentations:

- Cookie banners and empowering consumers by Dr Joanna Strycharz (University of Amsterdam, Amsterdam School of Communication Research ASCoR).
- The study “Giving my data away” and approach of “effective transparency” by Ms Maria-Lucia Rebreaan (University of Amsterdam).
- The behavioural experiment carried out on behalf of the Commission by OPEN EVIDENCE (contractor for DG JUST).
- “The critical role of a CMP (Consent Management Platform) for publishers” by Thomas Ghys (Privacy expert, Mediahuis).

## **2.5. Draft pledging principles and the opinion of the EDPB**

The Commission prepared the draft high-level principles of the pledge. The proposed solutions simplified several aspects such as for instance: i) no information on cookie banners about cookies that do not require consent; ii) not requiring consent for every single tracker; iii) not requiring separate consent for technical activities that are strictly linked to the well-described advertising model and iv) storing consumers’ choice to reject cookies for a year. The principles also required businesses to disclose clearly and upfront when the content is financed by advertising, and to offer consumers a choice of a more privacy-friendly advertising model besides tracking-based advertising and paying a fee options. The principles form a set and should work together.

The EDPB was consulted on the draft pledging principles and has issued an opinion ([annex II](#)) on their compliance with the [e-Privacy Directive](#) and the [GDPR](#). Overall, the EDPB expressed its support on the draft pledging principles in its opinion. The EDPB made a few suggestions to clarify the pledging principles from data protection angle, such as for instance to clarify the scope of certain principles and modifying certain terms to make them in line with the ePrivacy Directive and GDPR. For some principles, the EDPB highlighted the existing legal requirements, such as for a valid consent and interpretations of them from the EDPB’s guidelines. The EDPB pointed out that caution is needed in case of solutions recording affirmative cookie choices. Such solutions would need to be assessed in terms of their granularity and specificity to ensure a valid consent.

## **2.6. Second plenary meeting and written comments**

The draft pledging principles were shared with stakeholders and discussed at the plenary meeting of 19 December 2023. Around 45 stakeholders participated in this meeting and provided their preliminary comments on the pledging principles.

The Commission subsequently updated the pledging principles incorporating comments and suggestions of the EDPB and shared the revised version with stakeholders for their feedback. More than 30 organisations provided written comments on the amended pledging principles.

The key issues raised by stakeholders in their written contributions were the following:

- Concerns about legal certainty and the need for an explicit and formal endorsement of the principles from the EDPB.

- The need for a clear and formal approval by DG COMP on the potential competition issues and/or specific solutions provided by big platforms with regards to the pledge, e.g. regarding possible solutions for saving users' choices.
- The risk of excessive information to consumers and thus no improvement to cookie fatigue.
- Favoring a specific alternative advertising model restricts providers' freedom to run their business.
- The introduction of an alternative advertising model is not financially viable and will disrupt the activities, particularly of publishers.
- The wish to have more flexibility and the option to apply only some selected principles.
- Solutions for recording consumers' choices can result in a centralisation at browser level and can reinforce the position of big players even more.
- The need for clarification and more guidance regarding the governance model and the application of the principles to specific cases (e.g. associations, B2B companies, audience measurement, etc.).

### **III. Further reflections needed**

Notwithstanding all the Commission's efforts to provide the necessary assurance and convince stakeholders to join the pledge, by early March no stakeholder has declared a willingness to join the pledge. Regrettably, in their feedback, they rather focused on their concerns.

In particular, they raised concerns about the legal certainty as regards GDPR and the ePrivacy Directive and called for a formal endorsement of the principles from the EDPB and other Commission services. However, the pledging principles, in their draft form, had already been commented in relation to their compliance with this legal framework by the EDPB in a published opinion. The draft pledging principles have been updated to reflect the EDPB suggestions, so there was no need to reconsult the EDPB. Commission's services responsible for ePrivacy Directive (DG CNECT) and the GDPR (DG JUST), as well as DG COMP have been involved in the shaping of these principles throughout the process in order to ensure that they remained consistent with the various applicable laws.

Other concerns related to the timing of the process, in particular in relation to the implementation of the DMA and the changes that the gatekeepers were preparing to comply with its provisions. Likewise, there were concerns related to the inter-institutional negotiations of the proposal for ePrivacy Regulation revising the ePrivacy Directive and that fact that it touches upon the issue of cookies.

The work on the cookies pledge, even though the resulting document could not be endorsed by the digital advertising eco-system, provided a particularly useful exploration of the issues related to the consumer-facing part of the personalised digital advertisement ecosystem. It enabled the Commission and stakeholders to understand and evaluate the different views and interests of all the players involved and the various challenges at stake.

This exploration confirmed the complexity of an economic model where data about consumers and their online behaviour are generating financial resources that have become indispensable for



nearly all consumer-facing digital services (social media, publishers, firsthand and second-hand retailers, marketplaces and ad tech providers). As markups on online retailing are very low or the share of subscriptions rather limited, profits of digital services providers mainly come from providing advertising services. In fact, this has become the main activity of many companies. It is a fact that remains opaque for most consumers, even though the consumer law requires that business models are transparent.

From their side, consumers who wish to continue enjoying digital content free of charge are faced with requests to consent to the sharing of their data to which many will consent even if this is contrary to their privacy preferences.

Therefore, it is necessary to reflect further how to ensure that consumers can actively participate in the digital economy. As a voluntary approach has not been conclusive and the challenges involved can only be addressed by a move from all concerned operators at the same time, the Commission should also start reflecting on other possible solutions.

In these reflections, the following questions are relevant:

- How can consumers transition from a model where most digital services used to be free of monetary payment to paying for such services?
- Whether the burden imposed on consumers is proportionate when digital advertising is the way to finance free content?
- What are the ways for making consumers better understand how their personal data is monetised and how they can influence it?

These reflections should take place in the broader context of the digital and green transitions and in their interlinkage.<sup>1</sup>

The defined simplifications (the so-called pledging principles) are a starting point for a fairer offer of advertising services to consumers and should be considered as a model of best practices.

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<sup>1</sup> The energy and freshwater consumption needed for serving personalised advertising is yet to be evaluated but is significant and related to the amount of data processed.

**Annex I: From pledging to “Best practice principles” in recording consumers’ choices regarding trackers used for advertising purposes.**

**Annex II: Report on the behavioural experiment by Open Evidence**

**Annex III: Opinion of the EDPB on draft pledging principles**