

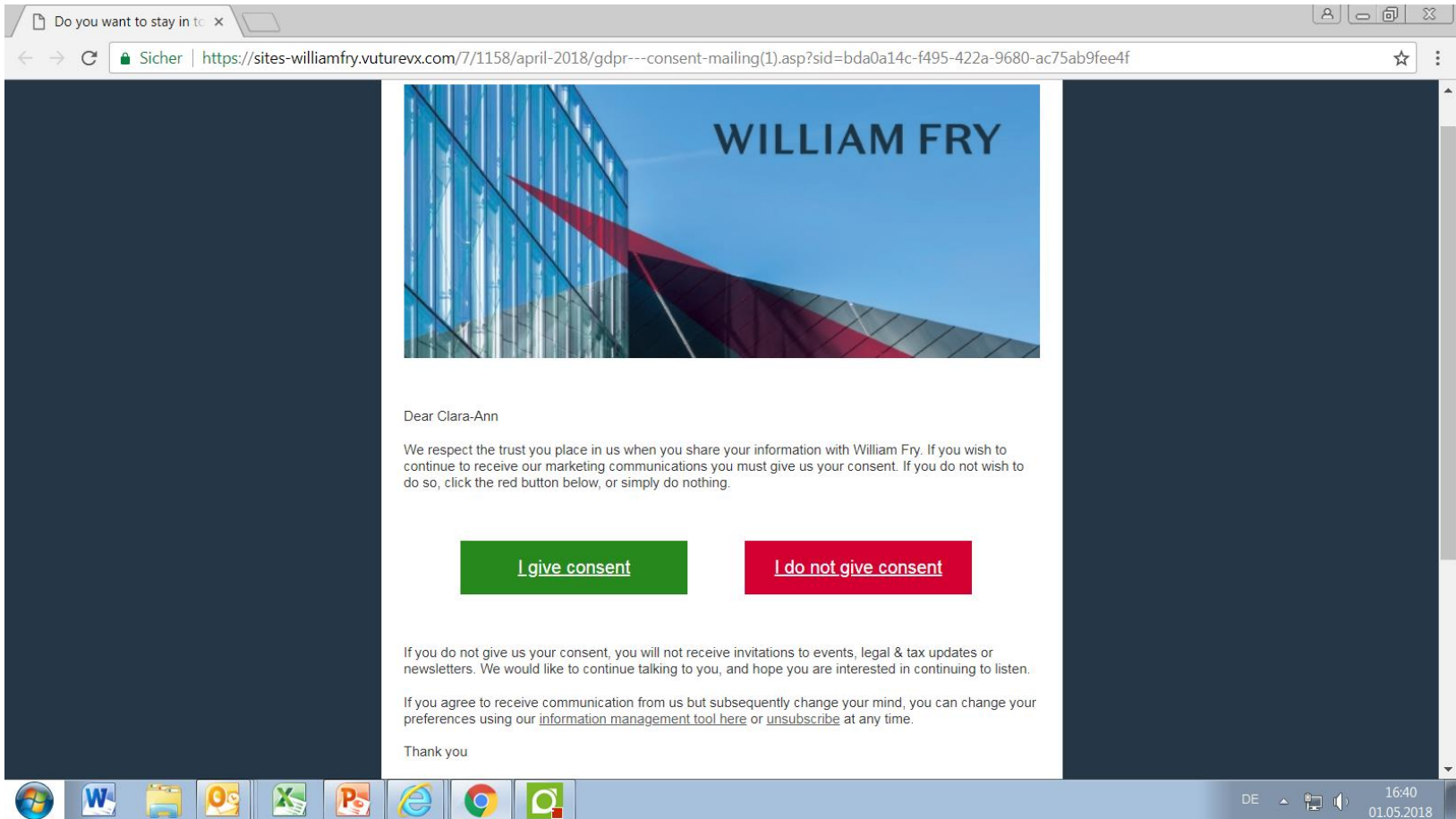


GDPR and Direct Marketing

IAPP Roundtables

2 May 2018

To Consent or not to Consent?



The screenshot shows a web browser window with the address bar displaying a URL from William Fry. The main content area features a header image with the company name 'WILLIAM FRY' and a personalized message to 'Clara-Ann'. Below the message are two buttons: a green one labeled 'I give consent' and a red one labeled 'I do not give consent'. Further down, there is explanatory text about consent and a 'Thank you' message. The Windows taskbar at the bottom shows various application icons and the system clock indicating 16:40 on 01.05.2018.

Do you want to stay in to x

Sicher | [https://sites-williamfry.vutuevix.com/7/1158/april-2018/gdpr---consent-mailing\(1\).asp?sid=bda0a14c-f495-422a-9680-ac75ab9fee4f](https://sites-williamfry.vutuevix.com/7/1158/april-2018/gdpr---consent-mailing(1).asp?sid=bda0a14c-f495-422a-9680-ac75ab9fee4f)

WILLIAM FRY

Dear Clara-Ann

We respect the trust you place in us when you share your information with William Fry. If you wish to continue to receive our marketing communications you must give us your consent. If you do not wish to do so, click the red button below, or simply do nothing.

[I give consent](#) [I do not give consent](#)

If you do not give us your consent, you will not receive invitations to events, legal & tax updates or newsletters. We would like to continue talking to you, and hope you are interested in continuing to listen.

If you agree to receive communication from us but subsequently change your mind, you can change your preferences using our [information management tool here](#) or [unsubscribe](#) at any time.

Thank you

DE 16:40
01.05.2018

Marketing under GDPR I

- GDPR does not define «marketing» or «direct marketing»
- Caution: e.g. Unfair Competition Act, Privacy and Electronic Communication Regulations and Acts, Telecommunication Act, E-Privacy Directive, Seco Guidance (CH), etc. also apply!
- What is impacted?
 - E-Mail Marketing: Newsletters
 - Website and Cookies
 - CRM
 - Software design: Privacy by default / Privacy by Design

Marketing under GDPR II

- What changes under GDPR for marketing and newsletters?
 - new requirements for consent and obtaining of consent (e.g. pre-ticked opt-in boxes are banned under GDPR)
 - Cookie policies and privacy notices relating to the marketing activities
- Lawful basis:
 - Not only consent... there are 5 other grounds for processing personal data (performance of contract, compliance with legal obligation, vital interests, public interest, legitimate interests)
 - Recital 47: «the processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.»

Marketing under GDPR III

- Consent vs. legitimate interest:
 - it's worth balancing legitimate interest against consent before GDPR is implemented
 - Relying on consent (=opt-in) restricts the communications to those who have opted in
 - Legitimate interest allows communication with those who have not yet opted in
 - It may be worth thinking through legitimate interest today, rather than simply chasing opt-ins and risking opt-outs before GDPR is implemented

Opt-Out Rules

- Sending of e-marketing to a recipient is permitted on an opt-out basis if:
 - the recipient's details were originally collected in the context of a sale
 - the entity sending the marketing is the same legal entity that collected the recipient's details initially
 - the marketing relates to similar products and/or services for which the recipient's details were originally obtained and
 - the recipient is given the opportunity free of charge to object to the e-marketing, both at the time their details were collected and in each subsequent communication

Case Study: Direct Marketing and Consent I

- Role: DPO Jim Slim has data protection compliance lead
- Company: Global Services Ltd. with international SaaS business
- Workforce: 500 employees
- Current basis for customer data processing and marketing:
 - Consent through accepting terms & conditions
 - Purpose: rendering services and sending marketing materials

Case Study: Direct Marketing and Consent II

- What to consider?
 - Identify all the different purposes for processing customer personal data
 - Consent must be specific and not bundled
 - Other grounds for certain purposes will be more relevant (and less tricky)
 - Consent is not freely given, if performance of the service is conditional on consenting to something not necessary for the service (e.g. to marketing)
 - Marketing consents (where required) need to be granular to different channels and different group companies

Case Study: Direct Marketing and Consent III

- Terms & Conditions must include all the information necessary for consent
(where necessary)
- Give information on the right to withdraw consent and how to do it
- Review and update existing customer privacy notices to provide clear and transparent information

Your contact



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