The Article 29 Working Party has published its guidance on consent in the context of the GDPR, and the guidelines appear to apply a strict interpretation of the principles that underpin valid consent in the GDPR.

Giving an overview, the Working Party said “in practice, the GDPR raises the bar with regard to implementing consent mechanisms and introduces several new requirements that oblige controllers to alter consent mechanisms, rather than rewriting privacy policies alone.”

The guidelines address in depth the elements of valid consent under Article 4(11), reiterating that consent must be (i) freely given, (ii) specific, (iii) informed, and (iv) unambiguously indicated.

Organisations are reminded that consent will not always be the best mechanism to legitimise their processing. Indeed, the Working Party urges organisations to consider whether it is more appropriate to rely on alternative lawful bases for processing the information under the new Regulation.

“Generally, consent can only be an appropriate lawful basis if a data subject is offered control and is offered a genuine choice with regard to accepting or declining the terms offered or declining them without detriment,” it said.

“When asking for consent, a controller has the duty to assess whether it will meet all the requirements to obtain valid consent. If obtained in full compliance with the GDPR, consent is a tool that gives data subjects control over (Continued on page 18)