

## Trending Topics of the month



Privacy and  
Data Protection



Online  
Regulation



Intellectual  
Property



Consumer  
Law

#Privacy and Data Protection

### The European Data Protection Supervisor (EDPS) and the European Data Protection Board (EDPB) published their joint opinion on the proposed Data Act



On 5 May 2022, the EDPS and the EDPB published their [joint opinion](#) on the proposed [Data Act](#).

In this joint opinion, the EDPS and the EDPB seek to highlight a number of overarching concerns on the proposed Data Act and urge the co-legislature to take decisive action.

The Proposal would apply to a broad range of products and services, including connected objects (“Internet of Things” or “IoT”), medical or health devices and virtual assistants which may collect personal data, including, special categories of personal data, such as data concerning health or biometric data. As the Proposal does not explicitly exclude certain types of data from its scope, data revealing

highly sensitive information about individuals could become the object of data sharing and use according to the rules established in the Proposal. For that reason, the EDPS and the EDPB consider that additional safeguards should be in place to avoid undermining the protection of the fundamental rights to privacy and to the protection of personal data.

For more information please see the [EDPS press release](#). 



## The EDPB adopts version 2.0 of the guidelines on the practical implementation of amicable settlements

On 12 May 2022, the EDPB adopted a new version of [guidelines 06/2022 on the practical implementation of amicable settlements](#).

The guidelines address the practical implementation of amicable settlements by the supervisory authorities (SAs) when dealing with complaints from data subjects, mainly with regard to cross-border complaints.

Experience has shown that the practical application of this instrument by SAs varies due to differences in domestic legislation. Hence, through these guidelines, the EDPB seeks to provide best practices for a consistent application of the GDPR at national and EU level, to such an extent as suitable to apply the amicable settlement instrument, taking into consideration the various national procedural legislations. <sup>up</sup>

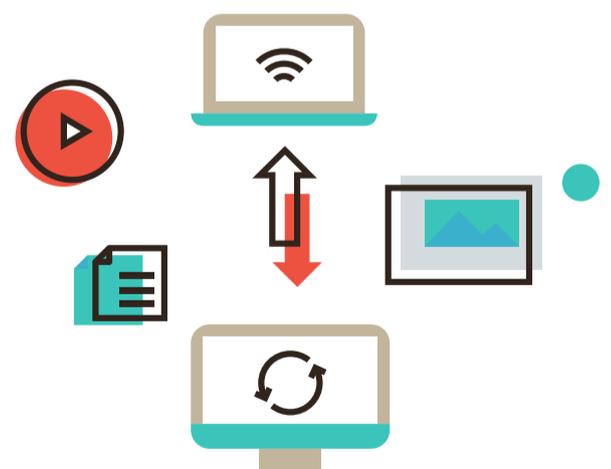
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## The EDPB welcomes comments on the guidelines 04/2022 on the calculation of administrative fines under the General Data Protection Regulation (GDPR)

On 12 May 2022, the EDPB adopted version 1.0 of [guidelines 04/2022 on the calculation of administrative fines under the GDPR](#).

The guidelines were adopted to harmonise the methodology SAs use when calculating the amount of the fine and complement the [guidelines on the application and setting of administrative fines for the purpose of the GDPR](#), previously adopted by the Article 29 Data Protection Working Party on 3 October 2017. Calculating the amount of a fine is at the discretion of the SAs, subject to the rules provided for in the GDPR. These guidelines are therefore intended to govern and lay an overarching foundation for SAs to set fines, implementing a five-step methodology for calculating administrative fines for GDPR infringements.

The guidelines are open for public consultation until 27 June 2022. <sup>up</sup>



## The EDPB welcomes comments on the guidelines 05/2022 on the use of facial recognition technology in the area of law enforcement

On 12 May 2022, the EDPB adopted version 1.0 of [guidelines 05/2022 on the use of facial recognition technology in the area of law enforcement](#).

These guidelines are aimed at law makers at EU and national level, as well as law enforcement authorities and officers that implement and use facial recognition technology systems, and they offer guidance on the applicable legal framework in the context of law enforcement.

Facial recognition technologies may interfere with fundamental rights, namely the right to protection of personal data; therefore legislative measures have to be appropriate for attaining the legitimate objectives pursued by the legislation concerned (e.g., the search for persons on police watch lists or the monitoring of a person's movements in public).

Thus, these guidelines also provide a tool to support an initial classification of the sensitivity of a given use case and contain practical guidance for law enforcement authorities that wish to procure and run facial recognition technology systems. Moreover, they provide several typical use cases and list numerous relevant considerations, in particular, with regard to the necessity and proportionality test.

The guidelines are open for public consultation until 27 June 2022. 

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## The Council of the European Union (EU) approves the Data Governance Act

On 16 May 2022, the Council approved the [Data Governance Act](#) (DGA), a new regulation to promote the availability of data and facilitate the reuse of public sector data across the EU.

On 6 April 2022, the European Parliament adopted the draft DGA following negotiations between EU legislators. The DGA is the first legislative proposal adopted under the [European Strategy for data](#) which aims at creating a single market for data in order to enhance Europe's global competitiveness and data sovereignty.

Overall, the DGA aims to:

- facilitate data sharing and joint processing of data through various legal instruments;
- enable the safe reuse of certain categories of public sector data and to create common European data spaces;
- regulate data intermediation services for supporting and promoting data sharing practices between companies or individuals and in the context of compliance with legal obligations;
- foster and regulate data altruism by making it easier for individuals and companies to share their data for the benefit of society.

For more information, please see the [press release](#). 

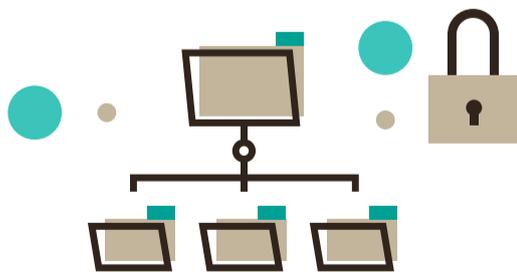
## EDPS welcomes much-needed harmonised rules on cybersecurity and information security for all EU institutions, bodies, offices and agencies (EUIs)

On 17 May 2022, the EDPS published two Opinions, [one](#) on the [Proposal for a Regulation laying down measures for a high common level of cybersecurity in the EUIs](#) and [one](#) on the [Proposal for a Regulation on information security in the EUIs](#).

In both opinions, the EDPS stresses how these Proposals can have a positive impact on the protection and security of personal data, although it recommends ensuring that all security measures envisaged in the Proposals have a valid legal ground, be necessary and proportionate.

Therefore, the EDPS welcomes the aim of the Proposals to improve the cybersecurity and information security of EUIs, through the establishment of common rules and minimum-security requirements which are aligned with relevant objectives of the [EU's Cybersecurity Strategy](#).

For more information please see the [EDPS press release](#). 



## EDPS publishes its opinion on the EU's participation in the United Nations' negotiations for a UN convention on cybercrime

On 18 May 2022, the EDPS published its [opinion](#) on the United Nations' negotiations for a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes (the future UN convention on cybercrime).

The EDPS includes, in its opinion, recommendations to ensure that the future UN convention on cybercrime upholds individuals' data protection and privacy rights according to EU law.

For more information please see the [EDPS press release](#). 

## #Online Regulation

## New EU legislation to prevent and combat child sexual abuse online



On 11 May 2022, the Commission proposed a new EU legislation to prevent and combat child sexual abuse online.

The [proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse](#) will oblige providers to detect, report and remove child sexual abuse material on their services. Providers will need to assess and mitigate the risk of misuse of their services and the measures taken must be proportionate to that risk and subject to robust conditions and safeguards.

Moreover, a new independent EU Centre on Child Sexual Abuse (EU Centre) will be created in order to support (i) online service providers in complying with their obligations under the proposed regulation; (ii) national law enforcement and Europol on their review

of reports from the providers; (iii) Member States, by serving as a knowledge hub for best practices on prevention and assistance to victims; (iv) victims, by helping them to take down the materials depicting their abuse.

The new rules will entail:

- Mandatory risk assessment and risk mitigation measures;
- Targeted detection obligations, based on a detection order;
- Strong safeguards on detection;
- Clear reporting obligations;
- Effective removal;
- Reducing exposure to grooming;
- Robust oversight mechanisms and judicial redress.

For more information please see the [European Commission press release](#). 

## #Intellectual Property

## World Intellectual Property Organization's (WIPO) White Paper on Blockchain and Intellectual Property



The member states of WIPO have established the Blockchain Task Force, which is responsible for drafting a new WIPO standard to support the potential applications of blockchain technologies within Intellectual Property (IP) ecosystems by addressing challenges such as interoperability, governance and regulation. The adopted White Paper explores potential applications and

opportunities presented by blockchain technologies to IP ecosystems. Moreover, it identifies the challenges that should be tackled to determine the likelihood and cost-effectiveness of using those technologies for the benefit of all IP stakeholders.

For more information, please see the [WIPO's White Paper](#). 



#Consumer Law

## EU Court Judgment in Case C-179/21 Victorinox



On 5 May 2022, the Court of Justice of the European Union (CJEU) found that traders who offer goods on online sales platforms that they have not produced themselves must inform the consumer of the manufacturer's warranty if that warranty has been made "a central or essential element of the offer" ([Case C-179/21](#)).

The request for a preliminary ruling under Article 267 TFEU concerns the interpretation of Article 6(1)(m) of [Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights](#), insofar as it relates to the existence and scope of information requirements concerning a manufacturer's warranty.

The parties to the proceedings are competitors in the online distribution of penknives. Both offered a penknife made by the Swiss manufacturer Victorinox for sale on the internet platform Amazon. The Amazon page offering the penknife for sale did not itself contain any information regarding a warranty provided by the defendant or a third party for that penknife, but rather provided a link to a product information sheet written by the penknife's manufacturer. The applicant considered that the defendant had failed to provide sufficient information about the warranty for the penknife as required by applicable legislation. It thus sought an injunction against the defendant.

The court concluded that traders need only provide consumers with pre-contractual information about a manufacturer's warranty if the warranty is central to or a decisive element of the trader's offer, and not an incidental part of it. It also clarified what information must be provided. 

## Decree-Law No. 109-G/2021, of 10 December 2021 enters into force

[Decree-Law No. 109-G/2021](#), of 10 December 2021, which partially transposes [Directive \(UE\) 2019/2162 of the European Parliament and of the Council of 27 November 2019](#) as regards the better enforcement and modernisation of Union consumer protection rules, entered into force on 28 May 2022.

This Decree-Law transposes European standards to ensure the better implementation and modernisation of EU consumer protection rules by enhancing consumer protection against commercial price reduction and unfair commercial practices. 

This document was prepared by the TECHNOLOGY, DATA AND DIGITAL INNOVATION team of CS'Associados.

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