

Trending Topics of the month



Privacy and
Data Protection



E-commerce



Telecom



Digital
Rights


#Privacy and Data Protection

EDPS orders Europol to erase data concerning individuals with no established link to a criminal activity



The EDPS (European Data Protection Supervisor) has ordered Europol to erase data concerning individuals with no established links to a criminal activity, concluding the EDPS's inquiry launched in 2019 regarding the processing of large datasets by Europol for purposes of strategic and operational analysis. Europol was notified of the order on 3 January 2022.


Back in 2020 the EDPS admonished Europol for its continued storage of large volumes of data, but Europol had since failed to comply with the EDPS's request to define an appropriate data retention period for such storage. The EDPS has now decided to use its corrective powers and impose a 6-month retention period.

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

EDPB adopts guidelines on the right of access

The EDPB (European Data Protection Board) [adopted guidelines on the right of access](#) on 18 of January 2022.

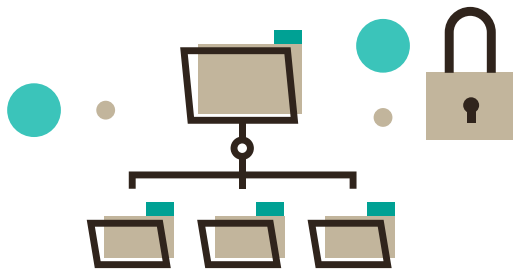
The guidelines aim to provide guidance on the implementation of the right of access under article 15 of the GDPR. The guidelines not only clarify the scope of the right of access but also elaborate on how to provide access to data subjects, on the timing of the provision, on the right's general principles and on its limits and restrictions (among others).

The guidelines will be subject to public consultation for a period of 6 weeks. 

EDPB adopts a letter on cookie consent and establishes a taskforce on cookie banners

On 18 January 2022, the EDPB also adopted a [letter](#) in response to several letters it had received calling for a steady interpretation of cookie consent.

In response to those letters, the EDPB reaffirms its commitment on ensuring a harmonised application of data protection rules throughout the EEA and, to that end, it has recently set up a taskforce on cookie banners and updated the [guidelines on consent](#). ^{up}



CNPD adopts guidelines on electronic communications and direct marketing

The Portuguese Data Protection Supervisory Authority (CNPD) [adopted guidelines on electronic communications and direct marketing](#) on 25 January 2022.

The adopted guidelines seek to clarify data controllers' obligations on direct marketing communications and the necessary conditions to obtain valid consent from data subjects.

Given that marketing activities are often subcontracted to service providers, the guidelines are targeted both at data controllers and processors and highlight the necessary steps any organisation should take before determining or undertaking direct marketing via electronic communications. ^{up}

#E-commerce

New consumer rights in 2022




[Decree-Law No. 84/2021](#), 18 October 2021, has entered into force on 1 January 2022.

This diploma sets out the rights of consumers in case of lack of conformity of digital goods, content or services, and provides a set of subjective and objective requirements for

assessing such conformity, through the transposition of Directives (EU) 2019/770 and (EU) 2019/771. It reinforces consumer protection by introducing new rights for consumers and further obligations and responsibilities for sellers/traders.

With the entry into force of this diploma, Articles 9-B and 9-C of the Law No. 24/96, of 31 July 1996 and Decree-Law No. 67/2003, 8 April 2003 are repealed.

Some of the key changes are:

- The definition of “goods” now encompasses goods that are incorporated or interconnected with digital content or a digital service as well as refurbished goods;
 - A definition of “commercial guarantee” is established that replaces the voluntary guarantee in the repealed Decree-law No. 67/2003, 8 April 2003 and imposes stricter information duties on the seller;
 - Consumer rights in the event of lack of conformity are now ranked on a hierarchical basis and remedies may be used depending on established criteria;
 - New protective measures are established for consumers, namely, regarding the availability and supply of spare parts necessary for the repair of goods purchased by the consumer and the after-sales service.
- Time limits for exercising rights also differ:
- Guarantee of conformity: 3 years from the delivery of the good (instead of the former 2 years). This time-period also applies, with some particularities, to goods containing digital elements. As for second-hand goods, the time-period may be reduced to 18 months by agreement (instead of the 12-month reduction formerly prescribed for by law);
 - Lack of conformity: this is presumed to have occurred at the time of delivery within 2 years after delivery of the good; this presumption also applies, subject to certain particularities, to goods containing digital elements. As for second-hand goods where the guarantee is reduced, the time period is of 1 year;
 - Notice of lack of conformity: within the time limit of the guarantee of conformity. Previously, the law established a presumption of 2 months from the date on which the lack of conformity was detected;
 - Exercise of rights, including the right to take legal action: 2 years from notice of lack of conformity. 



Law on geo-blocking and discriminatory practices in online sales

[Law No. 7/2022, of 10 January 2022](#) prohibits geo-blocking and discriminatory practices in online sales to consumers in the autonomous regions of Madeira and Azores.

The referred Law applies to traders who make goods available or provide services within national territory. It establishes 3 different sets of prohibitions for traders, regarding:

Access to online interfaces:

- The trader may not block or restrict, using technological or any other measures, a consumer's access to its online interfaces for reasons related to their place of residence or place of business within national territory;
- The trader may not redirect the consumer, for reasons connected with their place of residence or place of business within national territory, to a different version of the online interface to which the consumer originally attempted to gain access, unless the consumer has expressly consented to such redirection;
- The above does not apply if the blocking, restriction of access or redirection is necessary to ensure compliance with legal requirements to which the trader's activities are subject.


Access to goods and services:

- The trader may not apply general terms and conditions for access to goods or services that differ according to the consumer's place of residence or place of establishment within national territory.
- The trader is obliged to make available the delivery of its goods or services throughout national territory.
- The above does not limit the trader's ability to establish different terms and conditions for such delivery, depending on the place of residence or place of establishment of the consumer, in particular regarding the cost of delivery.

Payment:

- The trader may not apply different conditions to payment transactions, within the framework of the payment instruments it accepts, on grounds related to the place of residence, the place of establishment of the consumer in national territory, the location of the payment account, or the place of establishment of the payment service provider.
- The above does not prevent the trader from charging fees for the use of a payment instrument in accordance with Regulation (EU) No. 2018/302.

Compliance with these rules is supervised by the Portuguese Food Safety and Economic Authority (ASAE – *Autoridade de Segurança Alimentar e Económica*), and by the regional authorities with competence in the field of economic supervision (i.e., ARAE - *Autoridade Regional de Atividades Económicas*, in the case of Madeira, and IRAE - *Inspeção Regional das Atividades Económicas*, in the case of The Azores).

Law No. 7/2022, will enter into force on 11 March 2022. 



#Telecommunications

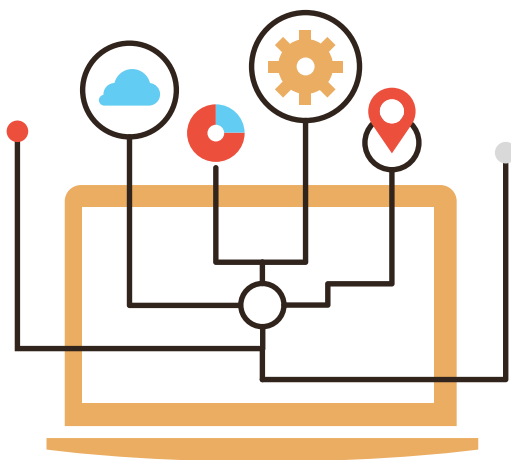
Social tariff for the provision of Internet services



[Decree No. 274-A/2021, 29 November 2021](#) entered into force on 1 January 2022. It establishes the model, procedures and conditions necessary for the application of Decree Law No. 66/2021, 30 July 2021, which creates the social tariff for the provision of Internet services.

The main purpose of the social tariff is to promote digital inclusion, through the possibility of access to a minimum set of digital-based services typified in [Directive \(EU\) 2018/1972](#) of the European Parliament and of the Council of 11 December 2018, establishing the European Electronic Communications Code.


This social tariff aims to address a market failure and respond to a need for access to a digital service by a segment of the economically disadvantaged population that, for financial reasons, is excluded from access to essential digital services.



ANACOM launches public consultation on coverage by very high-capacity fixed networks and on the options for installing them in “white areas” using public funds

On 27 January 2022, ANACOM launched a [public consultation](#) process on national coverage by very high-capacity fixed networks and on the options for the installation, management, operation and maintenance of those networks in “white areas” with the use of public funding, namely EU funding.

The public consultation aims to gather input from all interest parties with the objective of guaranteeing access by the entire Portuguese population to very high-capacity networks (Gigabit), by ensuring Gigabit network coverage throughout Portugal, reaching all households, by 2030.

The Government has extended the deadline for replying to the public consultation, which originally ended on 7 February 2022. All parties interested in taking part must send their contributions to ANACOM no later than 14 February 2022. 

#Digital Rights

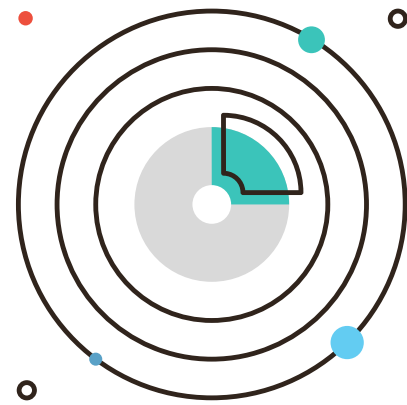
The European Declaration on Digital Rights and Principles for the Digital Decade



On 26 January 2022, the European Commission made a proposal to the European Parliament and Council to sign up to the [European Declaration on Digital Rights and Principles for the Digital Decade](#), a declaration of rights and principles that will guide the digital transformation in the EU.

The declaration aims at providing guidance for policy makers and companies when dealing with new technologies through the establishment of the European Union approach to digital transformation and in the promotion and protection of fundamental rights and freedoms in the digital world. The draft declaration covers key rights and principles for the digital transformation, such as ensuring freedom of choice online and fostering participation in the digital public space.

The European Parliament and the Council are now invited to discuss the draft declaration and to endorse it by this summer. ^{up}



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