

Trending Topics of the month



Privacy and
Data Protection



Telecoms




Intellectual
Property

#Privacy and Data Protection

The European Data Protection Board (EDPB) adopts its first opinion on certification criteria



On 2 February 2022, the EDPB adopted its [opinion on the GDPR-CARPA certification scheme](#) submitted to the Board by the Luxembourg Data Protection Supervisory Authority (SA) – this is the first time the EDPB has adopted a consistency opinion on criteria for a nationwide certification scheme.

The main aim of certification mechanisms is to help controllers and processors prove compliance with the GDPR. The GDPR-CARPA certification scheme is a wide-ranging scheme focusing on the general requirements of data protection governance in the organisation surrounding data processing activities. 

The Portuguese Data Protection Supervisory Authority (CNPD) takes part in the first coordinated enforcement action on use of cloud by the public sector

On 15 February 2022, the European Data Protection Board (EDPB) launched its first [coordinated enforcement on use of cloud by public sector](#) in which 22 supervisory authorities across the European Economic Area (EEA) will take part, including the CNPD.


The supervisory authorities will investigate the use of cloud-based services by the public sector. Over 80 public bodies in total will be addressed across the EEA, including EU institutions, covering a wide range of sectors (such as health, finance, tax, education, central buyers or providers of IT services).

In its investigation in Portugal, the [CNPD](#) will verify how public organisations are complying with their legal obligations regarding security measures in this context, since the use of cloud-based products and services raises

specific risks and challenges in the processing of personal data.

The Supervisory Authorities will decide on possible further national supervision and enforcement actions after a coordinated analysis of the results. In addition, results will be aggregated, generating deeper insight into the matter and allowing targeted follow-up at an EU level.

The EDPB will publish a report on the outcome of this analysis before the end of 2022.

CNPD will disclose the conclusions of this action at a national level. 


The European Parliament and the Council have adopted Directive (EU) 2022/228 of 16 February 2022

On 16 February 2022, the European Parliament and the Council adopted [Directive \(EU\) 2022/228 of 16 February 2022](#) amending Directive 2014/41/EU, as regards its alignment with Union rules on the protection of personal data.

The processing of personal data under Directive 2014/41/EU involves the processing, exchange and subsequent use of relevant information for the purposes set out in Article 82 of the Treaty on the Functioning of the European Union (TFEU).

However, the processing of personal data under Directive 2014/41/EU should comply with Directive (EU) 2016/680 and Regulation (EU) 2016/679 of the European Parliament and of the Council where it applies and, therefore, be amended accordingly. Pursuant to Article 62(6) of Directive (EU) 2016/680, the Commission is to review legal acts adopted by the Union which regulate the processing of personal data by the competent authorities for the purposes set out in Article 1(1) of the referred Directive in order to align those legal acts with the that Directive.

For the sake of consistency and effective protection of personal data, Article 20 of Directive 2014/41/EU is deleted and Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2022/228 by 14 March 2023.

Directive (EU) 2022/228 of 16 February enters into force on 13 March 2022. 



The European Parliament and the Council have adopted Directive (EU) 2022/211 of 16 February 2022

On 16 February 2022, the European Parliament and the Council adopted [Directive \(EU\) 2022/211 of 16 February 2022](#) amending Council Framework Decision 2002/465/JHA, as regards its alignment with Union rules on the protection of personal data.


The processing of personal data under Framework Decision 2002/465/JHA involves the processing, exchange and subsequent use of relevant information for the purposes set out in Article 82 of the Treaty on the Functioning of the European Union (TFEU).

However, the processing of personal data under Framework Decision 2002/465/JHA should comply with Directive (EU) 2016/680 and it should be possible to further process personal data lawfully obtained by a joint investigation team for purposes other than those for which the team was set up, e.g.,

subsequent criminal or related administrative or civil procedures or parliamentary scrutiny, but only in accordance with the conditions laid down in that Directive.

Pursuant to Article 62(6) of Directive (EU) 2016/680, the Commission is to review legal acts adopted by the Union which regulate the processing of personal data by the competent authorities for the purposes set out in Article 1(1) of the referred Directive in order to align such legal acts with the Directive.


For the sake of consistency and effective protection of personal data, a subparagraph is added in Article 1(10) of Framework Decision 2002/465/JHA and Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2022/211 by 11 March 2023.

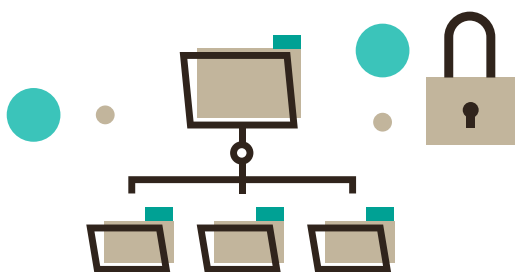
Directive (EU) 2022/228 of 16 February enters into force on 10 March 2022. 

The Spanish Data Protection Supervisory Authority has published a checklist to help those responsible for carrying out impact assessments

On 17 February 2022, the *Agencia Española de Protección de Datos* (AEPD) published a [checklist](#) which allows those responsible for carrying out a data protection impact assessment (DPIA) to check whether all necessary aspects have been taken into consideration when carrying out and documenting a DPIA.

The purpose is to enhance compliance with the requirements set out in the General Data Protection Regulation (GDPR) by those obliged to carry out a DPIA and, where needed, offer channels for prior consultation to the AEPD.

The checklist complements the AEPD's guidelines on [Risk management and impact assessment in personal data processing](#) aimed at data controllers, processors, and data protection officers assisting in compliance with data protection regulation, and is applicable to any processing operations, irrespective of the level of risk involved. 



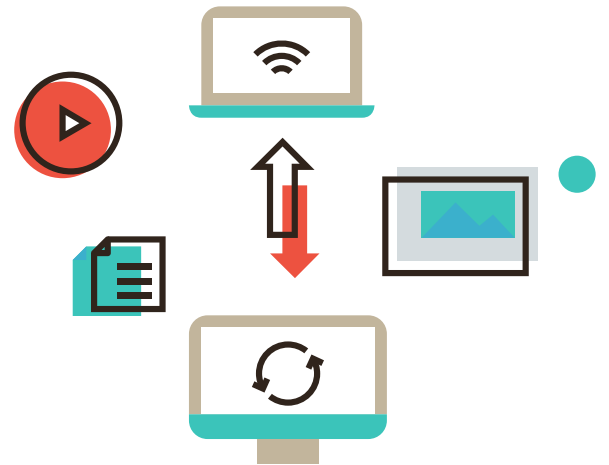
Proposal for a Regulation on harmonised rules on fair access to and use of data (Data Act)

On 23 February 2022, the European Commission adopted a proposal for a Regulation on harmonised rules on fair access to and use of data ([Data Act](#)).

The Data Act aims to enhance data value in the economy and provide a harmonised framework for data sharing across the European Union (EU). Moreover, the Data Act will impose obligations upon different stakeholders for the use and transfer of data (e.g., product design requirements, cloud switching requirements, data sharing obligations, etc.).

The Data Act applies to all data generated in the EU and not only to personal data, which is already regulated by the General Data Protection Regulation (GDPR). Therefore, the Data Act has not been designed as data privacy legislation and thus must be read in conjunction with the GDPR.

The Data Act complements the [Data Governance Regulation](#) proposed in November 2020, the first deliverable under the European strategy for data. ^{up}



The French Data Protection Supervisory Authority publishes a new White paper on payment data and means of payment

On 23 February 2022, the *Commission Nationale Informatique & Libertés* (CNIL) published a [White paper](#) on payment data and means of payment targeting both the general public and professionals.

The White paper covers a wide range of topics, from the international circulation of payment data to the new risks arising from the increasing digitalisation of payment operations and the use of crypto-currencies.

The White paper aims to address the economic, legal and societal issues relating to data and means of payment and the application of the General Data Protection Regulation (GDPR), namely, data protection principles in the payments sector.

For more information please see [CNIL press release](#). ^{up}


European Data Protection Board (EDPB) has sent a letter to the European Commission on adapting liability rules to the digital age and artificial intelligence (AI)

On 25 February 2022, the EDPB sent a letter to the European Commission regarding the Commission's initiative on adapting liability rules to the digital age and artificial intelligence (AI).

In its letter, the EDPB underlined some key issues that should be considered in this regard, namely, the alignment of the legal framework concerning product liability with personal data protection.

Although under the General Data Protection Regulation (GDPR) only data controllers and processor would be liable (e.g., in the event of a data breach) the EDPB has expressed in the letter the need to consider the role and potential liability of providers of AI systems developed and made available to secure personal data processing.


Moreover, the letter emphasised some of the recommendations that the EDPB had already made in the [joint opinion 5/2021](#) on the proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (the AI Act) together with the Data Protection Supervisor (EDPS).

For more information please see the [EDPB letter](#). 

The Spanish Data Protection Supervisory Authority has approved the first sector code of conduct since the entry into force of the General Data Protection Regulation (GDPR)

On 25 February 2022, the *Agencia Española de Protección de Datos* (AEPD) approved the [Regulatory Code of Conduct for the processing of personal data in the field of clinical trials and other clinical research and pharmacovigilance](#) promoted by Farmaindustria.

Farmaindustria is the national trade association of the Spanish-based pharmaceutical industry. It brings together most R&D based pharmaceutical companies established in Spain, representing nearly 100% of the country's prescription medicine sales. The new Farmaindustria code - which replaces and adapts the former code from 2009 to current regulations - represents a step forward in the protection of the data of parties who take part or who are involved in the activities governed by the code, and will serve to bolster clinical research and pharmacovigilance.

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



#Telecommunications

The Body of European Regulators for Electronic Communications (BEREC) recommends considering a more significant role for national regulatory authorities (NRAs) in the application of State aid rules

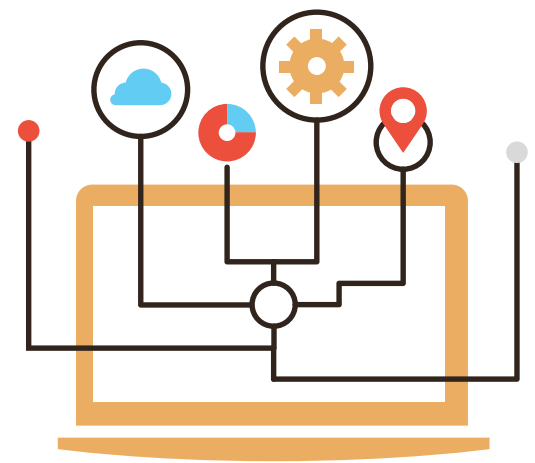


On 11 February 2022, BEREC recommended making consultations with NRAs mandatory in the design of State aid measures, in its response to the public consultation on the draft revised European Commission's (EC) Guidelines on State aid for broadband networks.

BEREC believes that dispute settlement on access products, conditions and pricing regarding State aid should be mandated to the NRAs and that Member States should ensure that the NRAs are provided with sufficient resources and competencies.

Moreover, BEREC supports the approach adopted by the Commission, i.e. the improvement of the referred Guidelines in order to reflect technological and market developments to best accompany the necessary investments in the coming years in a manner compatible with the internal market and the achievement of the connectivity objectives for 2030.

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



Consultation on the review of pricing in the Reference Duct Access Offer (RDAO) and Reference Poles Access Offer (RPAO) provided by MEO

The Portuguese Regulatory Authority for Electronic Communications (ANACOM) launched a public consultation on the review of pricing in the Reference Duct Access Offer (RDAO) and Reference Poles Access Offer (RPAO) provided by MEO.

Comments in writing and in Portuguese must be sent by 16 March 2022 to spd-precos-ORAC-ORAP@anacom.pt (maximum of 20 MiB per email), including a version

from which any confidential information has been omitted for publication purposes (in compliance with ANACOM decision of 17 November 2011).

For more information please see the [ANACOM press release](#) published on 16 February 2022.

It is now possible to sign up for the social tariff for Internet services


Mobile operators required to offer a social tariff for Internet services may now do so.

The Portuguese Regulatory Authority for Electronic Communications (ANACOM) has approved NOWO's offer of a social tariff for broadband Internet access, which can now be made available. The NOS group, MEO, Prodevice and Vodafone must adjust their offers within 10 working days, as determined by ANACOM.

The social tariff for Internet services, set annually by the government, aims to enable families on low incomes or with special social needs to access fixed or mobile broadband Internet services.

An application must be made to a service provider to benefit from the social tariff for Internet services. The application will then be forwarded to ANACOM, which will check whether it meets all the requirements to award the tariff.

This tariff does not include television and telephone.

For more information please see the [ANACOM press release](#) published on 21 February 2022. 

#Intellectual Property


EPC and PCT-EPO Guidelines



On 3 February 2022, the European Patent Office (EPO) published a preview of the EPC (European Patent Office) and PCT-EPO Guidelines (Guidelines for Search and Examination at the European Patent Office as PCT Authority) which are open for public user consultation. Accordingly, users are invited to submit their comments in any one of the EPO's three official languages via an online form. The deadline for contributions is 15 April 2022.

The EPC and PCT-EPO Guidelines give instructions on the practices and procedures to be followed in the examination of European and international applications and patents in accordance with the European Patent Convention (EPC), the Patent Cooperation Treaty (PCT) and their Implementing Regulations.

The EPC and PCT-EPO Guidelines will enter into force on 1 March 2022.

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



China Joins Two Key WIPO Treaties

On 5 February 2022, China joined the World Intellectual Property Organisation's (WIPO) Hague System for the International Registration of Industrial Designs.

China's entry into the Hague System is a major development for the International Design System, as well as the Marrakesh Treaty, and will make it easier and cheaper for Chinese designers to protect and promote their work overseas.

In 2020, Chinese residents filed a total of 795,504 designs, representing approximately 55% of the worldwide total.

For more information, please see [WIPO press release](#).^{up}



Consolidated Rules of Procedure of the Boards of Appeal

On 15 February 2022, the European Union Intellectual Property Office (EUIPO) published the [Consolidated Rules of Procedure of the Boards of Appeal](#) on its website.

The Rules of Procedure aim at increasing transparency, consistency, and legal certainty for users of the appeal system while streamlining the decision-making processes throughout the Boards of Appeal. They will be reviewed and updated each year and published in the EUIPO website at the beginning of the year.

The Rules of Procedure were adopted on 27 February 2020 and have since been amended. All those amendments and the dates on which they enter into force can be seen easily from the comparative consolidated version that has now been published.^{up}

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

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