

## Trending Topics of the month



Privacy and Data Protection



Telecoms



Intellectual Property



Crypto

#Privacy and Data Protection

### The European Data Protection Board (EDPB) published the adopted documents during its February 22nd Plenary




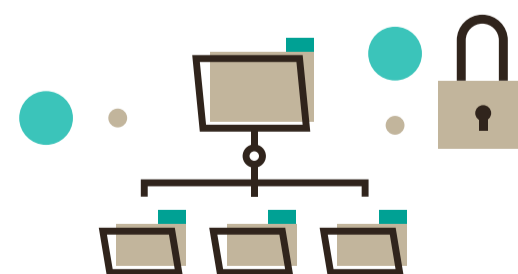
On 4 March 2022, the EDPB published the documents adopted during its February 22nd Plenary. Amongst these were the [guidelines 04/2021 on codes of conduct as tools for transfers](#).

The General Data Protection Regulation (GDPR) requires in Article 46 that controllers or processors place appropriate safeguards for transfers of personal data to third countries or international organisations. In that regard, the GDPR diversifies the appropriate safeguards that organisations may use under Article 46 for framing transfers to third countries by introducing, amongst others, codes of conduct as a new transfer mechanism.

The codes of conduct must be approved by the competent supervisory authority and validated by the Commission in order to be adhered to and used by controllers or processors not subject to the GDPR located in third

countries. Such controllers and processors are required to make binding and enforceable commitments, via contractual or other legally binding instruments, to apply the appropriate safeguards provided by the code of conduct.

These guidelines provide elements that should be addressed in the above-mentioned commitments and complement the [EDPB guidelines 1/2019 on codes of conduct and monitoring bodies under Regulation 2016/679](#) by providing clarification of the role of the different actors involved in the setting of a code to be used as a tool for transfers and on the adoption process. 



## The European Data Protection Board (EDPB) published the documents adopted during its March Plenary

On 21 March 2022, the EDPB published the documents adopted during its March Plenary. Among them are the guidelines on Article 60 GDPR, the guidelines 3/2022 on dark patterns in social media platform interfaces, and the toolbox on essential data protection safeguards for enforcement cooperation between EEA data protection authorities and competent data protection authorities of third countries.

The [guidelines on Article 60 GDPR](#) adopted on 14 March 2022 analyse the cooperation procedure provided under article 60 of the General Data Protection Regulation (GDPR) and give guidance on the concrete application of the provisions. Moreover, the adopted guidelines handle the interactions between the supervisory authorities in cross-border processing cases.

The [guidelines 3/2022 on dark patterns in social media platform interfaces](#) adopted on 14 March 2022 address how to recognise and avoid the so-called “dark patterns” in social media interfaces that infringe on GDPR requirements by offering a non-exhaustive list of practical recommendations to designers and users of social media platforms. Dark patterns are considered interfaces and user experiences implemented on social media platforms that lead users into making unintended, unwilling, and potentially harmful decisions regarding the processing of their personal data. As these guidelines make available best practices for the industry, social media providers remain responsible and accountable for ensuring the GDPR compliance of their platforms.


The [toolbox on essential data protection safeguards for enforcement cooperation between EEA data protection authorities and competent data protection authorities of third countries](#) adopted on 14 March 2022 develops a toolbox of essential data protection safeguards to be concluded in addition to or inserted in an enforcement cooperation agreement in the context of Article 50 GDPR concerning international cooperation with third countries competent data protection authorities. <sup>up</sup>



## The European Data Protection Supervisor (EDPS) issues opinions on the Police Cooperation Code proposals with a set of recommendations

On 2 March 2022, the EDPS published [opinion 4/2022 on the proposal for a Regulation on automated data exchange for police cooperation \(“Prüm II”\)](#). The Commission’s proposal for the Regulation on automated data exchange for police cooperation was adopted on 8 December 2021 and aims to enhance law enforcement cooperation, and in particular, the information exchange between the competent authorities responsible for the prevention, detection, and investigation of criminal offences, by establishing the conditions and procedures for the processing of personal data in this regard (e.g., automated searching of DNA profiles, dactyloscopic data (fingerprints), facial images, police records, etc.

Moreover, on 7 March 2022, the EDPS published [opinion 5/2022 on the proposal for a Directive on information exchange between law enforcement authorities of Member States](#). The Commission’s proposal for a Directive on information exchange between Member States law enforcement authorities was also adopted on 8 December 2021, and intends to facilitate equivalent access for law enforcement authorities to information held in another Member State while complying with data protection requirements.


The above-mentioned proposals are part of a large legislative package, referred to as “EU Police Cooperation Code”. 



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## The European Commission and the United States reach an agreement in principle for a Trans-Atlantic Data Privacy Framework

On 25 March 2022, the United States and the European Commission have committed to a new Trans-Atlantic Data Privacy Framework, which will enable data to flow freely between the EU and participating U.S. companies. The new legal framework is to foster trans-Atlantic data flows and address the concerns raised by the European Court of Justice (ECJ) of the European Union in its [Case C-311/18 Data Protection Commissioner v Facebook Ireland and Maximilian Schrems](#) (“Schrems II”), which invalidated the EU-US Privacy Shield.

For more information, please see [European Commission’s Fact sheet](#) and the [White House Fact Sheet](#). 

#Telecommunications

## The Body of European Regulators for Electronic Communications (BEREC) publishes updated Open Internet Guidelines for public consultation



On 16 March 2022, BEREC revised and updated its open internet guidelines taking into consideration the recent European Court of Justice (ECJ) ruling ([Case C- 854/19, Vodafone GmbH v Bundesrepublik Deutschland](#)) that zero tariff offers are incompatible with the obligation of equal treatment of traffic in the open internet Regulation. Therefore, the guidelines are updated to fall within the scope of the ECJ's ruling.

The draft [guidelines on the implementation of the open internet Regulation](#) are published for public consultation until 14 April 2022.

#Intellectual Property

## The impact of Artificial Intelligence (AI) on infringement and the enforcement of copyright and designs



On 2 March 2022, the European Union Intellectual Property Office (EUIPO) published the Report "[Study on The Impact of Artificial Intelligence on The Infringement and Enforcement of Copyright and Designs](#)". This study analyses the impact of AI technologies on both the infringement and enforcement of copyright and designs, shedding light upon not only the potential but also the misuse of such technologies in intellectual property.

## European Commission's call for evidence for an impact assessment on medicinal and plant protection products

On 8 March 2022, the European Commission published an initiative to put in place a unitary SPC and/or a single ("unified") procedure for granting national supplementary protection certificates (SPCs). This will make SPCs more accessible and efficient, benefitting the health sector.

SPCs are intellectual property rights extending patent protection for specific medicinal and plant protection products. However, differences between European Union (EU) countries in its administration and enforcement create inefficiencies, undermining the current SPCs system.

The above-mentioned [call for evidence](#) is open for feedback until 5 April 2022 (midnight Brussels time).




## The Portuguese Industrial Property Office (INPI) adopts measures in solidarity with Ukraine

On 18 March 2022, INPI adopted several measures in response to the military aggressions carried out by the Russian Federation against Ukraine, in coordination with the [European Intellectual Property Office \(EUIPO\)](#) and the [European Patent Office \(EPO\)](#).

Firstly, INPI has ceased all cooperation actions with Rospatent, the Russian Federal Service for Intellectual Property, and the Eurasian Patent Organisation (EAPO). Secondly, it has taken measures to provide the fullest support to its clients of Ukrainian nationality and of other nationalities resident in Ukraine, in safeguarding their industrial property rights as long as this situation does not allow the normal and careful management of their rights. Finally, INPI has determined that, in relation to applicants or right holders of Ukrainian nationality, and of other nationalities resident in Ukraine, that the current conflict, being public and notorious, constitutes grounds for the invocation of Article 8 of the Industrial Property Code, without the need for additional means of proof.

In that regard, INPI advises applicants or right holders who have been prevented from complying with a legal deadline due to the present circumstances to request the restoration of rights.


As the restoration of rights only applies to applicants or right holders, and not to any claimants, opponents of Ukrainian nationality and of other nationalities resident in Ukraine, who wish to defend their intellectual property rights, will be able to apply for the invalidation of the rights that have been granted in the meantime.

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

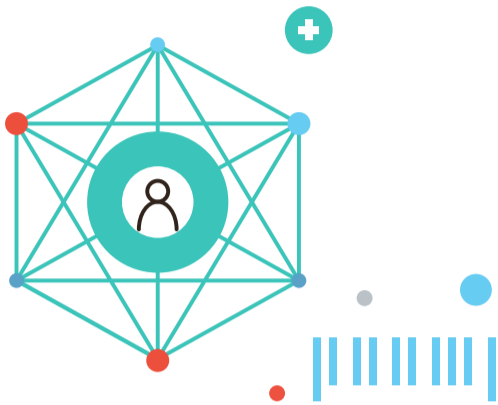


## The new European Union Intellectual Property Office (EUIPO) Artificial Intelligence (AI)-based comparison of goods and services

The EUIPO has implemented its first AI-based comparison of goods and services in the area of Relative Grounds decisions. According to the [EUIPO's press release](#) on 29 March 2022, the implementation of this new tool is the result of the joint effort of EUIPO's Digital Evolution Programme's AI Implementation Project and the Effective Working Tools Programme's E3U2 – New Generation Tools Project.


The tool consists of an AI algorithm created to assess a given pair of goods and services. This, in turn, allows for a prediction based on the comparison of historical data from 420 000 pairs of goods and services. Moreover, EUIPO's Similarity Tool is also searched, allowing for the identification of the closest, semantically relevant matches. The search results are then made available to the decision-makers for their consideration when writing the decision. This tool goes even further by providing the relevant reasoning behind previous decisions, thus further helping examiners in drafting their own. 

## New European Union Intellectual Property Office (EUIPO) examination guidelines enter into force



On 31 March 2022, the EUIPO published the latest edition of the examination [guidelines for EU trademarks \(EUTMs\) and registered Community designs \(RCDs\)](#). The guidelines entered into force from 31 March 2022 following their approval by means of [Decision EX-22-1](#).

The new edition of the guidelines is more interactive and incorporates recent case law from the European Court of Justice (ECJ), having over 5 000 new hyperlinks to trademark regulations, the eSearch Case Law database, and several other resources.

Moreover, the latest edition of the Guidelines is currently available in the five official languages: English, French, German, Italian and Spanish. 

### #Crypto

## President Biden to Sign Executive Order on Ensuring Responsible Development of Digital Assets




On 9 March 2022, the President of the United States signed an [Executive Order](#) outlining the first ever, whole-of-government approach to addressing the risks and harnessing the potential benefits of digital assets and their underlying technology.

The Executive Order lays out a strategy to protect consumers, financial stability, national security, and the climate, establishing several measures, namely:

- The protection of U.S. consumers, investors and businesses;
- The protection of the U.S. and global financial stability and mitigation of systemic risk;
- Mitigation of the illicit finance and national security risks posed by the illicit use of digital assets;

- The promotion of the U.S. leadership in technology and economic competitiveness to reinforce U.S. leadership in the global financial system;
- The promotion of equitable access to safe and affordable financial services;
- Supporting technological advances and ensuring responsible development and use of digital assets;
- Exploring a U.S. central bank digital currency (CBDC).


For more information, please see the [White House Fact Sheet](#). 

## Cryptocurrencies in the European Union (EU)

The European Parliament's Committee on Economic and Monetary Affairs (ECON) adopted its negotiating position on new rules on crypto-assets. The Members of the European Parliament (MEPs) adopted a draft report on Markets in Crypto-assets (MiCA), establishing rules on the supervision, consumer protection, and environmental sustainability of crypto-assets, including cryptocurrencies.

Key measures agreed by the MEPs for those issuing and trading crypto-assets cover transparency, disclosure, authorisation, and supervision of transactions. Moreover, the legal framework supports market integrity and financial stability by regulating public offers of crypto-assets. Lastly, the draft rules include provisions against market manipulation and to prevent money laundering, terrorist financing, and other criminal activities.

The MEPs have also referred to the Commission in order for it to present a legislative proposal to include in the [EU taxonomy \(a classification system\) for sustainable activities](#) any crypto-asset mining activities that contribute substantially to climate change, by 1 January 2025, instead of the original amendment proposed to address these environmental concerns.

For more information, please see the [European Parliament Press Release](#) issued on 14 March 2022. 

## Cryptocurrencies and European Union (EU) anti-money laundering package

The Members of the European Parliament (MEPs) from the Committee on Economic and Monetary Affairs (ECON) and the Committee on Civil Liberties (LIBE) have also adopted a draft legislation strengthening EU rules against money laundering and terrorist financing.

Under the adopted provisions, all transfers of crypto-assets will have to include information on the source of the asset and its beneficiary. Such information is to be made available to the competent authorities, in order to ensure that crypto transfers can be traced and hence suspicious transactions blocked. The adopted rules will also cover transactions from so-called unhosted wallets (a crypto-asset wallet address that is in the custody of a private user). However, the rules will not apply to person-to-person transfers conducted without a provider (such as bitcoin trading platforms) or among providers acting on their own behalf.

MEPs will now negotiate the final shape of the legislation with EU governments. The European Parliament should vote on the draft during the plenary session in April.

For more information, please see the [European Parliament Press Release](#) issued on 31 March 2022. 

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