

Trending Topics of the month



Privacy and
Data Protection



Telecoms



Intellectual
Property



Advertising

#Privacy and Data Protection

EDPB adopts three guidelines following public consultation



On 14 February 2023, the European Data Protection Board (“EDPB”) adopted three sets of guidelines, namely:


- [guidelines 03/2022 on deceptive design patterns in social media platform interfaces: how to recognise and avoid them](#). These guidelines set out practical recommendations to both social media designers and users on how to assess and avoid deceptive design patterns in social media interfaces which are in violation of the General Data Protection Regulation (“GDPR”). Following public consultation, the final version has been updated with new wording and further clarifications.

- [guidelines 05/2021 on the interplay between the application of Article 3 and the provisions on international transfers as per Chapter V of the GDPR](#). These guidelines clarify the interplay between

the GDPR’s territorial scope (Article 3) and the provisions on international transfers (Chapter V). They aim to provide guidance to controllers and processors when identifying whether a processing operation constitutes an international transfer, and to provide a common understanding of the concept of international transfers. Following public consultation, the final version has been updated and further clarifications were added.

- [guidelines 07/2022 on certification as a tool for transfers](#). These guidelines further clarify the practical use of certifications as a transfer tool and complement [guidelines 1/2018 on certification](#) which provide more general guidance on certification. Following public consultation, the final version has been updated to reflect the feedback received.

All three guidelines were published on 24 February 2023.

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


EDPB adopts a procedure for the adoption of its opinions on national criteria for certification and European Data Protection Seals

On 14 February 2023, the EDPB adopted a [document](#) on the procedure for the adoption of the EDPB opinions on national criteria for certification and European Data Protection Seals. This document is aimed at all applicants of certification criteria and clarifies both the approval process of national and EU-wide certification criteria and the criteria for certification meant as tools for international transfers. The goal is to simplify the adoption of EDPB opinions on certification criteria.

Specifically, this document contains all the steps that Data Protection Authorities (DPAs) are to take as soon as they receive criteria from the scheme owners until they communicate to the EDPB Chair, irrespectively of whether or not they intend to follow the EDBP's opinion.

This document supersedes [internal document 04/2019](#) on the procedure for the adoption of the EDPB Opinions on the DPA's draft accreditation requirements for certification bodies and the DPA's draft decisions on criteria of certification (although, the parts related to the procedure for the adoption of opinions on accreditation requirements will remain valid). It will also supersede the [EDPB document on the procedure for the approval of certification criteria by the EDPB resulting in a common certification, the European Data Protection Seal](#).

The document was published on 27 February 2023.


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

EDPB adopts an opinion on the draft adequacy decision regarding the EU-US Data Privacy Framework

On 28 February 2023, the EDPB adopted [opinion 5/2023](#) on the European Commission ("EC") draft implementing decision on the adequate protection of personal data under the EU-US Data Privacy Framework.

In its opinion, the EDPB acknowledges the significant improvements introduced in the United States ("US") legal framework regarding the principles of necessity and proportionality in data collection by US intelligence services and the new redress mechanism for European Union ("EU") data subjects. However, the EDPB has still expressed concerns on some aspects and has asked for further clarifications from the EC.

The [draft adequacy decision](#), published by the European Commission on 13 December 2022 is based on the EU-US Data Privacy Framework. Its key component is the EU-US Data Privacy Framework Principles, which were issued by the US Department of Commerce. The EU-US Data Privacy Framework is only applicable to US organisations that have self-certified. The EDPB has now adopted its opinion on the draft adequacy decision, which considers both the commercial aspects and US public authorities' access and use of data.

The EU-US Data Privacy Framework replaces the [Privacy Shield](#), which in turn replaced [Safe Harbor](#), both EC's adequacy decisions which have been invalidated by the Court of Justice of the European Union ("CJEU"), respectively in the [Schrems II](#) and [Schrems I cases](#). 

Telecommunications

ANACOM launches a public consultation on the draft amendment to Regulation on the provision of information of a statistical nature



On 3 February 2023, the Portuguese Telecoms regulator, *Autoridade Nacional de Comunicações* (“ANACOM”) launched a public consultation on the draft amendment to [Regulation No. 255/2017 on the provision of information of a statistical nature, which was adopted on 17 January 2023](#).

This Regulation, which is applicable to providers of electronic communications services and network operators, aims to establish a set of information that enables the monitoring of (i) the various electronic

communications markets and services; and (ii) the providers’ compliance with their obligations. Moreover, this Regulation defines “relevant markets”, assesses significant market power (SMP), and fulfils ANACOM’s other tasks.

The draft amendment to this Regulation is subject to public consultation for a period of 30 working days. Contributions may be sent until 17 March 2023.

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

ANACOM launches a public consultation on the coverage of “white areas” with very high capacity fixed networks

On 10 February 2023, ANACOM launched a public consultation on the deployment of very high capacity public electronic communications networks in “target areas”, using public funding, namely from the EU; this is the third public consultation launched on the identification of “target areas”.

The public consultation is open until 12 March 2023.

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



EC presents a set of actions regarding Gigabit connectivity


On 28 February 2023, the EC presented new initiatives to make Gigabit connectivity available to both citizens and businesses across the entire EU by 2030. This project is in line with the objectives of [Europe's Digital Decade](#) aimed at enabling the transformation of the connectivity sector in the EU.

The EC adopted the following initiatives:

- The EC adopted a proposal for a regulation that will put forward new rules to enable faster, cheaper and more effective rollout of Gigabit networks across the EU (the "[Gigabit Infrastructure Act](#)")
- The EC published a draft [Gigabit Recommendation](#), which aims to provide guidance to National Regulatory Authorities

on the conditions of access to telecoms networks of operators with significant market power, to incentivise faster switch-off of legacy technologies and accelerated Gigabit networks deployment

- The EC launched an [Exploratory Consultation](#) on the future of the connectivity sector and its infrastructure, in order to gather views on how growing demands for connectivity and technological improvements may affect future developments of the connectivity sector and its infrastructure.

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



#Intellectual Property

Portugal referred to the CJUE following failure to notify the transposition of the Digital Single Market




On 15 February 2023, the EC decided to refer several EU Member States, including Portugal, to the CJUE for failing to notify the Commission of transposition measures under 2 Directives with respect to copyright.

Portugal has failed to notify complete transposition measures on copyright and related rights for both Directive (EU) 2019/89 ("[Directive on copyright and related rights applicable to certain online transmissions](#)") and Directive (EU) 2019/790 (the "[Digital Single Market Directive](#)").

The transposition deadline expired on 7 June 2021, which led the EC to open the infringement procedure on 23 July 2021 by sending of letters of formal notice to the Member States that had failed to communicate the complete transposition of the 2 Directives. The EC followed up its notices with reasoned opinions on 19 May 2022.

Under Article 258 of the Treaty on the Functioning of the EU ("TFEU"), if the Member State in question does not comply with the reasoned opinion within the period laid down by the EC, the latter may bring the matter before the CJUE and call the CJUE to impose financial sanctions on that Member State.


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

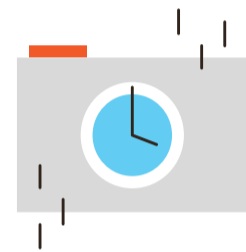
Unitary Patent in the EU

On 17 February 2023, the German government deposited its instrument of ratification of the Agreement on a Unified Patent Court (“UPCA”) before the Council of the European Union (“CEU”). This step marks the successful completion of the necessary ratification procedures by the participating EU Member States for the Unitary Patent Package to become effective for currently 17 states.

The new system is now ready to enter into operation on 1 June 2023 and more countries are expected to join in the future. The new system will enable uniform patent


protection across all participating EU Members States by way of a single patent application filed with the EPO and provide a centralised platform for Europe-wide patent litigation before the [Unified Patent Court \(“UPC”\)](#).

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



Portuguese Parliament authorizes the Government to legislate on copyright and related rights

On 27 February, [Law No. 7/2023 of 27 February 2023](#) was published, which authorises the government to legislate on copyright and related rights applicable to certain online transmissions, transposing [Directive \(EU\) 2019/789](#) of the European Parliament and of the Council of 17 April 2019.

This legislative authorisation is valid for 90 days and it covers the definition of “ancillary online service” for the purposes of Article 2(1) of Directive (EU) 2019/789, and the extension of the application of the [Copyright and Related Rights Code](#) (approved by Decree-Law No. 63/85 of 14 March 1985) to ancillary online service under the terms of the above Directive, among others. 



#Advertising

EAO publishes reports advertising in video sharing platforms in Europe



The European Audiovisual Observatory (“EAO”) published 2 comparative [mapping reports](#) which deal with how European countries have adapted their audiovisual legal framework to tackle the online challenges of video sharing platforms, namely, advertising.

The reports conclude that:

- Rules become stricter when adverts concern alcohol or foods and beverages containing nutrients and substances with a nutritional or physiological effect (e.g., sugar).
- Rules on sponsorship and product placement do apply to adverts carried by video sharing platforms but they generally only apply in a minority of cases.

The most regulated area is gambling, which is predominantly covered under special gambling legislation or advertising legislation and, in some cases, self-regulatory instruments.

Environmental or “green” claims are less regulated, but are often referred to in connection with unfair commercial practices or fall within the scope of misleading advertising.

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



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