

## Trending Topics of the month



Privacy and  
Data Protection



Artificial  
Intelligence



Digital  
Technologies



Cybersecurity



Crypto



Telecoms



Intellectual  
Property

#Privacy and Data Protection

### EDPB adopts Art. 65 GDPR dispute resolution binding decisions regarding Meta Platforms Ireland Limited




On 6 December 2022, the European Data Protection Board (EDPB) adopted 3 dispute resolution decisions on the basis of Art. 65 General Data Protection Regulation (GDPR) concerning social media platforms Facebook, Instagram and WhatsApp.

The binding decisions address important legal issues, namely, the lawfulness and transparency of processing for behavioural advertising in the case of the Facebook and Instagram draft decisions, and the lawfulness of processing for the purpose of the improvement of services in the case of the WhatsApp draft decision.

The EDPB binding decisions were triggered by the objections raised by several Supervisory Authorities (SAs) on the draft decisions prepared by the Irish SA as lead Supervisory Authority (LSA) concerning, among others, the legal basis for processing (Art. 6 GDPR), data protection principles (Art. 5 GDPR), and the use of corrective measures, including fines.


The EDPB decisions settle the question of whether the processing of personal data for the performance of a contract is a suitable legal basis for behavioural advertising, in the cases of Facebook and Instagram, and for service improvement, in the case of WhatsApp. These decisions are expected to be published once the LSA has notified its national decisions to the controller.

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

## Portuguese Data Protection Supervisory Authority (CNPD) fined the Portuguese National Statistics Institute (*Instituto Nacional de Estatística* or *INE*)

The CNPD applied a fine of EUR 4.3 million to INE for violating GDPR provisions in the context of the 2021 census. According to CNPD [Deliberation/2022/1072](#), published on 12 December 2022, the INE unlawfully processed health and religious data, failed to comply with the information duties towards respondents of the 2021 census

questionnaire, violated data transfer provisions, failed to conduct a data protection impact assessment and did not meet due diligence requirements in selecting a subcontractor.


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




## French Data Protection Supervisory Authority (CNIL) fined Microsoft Ireland Operations Limited

The CNIL imposed a penalty of EUR 60 million on Microsoft Ireland Operations Limited for not allowing users to refuse cookies as easily as accepting them. According to CNIL [Deliberation SAN-2022-023](#), published on 22 December 2022, when users visited “bing.com”, cookies were deposited on

their terminal without their consent, while these cookies were used, among others, for advertising purposes. Furthermore, the Deliberation noted that there was no button allowing to refuse the deposit of cookies as easily as accepting them.

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

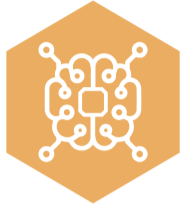
## The “old” standard contractual clauses (SCCs) are no longer valid

As of 27 December 2022, data exporters and importers will no longer be able to rely on the previous SCCs from the European Commission to lawfully transfer data to third countries, and will either have to use the updated standard [clauses of 4 June 2021](#) or other transfer tools. 



#Artificial Intelligence

## Artificial Intelligence Act




On 6 December 2022, the Council of the European Union (the Council) adopted its [general approach](#) on the Artificial Intelligence Act, which aims to ensure that artificial intelligence (AI) systems placed on the European Union market are safe and respect fundamental rights and other EU values.

The Council's text narrows down the definition of AI systems to distinguish it from simpler software systems. Moreover, it extends the provision regarding prohibited AI and clarifies the use of "real-time" remote biometric identification systems in publicly accessible spaces by law enforcement authorities. As regards the classification of AI systems as high-risk, the text adds a horizontal layer on top of the high-risk classification and clarifies the requirements of high-risk AI systems.

On the other hand, the Council's text adds new provisions regarding general purpose AI and explicitly excludes national security, defence, and military purposes from the scope of the Artificial Intelligence Act. Furthermore, the text clarifies the provisions on conformity assessment procedures, market surveillance, and AI Board while providing more proportionate caps on administrative fines for SMEs and start-ups.

Overall, the Council's general approach increases transparency and is more innovation-friendly when it comes to testing AI systems. By adopting it, the Council will be able to enter negotiations with the European Parliament as soon as the latter adopts its own position with a view to reaching an agreement on the proposed regulation.

The [draft regulation](#) was presented by the Commission in April 2021 and remains key in fostering development of safe and lawful AI systems within the EU.

For more information, please see the [press release of the Council of the European Union](#). 

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## Bias in algorithms – Artificial intelligence and discrimination

On 8 December 2022, the European Union Agency for Fundamental Rights (FRA) published a report on the use of AI in predictive policing and offensive speech detection entitled "[Bias in algorithms - Artificial intelligence and discrimination](#)". The Report highlights how bias in algorithms appears, can amplify over time and affect people's lives, potentially leading to discrimination.

The Report is available for download [here](#). 



# Digital Technologies

## European digital identity (eID)



On 6 December 2022, the Council adopted its [general approach](#) on the proposed legislation regarding the framework for a European digital identity (eID), which aims to ensure universal access for people and businesses to secure, trustworthy electronic identification and authentication by means of personal digital wallets on mobile phones.

The proposed new framework amends the Regulation (EU) No. 910/2014 of the European Parliament and of the Council, of 23 July 2014, on electronic identification and trust services for electronic transactions in the internal market ([eIDAS Regulation](#)), which set out the foundations for safely accessing public services and conducting transactions online and across borders in the EU.

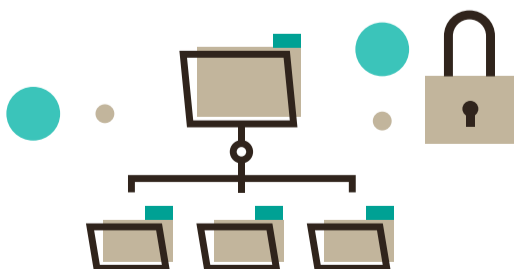
Among others, the Council's text further develops the concept of the wallet in the context of the proposal and adds a recital regarding the technical preconditions to be achieved to ensure high-level security in determining a person's identity. Moreover, the text rephrases the part of the proposal regarding the notification of relying parties and introduces a provision to cover cases where a more stringent registration or authorisation procedure is required.

On the other hand, the Council text clarifies that the issuance, use for authentication and revocation of wallets should be free of charge to natural persons and proposes that the implementing period of 24 months be counted from the adoption of the implementing acts. Regarding access to hardware and software features as part of core platform services provided by gatekeepers, the text adds a new provision to clarify that providers of wallets and issuers of notified electronic identification means acting in a commercial or professional capacity are business users of gatekeepers as defined in the [Digital Markets Act](#) (DMA). The text also addresses the implications of the interlink between the proposal and the DMA.

By adopting its general approach, the Council will be able to enter negotiations with the European Parliament as soon as the latter adopts its own position with a view to reaching an agreement on the proposed regulation.

In June 2021, the [Commission proposed a framework](#) for a European digital identity that would be available to all EU citizens, residents and businesses, via a European digital identity wallet. Member states are required to use the digital wallet under a notified eID scheme, built on common technical standards, following compulsory certification. The proposal was also accompanied by a recommendation for the development of a Union toolbox defining the technical specifications of the wallet.

For more information, please see the [press release of the Council of the European Union](#).



# Cybersecurity

## NIS 2 Directive




Directive (EU) 2022/2555 of the European Parliament and of the Council, of 14 December 2022, on measures for a high common level of cybersecurity across the Union ([NIS 2 Directive](#)) was published in the EU Official Journal of 27 December 2022.

The NIS 2 Directive replaces the [first NIS Directive](#) (Directive (EU) 2016/1148 of the European Parliament and of the Council, of 6 July 2016, concerning measures for a high common level of security of network and information systems across the Union), which laid down the rules for cross-border cooperation between EU member states as well as the requirements regarding national cybersecurity capabilities of EU

member states and national supervision of operators of essential services and key digital service providers.

The NIS 2 Directive sets out the baseline for cybersecurity risk management measures and reporting obligations across all sectors covered by the directive, namely energy, transport, health and digital infrastructure.

The NIS 2 Directive will enter into force on 16 January 2022, and member states must adopt it by 17 October 2024. Directive (EU) 2016/1148 will be repealed as from 18 October 2024. 

#Crypto


## The Council agreed its position on a strengthened AML rulebook: rules will be extended to the entire crypto sector

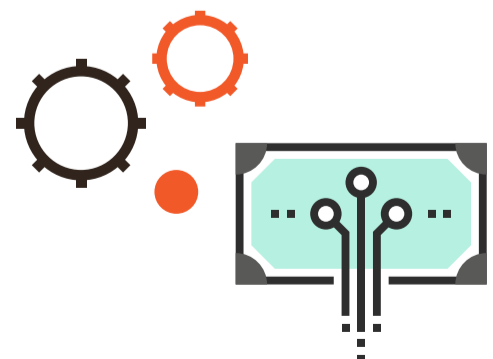


On 7 December 2022, the Council agreed its position on an anti-money laundering (AML) regulation and a new directive (AMLD6) which, together with the proposal for a recast of the transfer of funds regulation, will form the new EU AML rulebook, once adopted.

The new EU anti-money laundering and combating the financing of terrorism (AML/CFT) rules will oblige all crypto-asset service providers (CASPs) to conduct due diligence on their customers.

Having agreed its position on the anti-money laundering regulation and directive, the Council may now onset negotiations with the European Parliament to agree on a final version of the texts.


For more information, please see the [press release of the Council of the European Union](#). 

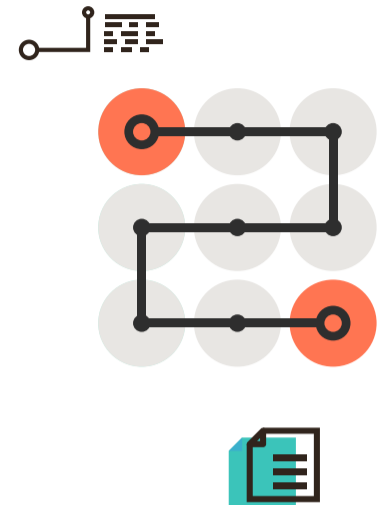


## New transparency rules require service providers to report crypto-asset transactions

On 8 December 2022, the European Commission [proposed new tax transparency rules](#) for all service providers facilitating transactions in crypto-assets for customers resident in the EU, which complement the Markets in Crypto-assets ([MiCA](#)) and anti-money laundering rules.

The draft text will be submitted to the European Parliament for consultation and to the Council for adoption. New reporting requirements with regard to crypto-assets, e-money and digital currencies are expected to enter into force on 1 January 2026.

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




### #Telecommunications

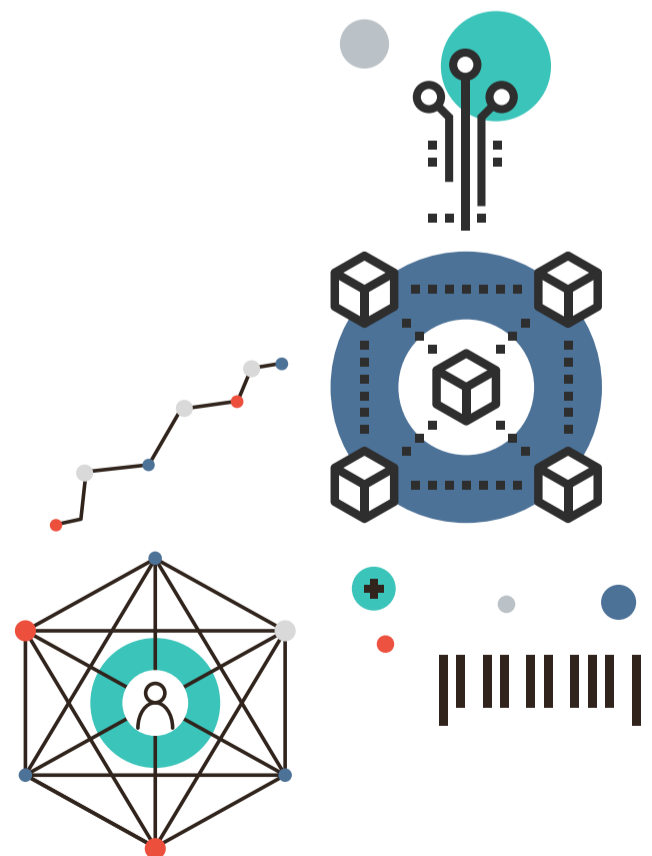
## Portugal's National Strategy for Connectivity



Portuguese Government adopted the National Strategy for Connectivity in very high capacity electronic communication networks for 2023-2030.

This Strategy is key for the Government to publish an invitation to tender for the installation, operation and maintenance of very high capacity networks in areas that currently lack coverage (also known as “white zones”) in 2023.

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




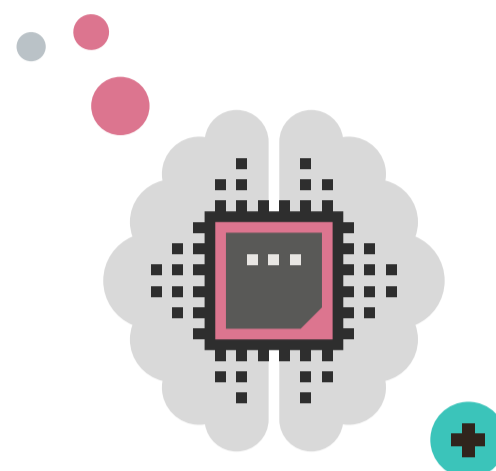
#Intellectual Property

## Boards of Appeal Case-Law Reports




Reports containing case-law of the Boards of Appeal are now made available by the European Union Intellectual Property Office (EUIPO) [here](#).

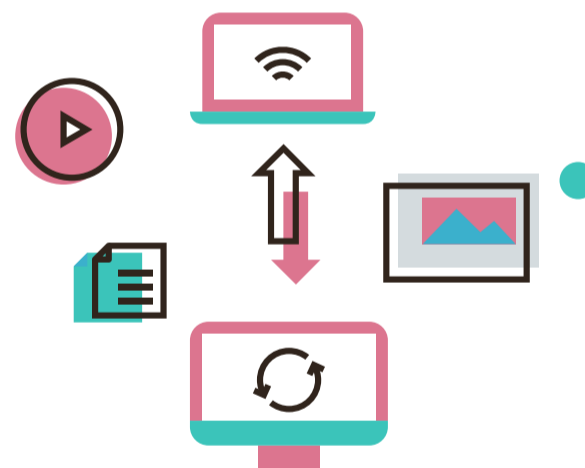
These reports contribute to enhanced coherence and consistency in numerous aspects of trademark and design law, as well as to greater legal certainty and knowledge. 



## Technology Transfer Offices (TTOs)

Within Project Tech4innov, *Agência Nacional de Inovação* (ANI) is organizing the “Program for the Promotion of Patent Registration in co-ownership with companies”. This initiative aims to improve, develop and maximise investment in research conducted in Portugal by supporting the projects of Academic TTOs. Applications must be sent to [info@ani.pt](mailto:info@ani.pt) by 6 January 2023.

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



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