

Trending Topics of the month



Privacy and
Data Protection



Intellectual
Property



Digital
Platforms

#Privacy and Data Protection


EDPB adopted a letter on data sharing for AML/CFT purposes



On 4 April 2023 the European Data Protection Board (EDPB) published a letter to the European Parliament, the Council and the European Commission (EC) on [data sharing for anti-money laundering and countering the financing of terrorism \(AML/CFT\) purposes](#).

This letter highlights the risks to privacy and data protection posed by some amendments introduced by the Council on the proposal for a [new Regulation on AML/CFT](#), which would allow private entities, under certain conditions, to share personal data with each other for AML/CFT purposes concerning “suspicious transactions” and data collected in the course of performing customer due diligence obligations.

In this regard, the EDPB expressed its concerns about the lawfulness, necessity and proportionality of these provisions, which could result in very large-scale processing of personal data by private entities. Moreover, the EDPB considers that the amendments do not adequately specify the conditions under which such processing is justified, and that they do not provide sufficient safeguards to ensure that the impact on individuals is minimised (for example, in relation to blacklisting and exclusion from financial services).

The EDPB hence recommends the co-legislators not to include these provisions in the final text of the Regulation proposal. For more information please see [EDPB press release](#). 


EDPB resolves dispute on transfers by Meta and creates task force on Chat GPT

On 13 April 2023 the EDPB announced that it had adopted a binding dispute resolution decision on the basis of Article 65 of the General Data Protection Regulation (GDPR) concerning a draft decision of the Irish Data Protection Supervisory Authority (IE DPA) on the legality of data transfers to the United States (US) by Meta Platforms Ireland Limited (Meta IE), relating to Facebook.

The EDPB noted that the binding decision addresses important legal questions arising from the draft decision of the IE DPA, as lead supervisory authority (LSA). Namely, the EDPB settles the dispute on whether an administrative fine and/or an additional order to bring processing into compliance must be included in the IE DPA final decision. In this regard, the EDPB stressed that the IE DPA is now required to adopt such decision within 1 month after the EDPB has notified its decision.

The EDPB will publish its decision on its website after the LSA has notified its national decision to the controller.


Moreover, the EDPB discussed the temporary ban imposed by the Italian Data Protection Supervisory Authority (Garante) on OpenAI, L.L.C. (Open AI) regarding ChatGPT, and decided to launch a dedicated task force to foster cooperation and to exchange information on possible enforcement actions conducted by DPAs.

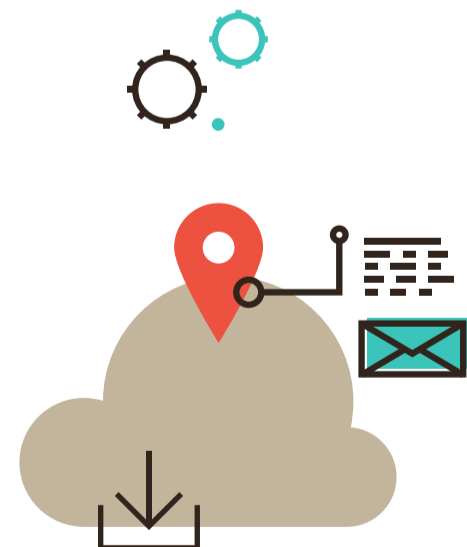
For more information please see the [EDPB press release](#). 



CNPD creates a database with ECJ case law

As of 14 April 2023, the Portuguese Data Protection Supervisory Authority (Comissão Nacional de Proteção de Dados, or CNPD) started providing access through its website to the most recent and relevant European Court of Justice (ECJ) [case-law on privacy and/or the protection of personal data](#).

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




EDPB adopts final version of several Guidelines

On 17 April 2023, the EDPB has published the final version of the [guidelines on data subject rights – right of access](#). These guidelines explain the right of access and its various aspects, while providing examples and guidance on how this right may be implemented in different scenarios. Moreover, these guidelines provide clarifications on the scope of the right of access, the information the controller has to provide to the data subject, the format of the access request, the main modalities for providing access, and the notion of manifestly unfounded or excessive requests.

Furthermore, the EDPB also adopted the final versions of [guidelines for identifying a](#)

[controller or processor's lead supervisory authority](#) and the [guidelines on data breach notification](#). Both guidelines concern an update of the Art.29 Working Party guidelines on the subject, which were endorsed by the EDPB at its [first plenary meeting](#) in May 2018.


Following public consultation, these guidelines were updated and further clarifications were added on different aspects raised during the consultation period.

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

CNPD issues Guidelines on the processing of Personal Data in the Public Sector

The CNPD has published 5 guidelines adopted on 18 April 2023 on the processing of personal data in the public sector, namely:

- [Guideline](#) on the web-streaming of meetings of municipal bodies;
- [Guideline](#) on the publication on the internet of minutes of collegial bodies;
- [Guideline](#) on the availability of personal data processed in the context of administrative procedures;
- [Guideline](#) on the access to personal data held by a public entity as a processor;
- [Guideline](#) on the incompatibility between the role of Data Protection Officer (DPO) and the Person responsible for access to the information (PRAI).

For more information please see the CNPD press release. 




EDPB promotes consistent approach for NOYB complaints

On 19 April 2023 the EDPB published a [report of the work undertaken by the Data Protection Authorities \(DPAs\) within the 101 task force](#) regarding the 101 complaints filed by NGO NOYB in the aftermath of the CJEU [Schrems II judgment](#).

The report sets out the common positions of the members of the task force and contains information on the outcomes of the first cases concerned. In this regard, several DPAs have ordered website operators to comply with the requirements of Chapter V of the GDPR on international transfers, and if necessary to stop the transfer in question.

The task force was set up in September 2020 to promote a consistent approach in the handling of 101 identical complaints lodged by NOYB with DPAs regarding “Google Analytics” and “Facebook Business Tools” on websites, and further transfers to the U.S.

The EDPB has also clarified that the positions of the DPAs expressed in the report do not represent that of the EDPB so as not to prejudge the DPAs’ analyses that will have to be made for each complaint and each tool concerned.


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

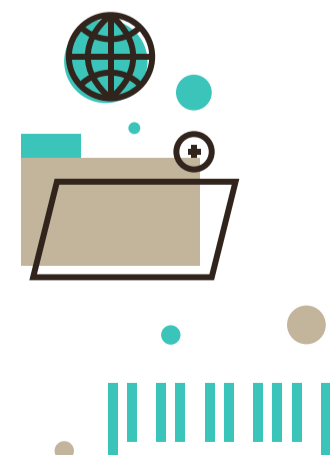
EDPB Launches Data Protection Guide for small business

On 27 April 2023, the EDPB has launched a [data protection guide](#) for small business to help business owners on their path to become more GDPR compliant. The guide thus aims to raise awareness about the GDPR requirements that businesses are required to meet as data controllers.

The guide covers various aspects of the GDPR, from data protection principles, to data subject rights, data breaches, etc. It contains videos, infographics, interactive flowcharts, and other practical materials. In addition, the guide contains an overview of information and materials developed for small businesses by the national DPAs.

The guide is currently only available in English but will be made available in other EU languages in the future.

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



Intellectual Property

The European Commission proposes new rules on Patents



On 27 April 2023, the EC proposed new Regulations on (i) [standard essential patents \(SEPs\)](#); (ii) [compulsory licensing of patents](#); and (iii) [supplementary protection certificates \(SPC\)](#).


The proposed SEP licensing framework seeks to create a balanced system, setting a global benchmark for SEP transparency, reduction of conflicts and efficient negotiations, and will apply to all standards to be published after it enters into force.

The new rules on the compulsory licensing of patents provide a new EU-wide compulsory licensing instrument that will allow access to

key patented products and technologies in crisis scenarios, such as faced worldwide during the Covid-19 pandemic.

On the other hand, the new rules on SPC will introduce a unitary SPC to complement the Unitary Patent. The SPC reform also introduces a centralised examination procedure, implemented by European Union Intellectual Property Office (EUIPO), in close cooperation with EU national Intellectual Property (IP) offices.

These Regulations aim to help companies, especially small and medium-sized companies (SMEs), make the most of their inventions, while creating a more transparent and effective framework regarding the protection of intellectual property rights in the EU.

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

#Digital Platforms

Amendments to the Portuguese Labour Code: Introduction of Presumption of Employment regarding Digital Platforms.



[Decree-Law No. 13/2023 of 3 April 2023](#) introduces amendments to the [Portuguese Labour Code](#) (Law No. 7/2009 of 12 February 2009) and related legislation, while transposing into national law [Directive \(EU\) 2019/1152 of 20 June 2019](#), as well as [Directive \(EU\) 2019/1158 of 20 June 2019](#) on transparent and predictable working conditions in the EU, and on work-life balance for parents and carers, respectively.

These amendments are part of the Portuguese Government's 'Dignified Work Agenda', which includes 70 measures based on 4 main


principles (i) combat precarious employment; (ii) value young people in the labour market; (iii) promote a better work-life balance; and (iv) boost collective bargaining and employee participation.

Among the amendments has been the addition of Article 12 – A on the presumption of employment regarding digital platforms. Under this new article, it can be presumed that an employment contract is in place between self-employed service providers and digital platform operators if two or more of the following conditions are met:

- the platform operator sets the service provider's remuneration or sets a maximum and minimum remuneration range;
- the platform operator manages the service provider's actions and outward presentation towards the service user;

- the platform operator controls the activity provided, particularly by electronic means or algorithmic management;
- the platform operator restricts the service provider's autonomy with regard to the organisation of their work, the ability to accept or refuse tasks, the use of subcontractors, the choice of clients, or the provision of service to third parties via the platform;
- the platform exercises labour-related powers over the service provider, such as the deactivation of their account; and
- the work equipment and tools used by the service provider are owned by the digital platform operator or are operated by it under a lease contract.

This article is applicable to the activities of digital platforms, including those regulated by specific legislation on remunerated passenger transportation using private vehicles managed from an electronic platform.

The legal presumption of employment may be rebutted, on the one hand, where the digital platform proves that the self-employed service provider works with effective autonomy (i.e., without being subject to the control, direction and disciplinary power of the platform) or, on the other hand, where the service provider is in fact acting as an intermediary, while making the services available through its own employees. 


The European Commission launches the European Centre for Algorithmic Transparency

On 18 April 2023, the EC launched the [European Centre for Algorithmic Transparency](#) (ECAT). The ECAT plays an important role under the [Digital Services Act](#) (DSA), which imposes risk management requirements for companies designated by the EC as Very Large Online Platforms and Very Large Online Search Engines.

Pursuant to the DSA, Very Large Online Platforms and Very Large Online Search Engines are obliged to identify, analyse and mitigate an extensive range of systemic risks on their platforms (such as, for instance, how illegal content and disinformation can be amplified through their services, as well as the impact on the freedom of expression, including in the media).

In that regard, the ECAT will provide the EC with in-house technical and scientific expertise to ensure that algorithmic systems used by the Very Large Online Platforms and Very Large Online Search Engines comply with the risk management, mitigation and transparency requirements under the DSA.


The risk mitigation plans developed by the designated platforms and search engines will be subject to an independent audit and oversight by the EC.

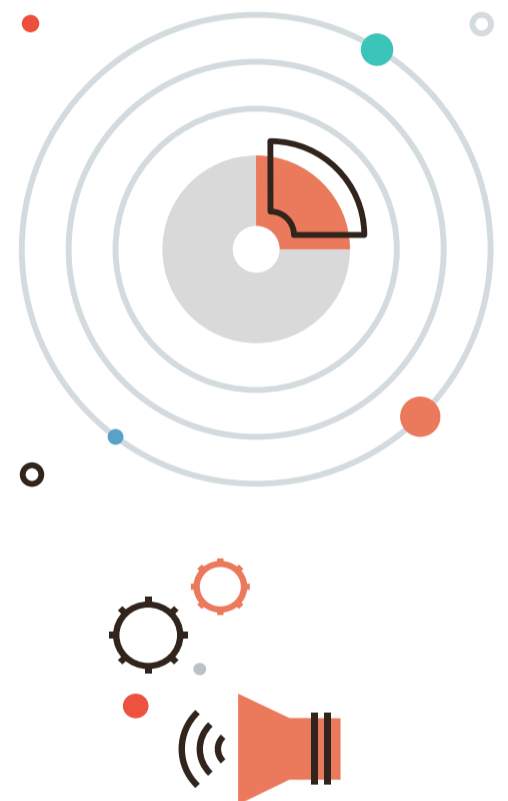
For more information please see the [EC press release](#). 

The EC designates first set of Very Large Online Platforms and Very Large Online Search Engines

On 25 April 2023, the EC adopted the first designation decisions under the DSA, identifying 17 Very Large Online Platforms and 2 Very Large Online Search Engines that reach at least 45 million active users per month. The list of Very Large Online Platforms includes companies such as Facebook, Amazon, Apple, and Youtube. The 2 Very Large Online Search Engines designated by the EC are Bing and Google Search.

The platforms have been designated based on the user data that they had to publish by 17 February 2023, as pursuant to the DSA.

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



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