

Trending Topics of the month



Privacy and
Data Protection



Telecoms



Intellectual
Property



Crypto

#Privacy and Data Protection

Portuguese Constitutional Court strikes down several provisions of the metadata law



The Portuguese Constitutional Court, in its recent decision in Case 268/2022, declared Articles 4, 6 and 9 of [Law No. 32/2008 of 17 July](#) – regarding the transfer of stored data to the competent authorities for the investigation, detection and prosecution of serious crimes – unconstitutional, in that they do not provide for notice to be served on the data subject regarding the data retained, provided that such notification is not likely to jeopardise investigations or the life or physical integrity of third parties.

The Portuguese Constitutional Court concluded that Law 32/2008, unlike other national laws aimed at combating crime, is unbalanced because it encompasses subjects who are not suspected of involvement in criminal activity by keeping the location and traffic data of all subscribers, without differentiation, exception or consideration regarding the

objective pursued, which is in violation of the fundamental rights to privacy and to self-determination.

Law No. 32/2008 of 17 July 2008, transposes into Portuguese law [Directive 2006/24/EC, of the European Parliament and of the Council of 15 March 2006](#) on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks. This Directive was held invalid by the Court of Justice of the European Union (CJEU) in its judgment of 8 April 2014 in the case of [Digital Rights Ireland and others](#), for violation of the principle of proportionality in light of Articles 7, 8 and 52(1) of the EU Charter of Fundamental Rights.


For more information please see the [Constitutional Court's Decision](#).

CNPD ordered the deletion of communications data retained under Law No. 32/2008

CNPD, the Portuguese Data Protection Supervisory Authority, ordered telecoms providers to delete data retained under [Law no. 32/2008 of 17 July](#), after the publication of the ruling of the Portuguese Constitutional Court that declared that some of its provisions unconstitutional.

In the meeting held on the 7th June, CNPD decided to order providers of publicly available electronic communications services or networks to delete personal data retained under Law no. 32/2008, of 17 July,

as it considered, following the publication of the Portuguese Constitutional Court’s decision, that it is unlawful for operators to continue to process personal data under that law.

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

EDPB adopts guidelines on certification as a tool for transfers and an Article 65 dispute resolution binding decision regarding Accor

The European Data Protection Board (“EDPB”) adopted [guidelines 07/2022 on certification as a tool for data transfers](#).

Article 46 of the General Data Protection Regulation (“GDPR”) requires data exporters to put in place appropriate safeguards for transfers of personal data to third countries or international organisations. In that regard, GDPR provides different safeguards that may be used by data exporters by introducing, among others, approved certification mechanisms as a new tool to transfer personal data to third countries in the absence of an adequacy agreement, under Article 46(2)(f). These guidelines provide guidance as to the application of Article 46(2)(f) of the GDPR and further clarify the practical use of this transfer tool.

[certification criteria in accordance with Articles 42 and 43 of the GDPR](#), which provide more general guidance on certification. The guidelines are undergoing public consultation until 30 September 2022.

Moreover, the EDPB adopted a dispute resolution decision on the basis of Art. 65 of the GDPR. The binding decision aims to tackle the lack of consensus on certain aspects of a draft decision issued by the French SA as lead supervisory authority (LSA) regarding Accor SA, a company specialised in the hospitality sector whose main establishment is located in France, and the subsequent objections expressed by one of the concerned supervisory authorities (CSAs).


The EDPB will publish its decision on its website without undue delay after the LSA has notified its national decision to the controller.

The [guidelines complement guidelines 1/2018 on certification and identifying](#)

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

Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022

[Regulation \(EU\) 2022/991 of the European Parliament and of the Council of 8 June 2022](#) amending Regulation (EU) 2016/794, as regards Europol’s cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol’s role in research and innovation entered into force on the 28 of June 2022.

The Regulation (EU) 2022/991 expands the mandate of Europol with regard to exchanges of personal data with private parties, the use of artificial intelligence, and the processing of large datasets. 

ICO Statement in response to the government’s announcement on the upcoming Data Reform Bill


The UK’s independent data protection regulator, the Information Commisioner’s Office (“ICO”) published a statement in response to the [government’s announcement](#) on the upcoming Data Reform Bill.

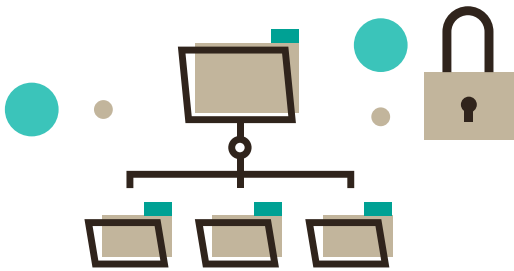
In its statement, John Edwards, UK Information Commissioner, said that he was pleased to see that the government has taken ICO’s concerns about independence on board and that the proposed changes will ensure that ICO can continue to operate as a trusted, fair and impartial regulator.

The UK government launched a consultation on 10 September 2021 to inform on the development of proposals to reform the UK’s data protection laws, to secure a pro-growth and trusted data regime as part of the [UK’s National Data Strategy](#).

The Data Reform Bill will reform the UK’s data protection regime and to diverge from European GDPR.

The current UK data protection regime consists of the UK General Data Protection Regulation (“UK GDPR”), the Privacy and Electronic Communications Regulations (“PECR”) and the Data Protection Act 2018 (“DPA”).

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



The EDPS believes amended Europol Regulation weakens data protection supervision


The European Data Protection Supervisor (“EDPS”) expressed its concerns regarding the amendments to [Regulation \(EU\) 2022/991 of the European Parliament and of the Council of 8 June 2022](#) amending Regulation (EU) 2016/794, as regards Europol’s cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol’s role in research and innovation (“Europol Regulation”).

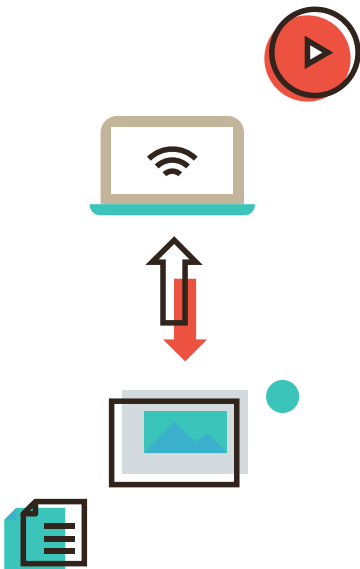
The EDPS believes that the amended Europol Regulation weakens the fundamental right to data protection and does not ensure appropriate oversight of the European Union Agency for Law Enforcement Cooperation (“Europol”).

The amended Europol Regulation expands the mandate of Europol with regard to exchanges of personal data with private parties, the use of artificial intelligence, and the processing of large datasets. Europol is now allowed to process large datasets,


meaning that data relating to individuals that have no established link to a criminal activity will be treated in the same way as the personal data of individuals with a link to a criminal activity.

The amendments entered into force on 28 June 2022.

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




Law No. 93/2021, of 20 December 2022 enters into force

Law no.93/2021, of 20 December, establishing the protection of whistle-blowers and which transposed into Portuguese legislation the EU Whistleblower Protection Directive (Directive 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law) entered into force on 18 June 2022. 

Google Analytics and data transfers to the United States

Following the European Court of Justice (“ECJ”) ruling invalidating the Privacy Shield (“[Schrems II](#)”), three Data Protection Supervisory Authorities have already determined that Google Analytics unlawfully transfers data to the United States in violation of the GDPR.

[Datenschutz behörde](#) (“dsb”), the Austrian Data Protection Authority, [Commission Nationale de l’Informatique et des Libertés](#) (“CNIL”), the French Data Protection Authority, and [Garante Per La Protezione Dei Dati Personali](#) (“Garante”), the Italian Data Protection Authority have ruled that Google Analytics violates the GDPR on the grounds that Google fails to guarantee that the personal data are processed in compliance with GDPR requirements, since it qualifies as an electronic communication service provider under the United States (“U.S.”) law and is thus obliged to disclose data to U.S. intelligence services if required.


The [European Union](#) and the [United States](#) have announced a political agreement in principle on a Trans-Atlantic Data Privacy Framework, (“Privacy Shield 2.0.”) following the invalidation of the Privacy Shield. Nonetheless, timings for a finalised EU-U.S. framework remain uncertain. 

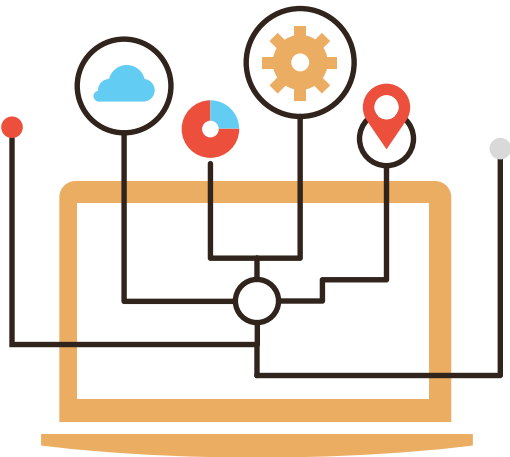


#Telecommunications

Decree-Law No. 40/2022, of 6 June 2022 was approved




Decree-Law No. 40/2022, of 6 June 2022, laying down general rules for the implementation of a digital platform containing information on fixed and mobile network coverage of undertakings providing public electronic communications networks informação was approved. 



BEREC Guidelines on the Implementation of the Open Internet Regulation

The Body of European Regulators for Electronic Communications (“BEREC”) published the stakeholders’ input to the public consultation on the draft guidelines on the Implementation of the Open Internet Regulation (“Open Internet Guidelines”).

BEREC prepared an updated version of the [Open Internet Guidelines](#) in light of the ECJ’s rulings on the Open Internet Regulation (“OIR”) issued on 2 September 2021. A draft of the updated Open Internet Guidelines was issued for consultation from 15 March to 14 April 2022. BEREC published a [summary of all received contributions](#).

For more information, please see [BEREC’s press release](#). 

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#Intellectual Property

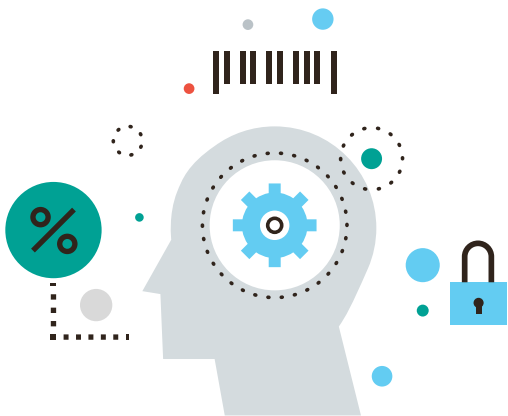
Update of Industrial Property Fees



The updated rate table [for 2022](#) for Industrial Property rights registration at the Instituto Nacional da Propriedade Industrial (“INPI”) was published on 9 June 2022.

This updated rate table follows the INPI’s Board of Directors decision of 25 June 2022 and is applicable since 1 June 2022.


The new rate table is available [here](#). 



The Portuguese-speaking countries Industrial Property Portal

Following Portuguese-speaking-countries conferences on Industrial Property, a new Industrial Property Portal for Portuguese-speaking countries was made available at <https://www.portal-lusofonia.org>.

This new digital platform aims to be a gateway for sharing specialised content information on Industrial Property (“I.P”) within Portuguese-speaking countries.

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

#Crypto

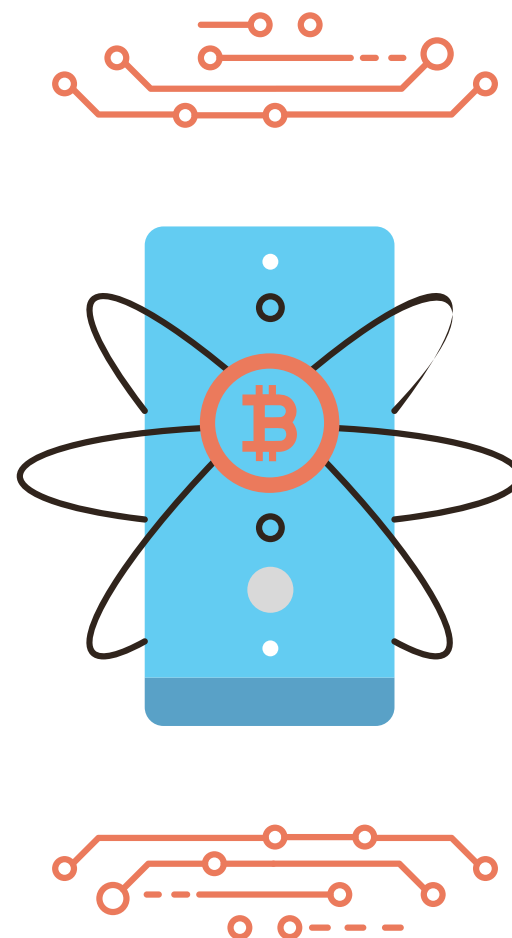
Agreement reached on European crypto-asset regulation (MiCA)



The Council presidency and the European Parliament reached a provisional agreement on the markets in crypto-assets (“[MiCA](#)”) proposal.

The European Commission came forward with the MiCA proposal on 24 September 2020, which is part of a large digital finance package. The proposal covers issuers of unbacked crypto-assets, and so-called “stablecoins”, as well as trading venues called crypto wallets. MiCA aims to regulate the risks related to crypto-assets by protecting consumers by helping them to avoid fraudulent schemes. Under the new rules, crypto-asset service providers will have to observe strong requirements to protect consumers’ crypto wallets and will be liable if they lose investors’ crypto-assets. Moreover, service providers in the crypto-asset market will be required to report information on their environmental and climate footprint.

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



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