

Monitoring Report – 29/03/2019 (No. 9 of 2019)

The efamro monitoring report covers selected legal and regulatory developments and events in data protection of particular interest to the European research sector.

First enforcement action by the Polish Data Protection Authority (DPA) serves as a reminder that the GDPR imposes significant obligations on processing indirectly collected data. Controller was fined PLN 943 000 (around €220 000) for the failure to fulfil the information obligation in relation to over 6 million people. Data subjects' data was obtained from publicly available sources, such as the Central Electronic Register and Information on Economic Activity, and processed for commercial purposes. But the controller failed to meet obligations in relation to them, that is it should have informed them inter alia on: their data, the source of their data, the purpose and the period of the planned data processing, as well as their rights under the GDPR.

The European Parliament voted to approve updated copyright rules that will mean platforms are responsible for copyright infringements committed by their users.

Artificial Intelligence meeting brought together Member States representatives from the Digitising European Industry and Artificial Intelligence platform, as well as the subgroup on Digital Skills of the Digital Single Market Strategic Group. Comprehensive report from the UK Royal Society "Protecting privacy in practice: the current use, development and limits of Privacy Enhancing Technologies in data analysis" is useful reading for a high level of overview of the application of these technologies.

Regulatory Enforcement

Polish Data Protection Authority – Fine levied for failure to fulfil the GDPR information obligation

The President of the Personal Data Protection Office (UODO) imposed its first fine for the amount of PLN 943 000 (around €220 000) for the failure to fulfil the information obligation.

Many people whose data were processed by the company were not aware of this. The controller did not inform them about the processing and thus deprived them of the possibility to exercise their rights under the General Data Protection Regulation (GDPR). Therefore, they had no possibility to object to further processing of their data, to request their rectification or erasure. The President of the Personal Data Protection Office considered the breach to be serious, since it concerns the fundamental rights and freedoms of persons, whose data are processed by the company and relates to the basic issue – the information on the processing of data. Imposing the fine is necessary, because the controller does not comply with the law.

As Piotr Drobek, Director of the Analysis and Strategy Department at UODO, explained- the company did not meet the information obligation in relation to over 6 million people. Out of about 90,000 people who were informed about the processing by the company, more than 12,000 objected to the processing of their data. This shows how important it is to properly fulfil the information obligations in order to exercise the rights we are entitled to in accordance with the GDPR.

The decision of the UODO's President concerned the proceedings related to the activity of a company which processed the data subjects' data obtained from publicly available sources, inter alia from the Central Electronic Register and Information on Economic Activity, and processed the data for commercial purposes. The authority verified incompliance with the information obligation in relation to natural persons conducting business activity – entrepreneurs who are currently conducting such activity or have suspended it, as well as entrepreneurs who conducted such activity in the past. The controller fulfilled the information obligation by providing the information required under Art. 14 (1) – (3) of the GDPR only in relation to the persons whose e-mail addresses it had at its disposal. In case of the remaining persons the controller failed to comply with the information obligation – as it explained in the course of the proceedings – due to high operational costs. Therefore, it presented the information clause only on its website.

In the opinion of the President of the Personal Data Protection Office, such action was insufficient – while having the contact data to particular persons, the controller should have fulfilled the information obligation in relation to them, that is it should have informed them inter alia on: their data, the source of their data, the purpose and the period of the planned data processing, as well as the data subjects' rights under the GDPR.

In the opinion of the UODO's President, the provisions do not impose an obligation on the controller to send such correspondence by registered mail, which was raised by the company as an excuse for not fulfilling an expensive obligation.

In the relevant case, the entity had postal addresses and telephone numbers and could therefore comply with the obligation to provide information to the persons whose data are being processed. Therefore, this case should be distinguished from another case decided by the Polish DPA a few years ago, when another company did not have such addresses at its disposal.

The President of the Personal Data Protection Office found that the infringement of the controller was intentional, because - as it was established during the proceedings - the company was aware of the obligation to provide relevant information, as well as the need to directly inform persons.

While imposing the fine, the authority also took into account the fact that the controller did not take any action to put an end to the infringement, nor did it declare its intention to do so.

Source: EDPB

URL: https://edpb.europa.eu/news/national-news/2019/first-fine-imposed-president-personal-data-protection-office_en

Legislative Initiatives

Copyright Directive – Adoption in Plenary of new rules on Copyright in the Digital Single Market Report

The Romanian Presidency of the Council is moving forward with the ePrivacy file. The Telecommunication working group (TELEWG) of the Council has met on the 12th and 14th of March to discuss the file. Now that the review of the Public Sector Information Directive and the Platform to business proposal are done, the Working group can focus on the ePrivacy. The Romanian Presidency seems to be hoping to send the file from the TELEWG to COREPER for an agreement by late Spring. However, there are still a number of issues where Member States haven't reached an agreement.

During the 2 meetings last week, the discussion have focused on browser privacy settings as well as the role of the regulatory authority, and the need for coordination with Data Protection Authorities, in the case where DPA would not be main regulatory authority for the enforcement of the ePrivacy Regulation in some member States. ON the latter, the EDPB has published earlier this week a new [opinion on the relation between GDPR and ePrivacy regarding](#) the competence of DPAs, which has given plenty of food for thoughts to Member States. With regard to privacy settings in browser, or any software providing access to the internet, the latest text on the table continues to suggest the

deletion of article 10. There is still no consensus behind this approach, which is quite the opposite to the one taken by the European Parliament. However, Member States have discussed changes in recitals to encourage browser and other software provider to offer user friendly and transparent privacy settings in order to help them manage their consent by easily setting up and amending whitelists and withdrawing consent at any moment.

Prior to the last Telecom Council of Minister which took place in Bucharest, FEDMA, together with 10 other associations send [a letter to the Romanian Presidency](#) of the Council and to all Member States calling for a new impact assessment of the ePrivacy files, identifying the need to take into consideration latest technological development, as well as the concrete implementation of the GDPR among other issues.

Data ethics and artificial Intelligence

UK Royal Society - Protecting Privacy in Practice Report

UK Royal Society recently launched a report *Protecting privacy in practice: the current use, development and limits of Privacy Enhancing Technologies in data analysis*. Realising the full potential of large-scale data analysis may be constrained by important legal, reputational, political, business and competition concerns. Certain risks can potentially be mitigated and managed with a set of emerging technologies and approaches often collectively referred to as ‘Privacy Enhancing Technologies’ (PETs). This disruptive set of technologies, combined with changes in wider policy and business frameworks, could enable the sharing and use of data in a privacy-preserving manner. They also have the potential to reshape the data economy and to change the trust relationships between citizens, governments and companies.

This report provides a high-level overview of five current PETs identified during our project as promising and of diverse nature, with their respective readiness levels and case studies from a range of sectors, to inform applied data science research and the digital strategies of government departments and businesses. This report also includes recommendations on how the UK could fully realise the potential of PETs and to allow their use on a greater scale, in particular:

- **Accelerate the research and development of PETs.** Funders, government, industry and the third sector can work together to support the development of interdisciplinary and cross-sector research challenges using PETs.
- **Promote the development of an innovation ecosystem.** UK Research and Innovation (UKRI) can encourage data-handling companies to engage with the start-ups and scale-ups developing PETs, to help UK investors and businesses realise the extent of the market opportunity for PETs.

- **Drive the development and adoption of PETs.** Government can be an important early adopter, using PETs and being open about their use so that others can learn from their experience, including opening up the analysis of sensitive datasets to a wider pool of experts whilst fully addressing privacy and confidentiality concerns.

The report also makes recommendations aimed at regulators, governance bodies and civil society, in particular to support organisations to become intelligent users of PETs and to promote human flourishing by exploring innovative ways of governing data and its use that are enabled by PETs.

Report is available [here](#).

Source: Royal Society

URL: https://royalsociety.org/topics-policy/projects/privacy-enhancing-technologies/?utm_campaign=6395&utm_source=adestra&utm_medium=email

EC HLEG on Artificial Intelligence – Upcoming Meetings

The High-Level Expert Group on Artificial Intelligence (main group) is expected to meet on 8 and 10 April 2019. The respective agendas will be uploaded [here](#) and [here](#).

Working group meeting with Member States: Artificial Intelligence, Digital Innovation Hubs and Digital Skills – Meeting Report and Presentations

This meeting brought together Member States representatives from the Digitising European Industry and Artificial Intelligence platform, as well as the subgroup on Digital Skills of the Digital Single Market Strategic Group. During two days, Member States representatives met in Brussels to discuss on three key topics for the future of Europe:

Coordinated Plan on Artificial Intelligence

The Working Group met for the first time since the adoption of the Coordinated Plan on AI that the Commission launched together with Member States in 2018. They discussed:

- Organisational questions relating to the 2019 review process and tools for better cooperation
- Financing tools to support SMEs in their digital transformation
- Testing facilities: Reference testing facilities and regulatory sandboxes
- Skills as part of national AI strategies

Digital Innovation Hubs

In the context of the reinforced role that hubs will play in the upcoming Digital Europe programme, Member States discussed:

- The selection process of the hubs
- The precise scope of the activities of the hubs
- Activities that they are running to prepare DIHs for their tasks in the Digital Europe Programme and the AI Coordinated Plan

There were also bilateral meetings with each Member State to discuss the draft reports that are being prepared on the different national initiatives for digitising industry.

Digital Skills

This Group is a subset of the Digital Single Market Strategic Group, which discusses ICT policy issues in the context of Digital Single Market (DSM) and gives input and advice on possible improvements and adjustments on DSM actions. The Subgroup on skills monitors overall progress with the DSM implementation, focusing on the social impacts of the digital transformation and in particular on digital skills development.

Presentations 18 March

Session 1 – Governance of AI

Session 2 – Exchange of best practices

- [Arnold Verbeek, EIB Advisory & Clementine Valayer, Gartner](#) : Introduction of the InnovFin advisory study on the digitalization of SMEs and SME evidence and initiatives to support the digitalization of SMEs; [Johan Harvard](#) , Kickstart Digitalisation, Sweden; [Jordi Llinares](#) ,; Ministry of Industry, Commerce and Tourism, Spain; [Mattia Corbetta](#) , MISE, Italy ; [Jorge Portugal](#) , COTEC, Portugal; [Caroline De Clock](#) , Belgium; Andrezej Soldaty, Poland

Session 3 – Regulatory sandboxes and reference testing facilities

- [European Commission](#) : Reference-testing facilities; [European Commission](#) : Regulatory sandboxes

Session 4 – Skills in AI

- [Fabrizia Benini](#) , European Commission: Skills in AI

Presentations 19 March

Session 1 – Skills state of play of current education offer

- [Joint Research Centre](#) : Academic offer in Artificial Intelligence

Session 2a: Digital Innovation Hubs in Digital Europe Programme

- [Anne-Marie Sassen](#) , European Commission

Session 2b – Preparing DIHs for their tasks in Digital Europe and AI Coordinated Plan

- [Cecile Huet & Andrea Halmos](#) , European Commission

Session 3a – Overview of National Initiatives on Digitising Industry

- [Rositsa Georgieva](#) , European Commission: Overview of national initiatives on digitising industry; [VVA and WIK-Consult](#) : Presentation of ongoing study on national initiatives on digitising industry.

Upcoming Events

April 2019

Center for Data and Innovation: Coordinated Plan on AI

4th April, Brussels, Belgium

To remain competitive in the global race for artificial intelligence (AI), the European Union will need more investment, more workers trained in AI-relevant skills, more shared resources including data, and a regulatory environment that will foster the development and use of AI. To that end, in December the European Commission released a "[Coordinated Plan on AI](#)" which encourages all member states to develop their own national AI strategies by mid-2019 and to work with the Commission to develop common metrics to measure AI adoption.

While some member states have already created national AI strategies, others have not or have only included dimensions of AI within broader digital strategies. Moreover, every member state is different, so the policies, priorities, and financial commitments in each national AI strategy will vary.

Join the Center for Data Innovation for a discussion that will take stock of the progress achieved so far across member states; compare targets, priorities, and dimensions; and assess the extent to which these national strategies will support Europe's goal of becoming a global leader in AI.

Registration details here: <https://www.eventbrite.com/e/european-ai-strategies-where-do-member-states-stand-and-where-are-they-headed-tickets-56188139237>