

Monitoring Report – 18/04/2019 (No. 11 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.

EU Commission launched a pilot phase to ensure that the ethical guidelines for Artificial Intelligence (AI) development and use can be implemented in practice. The Commission invited industry, research institutes and public authorities to test the detailed assessment list drafted by the High-Level Expert Group, which complements the guidelines. Significant stakeholder feedback on finalisation of these principles.

More draft regulatory guidance provided by European Data Protection Board (EDPB) which recently adopted guidelines on the scope and application of Article 6(1)(b) of the GDPR in the context of information society services. French data protection authority (CNIL) published a “Model Regulation” addressing the use of biometric systems to control access to premises, devices and apps at work.

Enforcement action by the ICO including a high profile penalty issued against a marketing organisation, collecting and unlawfully sharing personal data on new mothers under the previous data protection legislation. ICO also issued a draft Age Appropriate Design: Code of Practice for online services for children setting out the standards expected of those responsible for designing, developing or providing online services likely to be accessed by children and which process their data.

Regulatory Guidance

EDPS- Guidelines on scope and application Art 6(1)(b) GDPR

On April 9th and 10th, the EEA Data Protection Authorities and the European Data Protection Supervisor, assembled in the European Data Protection Board, met for their ninth plenary session.

During the plenary, the EDPB adopted guidelines on the scope and application of Article 6(1)(b)* GDPR in the context of information society services. In its guidelines, the Board makes general observations regarding data protection principles and the interaction of Article 6(1)(b) with other lawful bases. In addition, the guidelines contain guidance on the applicability of Article 6(1)(b) in case of bundling of separate services and termination of contract.

French DPA – CNIL publishes binding rules on biometric data processing in workplace

Hunton Andrews Kurth reports that on March 28, 2019, the French data protection authority (“CNIL”) published a “Model Regulation” addressing the use of biometric systems to control access to premises, devices and apps at work. The Model Regulation lays down binding rules for data controllers who are subject to French data protection law and process employee biometric data for such purposes.

The CNIL’s Model Regulation delineates how employee biometric data may be processed for workplace access control purposes. Specifically, the Model Regulation (1) gives an exhaustive list of the types of personal data that may be collected and further processed for those purposes; (2) defines the data retention periods; and (3) specifies technical and organizational measures that must be implemented to ensure the security of the personal data. The Model Regulation also requires that data controllers who process the employee biometric data at issue carry out a DPIA and regularly update that DPIA at least every three years.

See further the full [Model Regulation](#) and the [FAQs](#) on biometrics (both in French).

Source: Hunton Andrews Kurth

URL: <https://www.huntonprivacyblog.com/2019/04/04/cnil-publishes-binding-rules-on-processing-biometric-data-as-workplace-access-control/#page=1>

UK Data Protection – Draft Code of Practice Children's Privacy

The Information Commissioner's Office opens consultation on 16 standards that online services must meet to protect children's privacy. Age appropriate design: a code of practice for online services sets out the standards expected of those responsible for designing, developing or providing online services likely to be accessed by children and which process their data. When finalised, it will be the first of its kind and become an international benchmark.

Elizabeth Denham, Information Commissioner, said: "This is the connected generation. The internet and all its wonders are hardwired into their everyday lives. We shouldn't have to prevent our children from being able to use it, but we must demand that they are protected when they do. This code does that. Introduced by the Data Protection Act 2018, the draft code sets out 16 standards of age appropriate design for online services like apps, connected toys, social media platforms, online games, educational websites and streaming services. It is not restricted to services specifically directed at children.

The draft code says that the best interests of the child should be a primary consideration when designing and developing online services. It says that privacy must be built in and not bolted on. Settings must be "high privacy" by default (unless there's a compelling reason not to); only the minimum amount of personal data should be collected and retained; children's data should not usually be shared; and geolocation services should be switched off by default in most circumstances. So-called "nudge techniques" should not be used to encourage children to provide unnecessary personal data, to weaken their privacy settings or carry on using the service longer than they had intended. It also addresses issues of parental control and profiling.

Ms Denham said: "The ICO's Code of Practice is a significant step, but it's just part of the solution to online harms. We see our work as complementary to the current focus on online harms, and look forward to participating in discussions regarding the Government's white paper. The code gives practical guidance on data protection safeguards that ensure online services are appropriate for use by children. It leaves online service providers in no doubt about what is expected of them when it comes to looking after children's personal data. It helps create an open, transparent and safer place for children to play, explore and learn online. The standards in the code are rooted in existing data protection laws that are regulated by the ICO. Organisations should follow the code and demonstrate that their services use children's data fairly and in compliance with data protection law. Those that don't, could face enforcement action including fines of up to £17million or 4% of global turnover or orders to stop processing data.

Baroness Kidron, who led the parliamentary debate about the creation of the code, said: "I welcome the draft code released today which represents the beginning of a new deal between children and the tech sector. For too long we have failed to recognise children's rights and needs online, with tragic outcomes. I firmly believe in the power of technology to transform lives, be a force for good and rise to the challenge of promoting the rights and safety of our children. But in order to fulfil that role it must consider the best interests of children, not simply its own commercial interests. That is what the code

will require online services to do. This is a systemic change. The code is out for consultation until 31 May. The final version will be laid before Parliament and is expected to come into effect before the end of the year.

The code was informed by initial views and evidence gathered from designers, app developers, academics and civil society. The ICO also sought views from parents and children by working with research company Revealing Reality. The findings published its report on “Regulating in a digital World” in March 2019.

Source: ICO

URL: <https://ico.org.uk/about-the-ico/news-and-events/age-appropriate-design-code-blog>

UK Digital Initiatives – Digital Authority for Online Regulation

UK House of Lords Select Committee on Communications published its report on “Regulating in a digital World” in March 2019. The report included recommendations to the government, including 10 guiding principles for the development of regulation online, a new public interest test for data driven mergers and a new Digital Authority, to oversee regulation of the digital world.

The Select Committee on Communications is appointed by the House of Lords “to look at a broad range of communication and broadcasting public policy issues and highlight areas of concern to Parliament and the public.” Noting the growing importance of the digital world, the Committee stressed that regulation has not kept up with the pace of the role of the internet and digital services in the lives of the public calling for a new approach to regulation.

URL: <https://publications.parliament.uk/pa/ld201719/ldselect/ldcomuni/299/299.pdf>

Regulatory enforcement

UK ICO – Data protection fine on Bounty UK Limited

The Information Commissioner's Office (ICO) has fined Bounty (UK) Limited £400,000 for illegally sharing personal information belonging to more than 14 million people. An ICO investigation found that Bounty, a pregnancy and parenting club, collected personal information for the purpose of membership registration through its website and mobile app, merchandise pack claim cards and directly from new mothers at hospital bedsides. But the company also operated as a data broking

service until 30 April 2018, supplying data to third parties for the purpose of electronic direct marketing.

Bounty breached the Data Protection Act 1998 by sharing personal information with a number of organisations without being fully clear with people that it might do so. The company shared approximately 34.4 million records between June 2017 and April 2018 with credit reference and marketing agencies, including Acxiom, Equifax, Indicia and Sky. These organisations represented the four largest recipients out of a total of 39 organisations which Bounty confirmed it shared personal data with.

The personal information shared was not only of potentially vulnerable, new mothers or mothers-to-be but also of very young children, including the birth date and gender of a child. Steve Eckersley, ICO's Director of Investigations, said: The number of personal records and people affected in this case is unprecedented in the history of the ICO's investigations into data broking industry and organisations linked to this. Bounty were not open or transparent to the millions of people that their personal data may be passed on to such large number of organisations. Any consent given by these people was clearly not informed. Bounty's actions appear to have been motivated by financial gain, given that data sharing was an integral part of their business model at the time. Such careless data sharing is likely to have caused distress to many people, since they did not know that their personal information was being shared multiple times with so many organisations, including information about their pregnancy status and their children. The investigation found that for online registrations, Bounty's privacy notices had a reasonably clear description of the organisations they might share information with, but none of the four largest recipients were listed. Additionally, none of the merchandise pack claim cards and offline registration methods had an opt-in for marketing purposes.

Data ethics and artificial intelligence

Artificial Intelligence - Stakeholder reactions to the publication of ethics guidelines for trustworthy AI

The Commission presents today next steps for building trust in artificial intelligence by taking forward the work of the High-Level Expert Group.

Building on the work of the group of [independent experts](#) appointed in June 2018, the Commission launched a pilot phase to ensure that the ethical guidelines for Artificial Intelligence (AI) development and use can be implemented in practice. The Commission invites industry, research institutes and public authorities to test the detailed assessment list drafted by the High-Level Expert Group, which complements the guidelines.

Today's plans are a deliverable under the [AI strategy](#) of April 2018, which aims at increasing public and private investments to at least €20 billion annually over the next decade, making more data available, fostering talent and ensuring trust.

Vice-President for the Digital Single Market Andrus **Ansip** said: *"I welcome the work undertaken by our independent experts. The ethical dimension of AI is not a luxury feature or an add-on. It is only with trust that our society can fully benefit from technologies. Ethical AI is a win-win proposition that can become a competitive advantage for Europe: being a leader of human-centric AI that people can trust."*

Commissioner for Digital Economy and Society Mariya **Gabriel** added: *"Today, we are taking an important step towards ethical and secure AI in the EU. We now have a solid foundation based on EU values and following an extensive and constructive engagement from many stakeholders including businesses, academia and civil society. We will now put these requirements to practice and at the same time foster an international discussion on human-centric AI."*

Artificial Intelligence (AI) can benefit a wide-range of sectors, such as healthcare, energy consumption, cars safety, farming, climate change and financial risk management. AI can also help to detect fraud and cybersecurity threats, and enables law enforcement authorities to fight crime more efficiently. However, AI also brings new challenges for the future of work, and raises legal and ethical questions.

The Commission is taking a three-step approach: setting-out the key requirements for trustworthy AI, launched a large scale pilot phase for feedback from stakeholders, and working on international consensus building for human-centric AI.

1.Seven essentials for achieving trustworthy AI

Trustworthy AI should respect all applicable laws and regulations, as well as a series of requirements; specific assessment lists aim to help verify the application of each of the key requirements:

- **Human agency and oversight** : AI systems should enable equitable societies by supporting human agency and fundamental rights, and not decrease, limit or misguide human autonomy.
- **Robustness and safety** : Trustworthy AI requires algorithms to be secure, reliable and robust enough to deal with errors or inconsistencies during all life cycle phases of AI systems.
- **Privacy and data governance**: Citizens should have full control over their own data, while data concerning them will not be used to harm or discriminate against them.
- **Transparency**: The traceability of AI systems should be ensured.
- **Diversity, non-discrimination and fairness**: AI systems should consider the whole range of human abilities, skills and requirements, and ensure accessibility.

- **Societal and environmental well-being:** AI systems should be used to enhance positive social change and enhance sustainability and ecological responsibility.
- **Accountability:** Mechanisms should be put in place to ensure responsibility and accountability for AI systems and their outcomes.

2. Large-scale pilot with partners

In summer 2019, the Commission will launch a pilot phase involving a wide range of stakeholders. Already today, companies, public administrations and organisations can sign up to the [European AI Alliance](#) and receive a notification when the pilot starts. In addition, members of the AI high-level expert group will help present and explain the guidelines to relevant stakeholders in Member States.

3. Building international consensus for human-centric AI

The Commission wants to bring this approach to AI ethics to the global stage because technologies, data and algorithms know no borders. To this end, the Commission will strengthen cooperation with like-minded partners such as Japan, Canada or Singapore and continue to play an active role in international discussions and initiatives including the G7 and G20. The pilot phase will also involve companies from other countries and international organisations.

Next steps

Members of the AI expert group will present their work in detail during the third [Digital Day](#) in Brussels on 9 April. Following the pilot phase, in early 2020, the AI expert group will review the assessment lists for the key requirements, building on the feedback received. Building on this review, the Commission will evaluate the outcome and propose any next steps.

Furthermore, to ensure the ethical development of AI, the Commission will by the autumn 2019: launch a set of networks of AI research excellence centres; begin setting up networks of digital innovation hubs; and together with Member States and stakeholders, start discussions to develop and implement a model for data sharing and making best use of common data spaces.

Background

The Commission is facilitating and enhancing cooperation on AI across the EU to boost its competitiveness and ensure trust based on EU values. Following its [European strategy on AI](#), published in April 2018, the Commission set up the [High-Level Expert Group on AI](#), which consists of 52 independent experts representing academia, industry, and civil society. They [published](#) a first draft of the ethics guidelines in December 2018, followed by a stakeholder consultation and meetings with representatives from Member States to gather feedback. This follows the [coordinated plan](#) with Member States to foster the development and use of AI in Europe, also presented in December 2018.

Background Background

For more information

- [Communication: "Building trust in human-centric artificial intelligence"](#)
- [AI ethics guidelines](#)
- [Factsheet artificial intelligence](#)
- [High-Level Expert Group on AI](#)
- [European AI Alliance](#)
- [Artificial Intelligence: A European Perspective](#)
- [Artificial Intelligence Watch](#)

DIGITALEUROPE - AI Ethics guidelines: DIGITALEUROPE welcomes the vision for agile process and real-life policy sandboxing

The European Commission High-Level Expert Group on Artificial Intelligence has today presented its Ethics Guidelines for Trustworthy AI. Cecilia Bonefeld-Dahl, Director-General of DIGITALEUROPE and co-rapporteur for the assessment list, released the following statement:

"The result of the HLEG is a breakthrough in the sense that it is the outcome of a very diverse multi-stakeholder group with members from all types of backgrounds. I am a strong believer of this diversity and of a piloting approach to policy making. Further, the group took a decision to reach out, listen and learn so that the next step is to drive an agile policy sandboxing exercise enabling public institutions, private companies, SMEs and citizens to try the Trustworthy AI Assessment list and governance structure in real life.

This means that the HLEG will receive detailed practical feedback before finalising the document. Only through an agile process and real-life sandboxing of the proposal can we learn and avoid unforeseen consequences of policy making. Looking at how to apply AI in particular, there are extensive benefits to be realised in society. We need to get it right in order to drive European innovation and welfare and to avoid the risks of misuse of AI. We outline the common European values and principles that AI should respect.

In the Guidelines, we've worked hard to find consensus and reflect the key European principles and values that AI technology and usage should respect. As co-rapporteur on this section, it's clear that companies and governments using AI need concrete and pragmatic guidance. Cross-country cooperation will be essential to realise these benefits: the majority of investment in AI is still happening outside Europe, and our societies need to have modern thinking on how to tackle challenges around education, healthcare, environment and the labour market.

At DIGITALEUROPE, we will continue the discussion with our member company experts and national trade associations, to build knowledge and turn these Trustworthy AI Guidelines into a success story."

BSA | The Software Alliance - BSA Welcomes EU High-Level Expert Group AI Ethics Guidelines

BSA | The Software Alliance welcomes the release of the final Ethics Guidelines for Trustworthy AI, as an important step for ethical development and deployment of AI in the European Union. BSA Members are leaders in the development of cutting-edge AI tools, and have worked globally to ensure that Artificial Intelligence is designed and deployed responsibly. To that end, BSA has developed five Key Pillars for Responsible Artificial Intelligence, for facilitating responsible AI innovation, which can be found at ai.bsa.org.

"The AI Ethics Guidelines are a welcome addition to the global conversation on Artificial Intelligence" said Thomas Boué, BSA Director General, Policy – EMEA. "AI has the potential to revolutionize many aspects of our daily life, and the Ethics Guidelines are well placed to provide an innovation-friendly framework for all developers and researchers in the EU. We are particularly happy to see that the Guidelines took into account international efforts in this area, like the BSA five Key Pillars for Responsible Artificial Intelligence. We also look forward to working with the HLEG for their second deliverable on Policy and Investment."

BEUC - AI ethic guidance a first step but needs to be transformed into tangible rights for people

On Monday, 8 April, the European Commission's High Level Expert Group on Artificial Intelligence (HLEG) will publish its "Ethics Guidelines for Trustworthy AI". AccessNow, ANEC and BEUC, all members of the expert group, support these guidelines but stress that they can only be a first step. The European Union has the responsibility to ensure that fundamental and consumer rights are respected and bring benefits to people.

"The design and deployment of AI must be individual centric and respect human rights. Trustworthy AI can be a step in the right direction but only if the guidelines are matched by the development and enforcement of adequate safeguards," said Fanny Hidvégi, European Policy Manager of Access Now, HLEG member. "AI systems can be used to have a positive impact on our lives, but can also lead to unfair discrimination, manipulation and loss of consumers' autonomy. Ethics are not enforceable protections. It is crucial to go beyond ethics now and establish mandatory rules to ensure AI decision-making is fair, accountable and transparent," said Ursula Pachl, Deputy Director General of BEUC, HLEG member.

"Consumers will be able to trust AI systems only if they are sure their rights will be respected and protected. Because of the dynamic aspects of AI systems, we need to update our static legislation, standards and enforcement procedures," said Chiara Giovannini, Deputy Secretary General of ANEC,

HLEG member. To address the challenges that the design, development and deployment of AI systems pose to our society, we propose the following next steps to the European Commission:

- A comprehensive mapping of existing legislation that applies to AI development and deployment, and an identification of legal uncertainties and gaps.
- An update of *existing* legislation, where needed, particularly in the fields of safety, liability, consumer and data protection law.
- An evaluation and update of current enforcement mechanisms with regard to fundamental and consumer rights including on redress and market surveillance.
- The establishment of *new* rights for consumers to ensure transparency, fairness and accountability of AI powered algorithms.

ETNO - Artificial Intelligence: Europe should take the lead on trustworthy solutions

Brussels, 8 April 2019 – ETNO, the Association representing Europe's leading telecom operators, welcomed today the European High-Level Expert Group "Ethics [Guidelines](#) for Trustworthy Artificial Intelligence (AI)" and called for supporting European solutions through sustained levels of investment and innovation.

Countries are today competing globally to become leaders in the delivery of AI-based products and services. In this context, it is crucial for the European Union to support industrial leadership in this field, so that citizens can also choose from solutions inspired by European values.

AI is central to the future of communications

The telecoms sector looks at AI as an enabler of dramatic improvements in communication technologies and services. Better customer service, smarter network deployment and incubation of start-ups to develop new services are just some of the ways in which telecom operators are deploying AI to improve their operations.

For this reason, ETNO has coordinated the telecoms input to the public consultation on the Guidelines and it has activated a taskforce on the issue. At the same time, our members have launched [ethical principles](#) , [stakeholder dialogues](#) and are embedding AI in their codes of conducts.

Ethics Guidelines provide a solid building block

The "Ethics Guidelines for Trustworthy AI" provide a solid building block for defining Europe's policy framework on this crucial topic. ETNO supports the guiding principles and the seven key requirements of trustworthy AI. Many of them are already today built in telecoms services and operations.

ETNO and its members look forward to the next steps in the adoption and governance of the guidelines. We recognise that implementing and testing the assessment list will be a huge task, but we support a flexible approach built on regular feedback from adopting organisations to allow for adjustment of the guidelines.

Today's guidelines are an important contribution to the broader ethical debate that will keep developing over the coming years, in Europe and worldwide. Such a complex issue requires multi-stakeholder engagement with all interested parties, as done with the European High-Level Expert Group. The telecoms industry remains fully committed to an open, inclusive dialogue.

Lise Fuhr , ETNO Director General, said: "*Europe should take the lead in exporting trustworthy AI solutions. Building European industrial leadership in AI is a key tool to assert European values in the technology space*".

Ieva Martikenaite , Chair of the ETNO AI Taskforce and VP Innovation at Telenor, said: "*I am pleased that the Commission recognised the importance of the telecommunications industry in the ethical discussion for realising Europe's AI strategy. Trust in the design, deployment and use of AI is a must-win battle. We are happy for this first step and will continue contributing towards this vision*".

Upcoming Events

April 2019

Kick-off meeting of the CEN-CENELEC Focus Group on Artificial Intelligence

24th April, Copenhagen

The Kick-off meeting of the CEN-CENELEC Focus Group on Artificial Intelligence is taking place in Copenhagen.

URL: <https://www.cen.eu/news/brief-news/Pages/NEWS-2019-013.aspx>

May 2019

Exploring the Privacy and Data Protection connections

14th May, Brussels

The Law, Science, Technology and Society (LSTS) Research Group and the Brussels Privacy Hub are organising an [international workshop](#) entitled Exploring the Privacy and Data Protection connection: International Workshop on the Legal Notions of Privacy and Data Protection in EU Law in a Rapidly Changing World.

URL: <https://brusselsprivacyhub.eu/events/article%207%208%20workshop.html>