

Monitoring Report – 17/05/2019 (No. 14 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.

The EDPB (European Data Protection Board) held its tenth plenary session which resulted in election of a new Deputy Chair, a response to MEP In 't Veld regarding connected vehicles and designation of the representatives for the third annual Privacy Shield Review. Building on recent draft EDPB Guidance the UK ICO has published new guidance on Codes of Conduct and Certification schemes.

Recent judgement from CJEU on a Spanish case about the practice of a German firm towards Spanish employees may lead to national changes on employment practices. Court held that Member States must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured noting that Member States will need to implement precise requirements for this to ensure compliance with Working Time Directive.

More principles-based guidance on artificial intelligence with publication of report by the Council of Europe Commissioner for Human Rights. Of interest but of course there is still a gap in terms of translation of these type of principles- based approaches to tangible guidance for organisations operating in this sphere.

Regulatory decisions and guidance

EDPB – Report of Tenth Plenary Session

On May 14th and 15th, the European Data Protection Board, met for their tenth plenary session. During the plenary a wide range of topics were discussed.

Election of a new Deputy Chair

The Members of the Board elected Aleid Wolfsen, Chairman of the Dutch Supervisory Authority, as new Deputy Chair, replacing Willem Debeuckelaere, whom EDPB Chair Andrea Jelinek thanked for his work. Along with fellow Deputy Chair Ventsislav Karadjov, Mr. Wolfsen will support the EDPB Chair in her work for the Board over the coming years. Dr. Jelinek added: "Public interest in data protection is at an all-time high. I look forward to working with Aleid and Ventsislav to engage with the wider community of data protection stakeholders." Mr. Wolfsen added: "In the years to come, it is our responsibility as Board to deliver authoritative guidance and sound advice. I will make it my responsibility as Deputy Chair that we take on board all opinions, and ultimately speak with one voice."

Response to MEP Sophie In't Veld regarding connected vehicles

The EDPB adopted a letter in response to MEP Sophie In't Veld's letter of 17 April 2019 regarding the sharing of car drivers' personal data with the car producer and third parties, without explicit consent, specific and informed consent of the driver, and without adequate legal basis. In its response the EDPB highlights that the Members of the Board and their international colleagues adopted an ICDPPC resolution on Data Protection in Automated and Connected Vehicles in 2017 and that the WP29 adopted its Opinion 3/2017 on the processing personal data in the context of Cooperative Intelligent Transport Systems (C-ITS). The issue will also be dealt with according to the EDPB 2019-2020 work program.

Third Annual Privacy Shield Review

The EDPB designated representatives for the third annual review of the Privacy Shield. Austria, Bulgaria, France, Germany, Hungary and the EDPS will represent the Board during the review.

ICO– UK Information Commissioner's Office Guidance on Codes of Conduct

The UK ICO has published new guidance on Codes of Conduct and Certification schemes.

Guidance available here: https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/codes-of-conduct/?utm_source=hootsuite&utm_medium=twitter&utm_term=iconews&utm_content=&utm_campaign=Codes%2FCerts

Employment Practices

CJEU – System enabling duration of daily working time to be measured

Spanish trade union, Federación de Servicios de Comisiones Obreras (CCOO), brought an action before the Audiencia Nacional (National High Court, Spain), seeking a judgment declaring Deutsche Bank SAE to be under an obligation to set up a system for recording the time worked each day by its members of staff. The union considered that such a system would make it possible to verify compliance with the stipulated working times and the obligation, laid down in national law, to provide union representatives with information on overtime worked each month. According to CCOO, the obligation to set up such a recording system is derived not only from national law but also from the Charter of Fundamental Rights of the European Union ('the Charter') and the Working Time Directive¹. Deutsche Bank contends that it follows from the case-law of the Tribunal Supremo (Supreme Court, Spain) that Spanish law does not lay down such an obligation of general application. It argues that that case-law shows that Spanish law requires only, except where there is an agreement to the contrary, that a record be kept of overtime hours worked by workers and the communication, at the end of each month, to workers and their representatives of the number of hours overtime thus worked.

The Audiencia Nacional had doubts as to whether the interpretation of Spanish law by the Tribunal Supremo complies with EU law and referred questions on that matter to the Court of Justice. According to information provided by that court to the Court of Justice, 53.7% of overtime hours worked in Spain are not recorded. In addition, the Spanish Minister for Employment and Social Security considers that it is necessary, in order to determine whether overtime has been worked, to know precisely the number of normal hours worked. The Audiencia Nacional notes that the interpretation of Spanish law given by the Tribunal Supremo in practice, first, deprives workers of an item of evidence essential for demonstrating that they have worked in excess of maximum working time limits and, second, deprives their representatives of the necessary means for verifying whether the applicable rules on the matter were complied with. Consequently, according to that court, Spanish law is not able to ensure the effective compliance with the obligations laid down by the Working Time Directive or the Directive on the health and safety of workers at work².

By today's judgment, the Court declares that those directives, read in the light of the Charter, preclude a national law that, according to the interpretation given to it in national case-law, does not require employers to set up a system enabling the duration of time worked each day by each worker to be measured.

The Court notes, first of all, the importance of the fundamental right of every worker to a limitation on the maximum number of working hours and to daily and weekly rest periods, which is enshrined in the Charter and given specific detail in the Working Time Directive. Member States are required to ensure that workers actually benefit from the rights that are conferred on them, without the specific

arrangements chosen to implement the directive being liable to render those rights meaningless. The Court recalls that the worker must be regarded as the weaker party in the employment relationship, such that it is necessary to prevent the employer from being in a position to impose a restriction of his rights on him.

The Court holds that, in the absence of a system enabling the duration of time worked each day by each worker to be measured, it is not possible to determine, objectively and reliably, either the number of hours worked and when that work was done, or the number of hours of overtime worked, which makes it excessively difficult, if not impossible in practice, for workers to ensure that their rights are complied with.

The objective and reliable determination of the number of hours worked each day and each week is essential in order to establish whether the maximum weekly working time – including overtime – and minimum daily and weekly rest periods have been complied with. The Court considers therefore that a national law which does not provide for an obligation to have recourse to an instrument that enables that determination does not guarantee the effectiveness of the rights conferred by the Charter and the Working Time Directive, since it deprives both employers and workers of the possibility of verifying whether those rights are complied with. Such a law could also compromise the directive's objective of ensuring better protection of the safety and health of workers, which is the case irrespective of the duration of the maximum weekly working time laid down in national law. By contrast, a system enabling the time worked by workers each day to be measured offers those workers a particularly effective means of easily accessing objective and reliable data as regards the duration of time actually worked, which facilitates both the proof by those workers of a breach of their rights and also the verification by the competent authorities and national courts of the actual observance of those rights.

Consequently, in order to ensure the effectiveness of the rights provided for in the Working Time Directive and the Charter, the Member States must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured. It is for the Member States to define the specific arrangements for implementing such a system, in particular the form that it must take, having regard, as necessary, to the particular characteristics of each sector of activity concerned, or the specific characteristics of certain undertakings concerning, inter alia, their size.

More information on the case is available in almost all official EU languages on the [website of the Court of Justice of the European Union](#) (cfr. N° 61/2019 : 14 May 2019 Judgment of the Court of Justice in Case C-55/18 CCOO).

Artificial Intelligence and ethics

Council of Europe – Unboxing Artificial Intelligence: 10 Steps to protect human rights

“Ensuring that human rights are strengthened and not undermined by artificial intelligence is one of the key factors that will define the world we live in”, says Council of Europe Commissioner for Human Rights, Dunja Mijatović, in recently published Recommendation. This Recommendation – entitled “Unboxing artificial intelligence: 10 steps to protect human rights” – provides a number of steps which national authorities can take to maximise the potential of artificial intelligence systems and prevent or mitigate the negative impact they may have on people's lives and rights. It focuses on 10 key areas of action:

- human rights impact assessment;
- public consultations;
- human rights standards in the private sector;
- information and transparency;
- independent oversight;
- non-discrimination and equality;
- data protection and privacy;
- freedom of expression, freedom of assembly and association, and the right to work;
- access to remedies; and
- the promotion of artificial intelligence literacy.

The Recommendation also contains an annexed checklist to help implement the measures recommended in each key area. The Recommendation builds on work done in this area by the Council of Europe, as well as other international organisations. It is rooted in the existing universal, binding and actionable framework provided by the international human rights system.

More information available here: <https://rm.coe.int/unboxing-artificial-intelligence-10-steps-to-protect-human-rights-reco/1680946e64>

Upcoming Events

June 2019

IPEN Rome Workshop 2019 - Towards an operational definition of state of the art in data protection by design – Current state and future trends

12th June, Rome

The Internet Privacy Engineering Network (IPEN) aims to bring together privacy experts from engineering fields with those of other disciplines, such as law, policy, economics etc.

The objective of this cooperation is to achieve an understanding of the technological requirements of privacy by design between all experts, which allows designers and developers to understand which privacy related choices they have in the design process, and how they should integrate privacy and data protection criteria in the decisions they take during the process. At the same time, any other parties involved in the design and development process, or concerned with its outcome, such as business managers, marketers, regulators and privacy counsels of DPOs in organisation should understand what the technological options are. The different groups involved should develop a common language which allows them to communicate about obligations, requirements, options and choices in a meaningful way.

Since the entry into force of the European Union's General Data Protection Regulation (GDPR), the need to consider data protection in the design of technological solutions changed from a best practice and implicit necessity into a legal obligation. Therefore, Both controllers and developers and operators of data processing operations on the one side and regulators and legal experts on the other side need to understand what should be considered "state of the art" in "data protection by design", what is below standard, and what is advancing the level of data protection.

Up till now, IPEN supported a general exploration of the concepts at stake, clarified their interpretation, and provided a platform for showcasing available privacy friendly solutions.

The next step is to get more specific and to identify what the state of the art in data protection by design is and will be in concrete and specific fields of application. In this workshop, we will launch a discussion on this issue for several areas of application. We are currently working on the draft agenda, which will provide further details. The IPEN workshop will aim to produce first drafts of concrete privacy enhancing measures for each of the areas addressed, covering the current state of the art as well as promising developments. The discussion will not be exhaustive. In addition to the field specific

analysis, we will also learn about the usability of this approach for wider and other areas than those covered in the workshop.

Registration details

The workshop is free of charge. Participants will carry their own expenses. To register for the workshop, please send an email to ipen@edps.europa.eu

URL: https://edps.europa.eu/ipen-rome-workshop-2019_en

First European AI Alliance Assembly

26th June, Brussels

The first European Artificial Intelligence (AI) Alliance Assembly will mark the one year anniversary of the creation of the European AI Alliance platform. It will bring together stakeholders, including citizens, and policymakers during a full day event. The aim is to discuss the latest achievements in AI policy as well as future perspectives of the European Strategy on Artificial Intelligence, including its impact on the economy and society.

During the event, the [High-Level Expert Group on Artificial Intelligence](#) (AI HLEG), which is the AI Alliance's steering group, will present two important milestones of its work:

- the Policy and Investment Recommendations on AI, addressed to the European Commission and Member States
- the Launch the [piloting process](#) of the [AI Ethics Guidelines](#) presented during the Digital Day 2019

The second part of the day will allow participants to take part in interactive workshops on the next steps of the European AI Strategy. The workshop discussions will serve as an input to future policy making. The event is open to all, yet priority will be given to the members of the European AI Alliance and stakeholders interested in piloting the AI Ethics Guidelines. Registrations will be assessed on a case-by-case basis to ensure a balanced representation. More information and registration form will be available soon.

October 2019

European Big Data Value Forum 2019

14th - 16th October, Helsinki Finland

The European Big Data Value Forum (EBDVF) is the main event of the European Big Data and Data-Driven Artificial Intelligence (AI) Research and Innovation community.

The [European Big Data Value Forum 2019](#) aims to continue the success of previous editions, where on average every year around 700 industry professionals, business developers, researchers, and policymakers coming from 40 different countries attended the event.

The organising committee of this event includes, in addition to [BDVA](#), the [EC](#) and [VTT](#), multiple Finnish industrial, Innovation and Research players as well as international companies and other research institutions.

Read more: [More information](#)