

## **Monitoring Report – 31/05/2019 (No. 16 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 shift in privacy and information rights with the implementation of the General Data Protection Regulation (GDPR) one year ago was marked by supervisory authorities across the EU.*

*The UK ICO published an update to share reflections and learnings from the past twelve months.*

*The Belgian DPA imposed its first financial penalty since the entry into application of the GDPR for the misuse of personal data for election purposes.*

*Also of note, Helen Dixon has been reappointed as Commissioner for Data Protection in Ireland. She also recently announced that enforcement action is pending, and draft decisions will be circulated to EU colleagues this summer.*

*The European Commission published a new guidance on the interaction of free flow of “non-personal data with the EU data protection rules.*

*New documents from the High-Level Expert Group on Artificial Intelligence have been made available.*

## **Data protection**

### ***Belgium: First GDPR fine***

On Tuesday 28 May 2019, the Belgian DPA imposed its first financial penalty since the entry into application of the GDPR. The administrative fine amounts to EUR 2 000 and concerns the misuse of personal data for election purposes. Although the fine is modest, the message is not: Data protection is an important matter to us all, but data controllers must assume their responsibility, especially if they have a government mandate

Original article is in Dutch is available [here](#):

Source: Belgian DPA

URL: [https://www.gegevensbeschermingsautoriteit.be/nieuws/de-gegevensbeschermingsautoriteit-legt-een-sanctie-op-het-kader-van-een-verkiezingscampagne?mkt\\_tok=eyJpIjoiWm1RME16TTFZakl6WVRObCIzInQiOiJpTzYxcWoySDQ2RXJVVyORwTDcoSTZxc295SW5YWng2dmhJZUZZNGhMbWlDUSt5ZodcL2hCS0UoXC9uQWhYWldnNm1kVVpqZWhocWNiVohYRnZZTmJtbWNoQVwvb2JYb2FPQ3RiTXJzYUVSd292Vo9YbHZNTitkSWlCdGszZmp2WmtWdCJ9](https://www.gegevensbeschermingsautoriteit.be/nieuws/de-gegevensbeschermingsautoriteit-legt-een-sanctie-op-het-kader-van-een-verkiezingscampagne?mkt_tok=eyJpIjoiWm1RME16TTFZakl6WVRObCIzInQiOiJpTzYxcWoySDQ2RXJVVyORwTDcoSTZxc295SW5YWng2dmhJZUZZNGhMbWlDUSt5ZodcL2hCS0UoXC9uQWhYWldnNm1kVVpqZWhocWNiVohYRnZZTmJtbWNoQVwvb2JYb2FPQ3RiTXJzYUVSd292Vo9YbHZNTitkSWlCdGszZmp2WmtWdCJ9)

### ***Ireland: Re-appointment of Data Protection Commissioner***

Statement from Helen Dixon on her reappointment as Commissioner for Data Protection

“I welcome the Government’s early decision and announcement in relation to my reappointment as Commissioner for a second term. At this early but critical juncture of GDPR implementation and enforcement, continuity is important to drive clarity for organisations around the standards they must meet in order to effectively safeguard the data protection rights of service users, consumers and citizens. It is a privilege to serve in this role and to work with the dedicated staff of the Data Protection Commission. Our fellow EU data protection authorities count on us to effectively supervise the large internet platforms headquartered in Ireland and we are committed to this task.”

Source: Data Protection Commissioner, Ireland

URL: <https://www.dataprotection.ie/en/news-media/press-releases/statement-helen-dixon-her-reappointment-commissioner-data-protection>

### ***Ireland: Update from Data Protection Commissioner***

During a Conference on 9 May 2019 Helen Dixon, Ireland's Data Protection Commissioner, said that she will circulate draft decisions to her EU colleagues this summer. There is a procedure to follow, and that takes time, she said. At the same event, UK ICO's Head of Regions, Ken Macdonald said that a large fine in the United Kingdom is just a few weeks away.

The European Data Protection Board (EDPB) reports that during the first year of the GDPR, a total of 446 cross-border cases were logged in its cross-border case register, and 205 of these cases have led to One-Stop-Shop (OSS) procedures. The national DPAs have received 144,000 queries and complaints, and over 89,000 data breaches have been logged. 63% of these cases have been closed and 37% are ongoing.

The DPA co-ordination body, the European Data Protection Board, decided at its 14-15 May meeting to designate representatives for the third annual review of the EU-US Privacy Shield. Austria, Bulgaria, France, Germany, Hungary and the European Data Protection Supervisor will represent the Board during the review.

The Board elected Aleid Wolfsen, Chairman of the Dutch Supervisory Authority, as new Deputy Chair, replacing Willem Debeuckelaere, former Chair of Belgium's Data Protection Commission. Wolfsen said: "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." The Board also adopted opinions on the draft lists from Spain and Iceland regarding the processing operations subject to Data Protection Impact Assessments.

Source: Privacy Laws and Business

### ***UK – Information Commissioner's Office (ICO) GDPR Update***

Last May marked a seismic shift in privacy and information rights with the implementation of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018. Today, we're publishing an update to share our reflections and learnings from the past twelve months. The change in the regulatory landscape has shown the importance of getting privacy right. People have woken up to the new rights the GDPR delivers, with increased protection for the public and increased obligations for organisations. But there is much more still to do to build the public's trust and confidence. With the initial hard work of preparing for and implementing the GDPR behind us, there are ongoing challenges of operationalising and normalising the new regime. This is true for businesses and organisations of all sizes.

A key area of work for my office during 2019/20 will be to support all parts of the UK business community, from the smallest SMEs to the biggest boardrooms, to deliver what is needed. Where the law requires it, I want to see Data Protection Officers (DPOs) embedded and supported in their respective organisations by senior management. The focus for the second year of the GDPR must be beyond baseline compliance - organisations need to shift their focus to accountability with a real evidenced understanding of the risks to individuals in the way they process data and how those risks should be mitigated. Well-supported and resourced DPOs are central to effective accountability.

Strong accountability frameworks are the backbone of formalising the move of our profession away from box ticking. They reflect that people increasingly demand to be shown how their data is being used, and how it is being looked after. They are an opportunity for data protection to be an enabler of growth and innovation whilst building people's trust and confidence in the way their information is handled. Just as organisations have had to change to meet the demands of the new regulations, so has my office. We have grown in size and capability as well as ambition, working tirelessly to provide guidance and expertise to individuals, to businesses, and to the public sector. We make sure our work is focussed on the areas of greatest risk as set out in our Regulatory Action Policy. This policy also describes our refreshed toolbox of enforcement powers in these areas - ranging from heavy fines to lighter sanctions depending on the relative harm to individuals.

We are committed to supporting DPOs and organisations to get things right. We celebrate and champion excellence in the data protection field. We recognise our role in helping small organisations to understand their responsibilities, but our role is not to be a 'DPO for hire' – responsibility for compliance lies with organisations. For those who do not take this responsibility seriously or those who break the law, we will act swiftly and effectively. We are using the intelligence we have gained - from more than 40,000 data protection complaints since May 25 2018 and over 14,000 personal data breaches reported to us, as well as intelligence from other regulators and investigations we have instigated- to take robust action.

Many of the investigations launched with our new powers are now nearing completion and we expect outcomes soon, demonstrating the actions my office is willing and able to take to protect the public.

The past 12 months have been pivotal for data protection, but they are only part of the story. Preparing for, launching and bedding in the GDPR has posed many challenges – for the ICO as well as those we regulate. This [update](#) provides an overview of our experience in the first year of the GDPR, and shares information and insights that will be further explored in our Annual Report later this year.

Source: UK ICO

URL: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2019/05/gdpr-one-year-on/>

## Data initiatives

### *Interplay between free flow of non-personal data and EU data protection*

The European Commission published a new guidance on the interaction of free flow of “ non-personal data with the EU data protection rules.

As part of the [Digital Single Market strategy](#), the new [Regulation on the free flow of non-personal data](#), which has started to apply in the Member states, will allow data to be stored and processed everywhere in the EU without unjustified restrictions. Today's guidance aims to help users – in particular small and medium-sized enterprises – understand the interaction between these new rules and the [General Data Protection Regulation](#) (GDPR) - especially when datasets are composed of both personal and non-personal data.

Vice-President for the Digital Single Market Andrus **Ansip** said: *“By 2025 the data economy of the EU27 is likely to provide 5.4% of its GDP, equivalent to €544 billion. However, that huge potential is limited if data cannot move freely. By removing forced data localisation restrictions, we give more people and businesses the chance to make the most out of data and its opportunities. Today's guidance will now give full clarity on how free-flow of non-personal data interacts with our strong personal data protection rules.”* Commissioner for Digital Economy and Society Mariya **Gabriel** said: *“Our economy is increasingly driven by data. With the regulation on the free flow of non-personal data and the General Data Protection Regulation, we have a comprehensive framework for a common European data space and the free movement of all data within the European Union. The guidance that we are publishing today will help businesses, especially small and medium-sized enterprises, to understand the interaction between the two regulations.”*

Together with the General Data Protection Regulation (GDPR), which [started to apply one year ago](#), the new Regulation on the free flow of non-personal data provides for a stable legal and business environment on data processing. The new Regulation prevents EU countries from putting laws in place that unjustifiably force data to be held solely inside national territory. It is the first of its kind in the world. The new rules increase legal certainty and trust for businesses and make it easier for SMEs and start-ups to develop new innovative services, to make use of the best offers of data processing services in the internal market, and to expand business across borders.

Guidance gives practical examples on how the rules should be applied when a business is processing datasets composed of both personal and non-personal data. It also explains the concepts of personal and non-personal data, including mixed datasets; lists the principles of free movement of data and the prevention of data localisation requirements under both, the GDPR and the free flow of non-personal data Regulation; and covers the notion of data portability under the Regulation on the free flow of non-personal data. The guidance also includes the self-regulatory requirements set out in the two Regulations.

## Background

The Commission presented the [framework for the free flow of non-personal data](#) in September 2017 as part of President Jean-Claude **Juncker**'s State of the Union address to unlock the full potential of the [European Data Economy](#) and the [Digital Single Market strategy](#). The new Regulation applies since yesterday 28 May. As part of the new rules, the Commission was required to publish guidance on the interaction between this Regulation and the [General Data Protection Regulation](#) (GDPR), especially as regards datasets composed of both personal and non-personal data. The free flow of non-personal data rules are in line with existing rules for the free movement and portability of personal data in the EU. They:

- **Ensure the free flow of data across borders:** The new rules set a framework for data storing and processing across the EU, preventing data localisation restrictions. Member States will have to communicate any remaining or planned data localisation restrictions to the Commission, which in turn will assess if they are justifiable. The two Regulations will function together to enable the free flow of any data – personal and non-personal – thus creating a common European space for data. In the case of a mixed dataset, the GDPR provision guaranteeing free flow of personal data will apply to the personal data part of the set, and the free flow of non-personal data principle will apply to the non-personal part.
- **Ensure data availability for regulatory control:** Public authorities will be able to access data for scrutiny and supervisory control wherever it is stored or processed in the EU. Member States may sanction users that do not provide upon request by a competent authority access to data stored in another Member State.
- **Encourage the development of codes of conduct for cloud services** to facilitate switching between cloud service providers by the end of November 2019. This will make the market for cloud services more flexible and the data services in the EU more affordable.

## For More Information

[Commission publishes guidance on free flow of non-personal data - Questions and Answers](#)

[Guidance on the Regulation on the free flow of non-personal data](#)

[Free flow of non-personal data - Factsheet](#)

[A framework for the free flow of non-personal data in the EU – Questions and Answers](#)

[Regulation on the free flow of non-personal data](#)

[General Data Protection Regulation: one year on](#)

[Cloud stakeholder working groups on cloud switching and cloud security certification](#)

[Practical information about free flow of data on Your Europe portal](#)

## **Artificial intelligence and ethics**

### ***High Level Expert Group on Artificial Intelligence***

The High-Level Expert Group on Artificial Intelligence (main group) met on 22-23 May. The meeting agenda and published documents are available [here](#).

The next meeting is scheduled for 10 June. The meeting agenda and any published discussion documents will be made available [here](#).

## ***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***

12<sup>th</sup> 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](mailto:ipen@edps.europa.eu)

URL: [https://edps.europa.eu/ipen-rome-workshop-2019\\_en](https://edps.europa.eu/ipen-rome-workshop-2019_en)

### ***First European AI Alliance Assembly***

26<sup>th</sup> 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***

14<sup>th</sup> - 16<sup>th</sup> 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](#)