

DATA PROTECTION, DIGITAL SERVICES AND AI: A SUMMER RECAP

10 SEPTEMBER 2023

In summer 2023, a major development took place in the area of data protection, as described below.

In addition, other processes are still ongoing or in a preliminary stage in a number of other areas. We take this opportunity to keep you posted on these as well.

1. Data protection

- Adoption of the EU-US adequacy decision

One of the most significant data protection events of the summer is undoubtedly the adoption of the adequacy decision on data transfers from the European Economic Area (EEA) to the US.

On 10 July 2023, the European Commission adopted its adequacy decision on the adequate level of protection of personal data under the EU-US Data Privacy Framework.

With this adequacy decision, the European Commission has decided that the US provides an adequate level of protection for personal data transferred from the EEA to organisations in the US listed on the “Data Privacy Framework List”, which is maintained and made publicly available by the US Department of Commerce.

As a result, since 10 July 2023, personal data can flow freely from the EEA to US undertakings participating in the EU-US Data Privacy Framework, without the need for additional safeguards. The European Commission, together with the European data protection authorities and the competent US authorities, will review the functioning of the EU-US Privacy Framework on a regular basis.

The European Commission’s FAQ on the EU-US Data Privacy Framework is available [here](#).

The adequacy decision can be read [here](#).

- Proposal for a Regulation laying down additional procedural rules relating to the enforcement of GDPR

On 4 July 2023, the European Commission presented a proposal for a Regulation to streamline cooperation between data protection authorities when enforcing the GDPR in cross-border cases (Proposal). The Proposal aims to address some key issues by setting out procedural rules for certain stages of the investigation process in cross-border cases.

The Proposal aims to address problems in areas such as:

- *Form of complaints and position of complainants*: it provides a form specifying the information required for all complaints under Article 77 GDPR relating to cross-border processing and set forth procedural rules for the involvement of complainants in the procedure, including their right to make their views known;
- *Targeted harmonisation of procedural rights in cross-border cases*: it provides the parties under investigation with the right to be heard at key stages in the procedure, and clarifies the content of the administrative file and the parties' rights of access to the file;
- *Streamlining cooperation and dispute resolution*: it equips data protection authorities with the tools necessary to achieve consensus by giving added substance to the requirement for the relevant authorities to cooperate and to share "relevant information" set out in Article 60 GDPR.

This Proposal will now go through the European legislative process.

The Proposal is available [here](#).

2. Digital Markets Act

The Regulation 2022/1925 of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act or DMA) entered into force on 1 November 2022 and applies since 2 May 2023.

The DMA aims at preventing the so called "gatekeepers" from imposing unfair conditions on businesses and end users and at ensuring the openness of important digital services. Gatekeepers are required to meet several obligations, such as ensuring that users can unsubscribe from core platform services of the gatekeeper as easily as they subscribe to them or allowing end users to download alternative app stores. Gatekeepers shall also e.g. refrain from ranking their own products or services in a more favourable manner compared to those of third parties.

By 3 July 2023, undertakings had to provide the European Commission with information about their number of users so that the Commission could designate "gatekeepers" before 6 September 2023.

Gatekeepers will then have until March 2024 to ensure that they comply with the obligations set out by the DMA.

Read more info on the DMA [here](#).

3. Digital Services Act

The Regulation 2022/2065 of 19 October 2022 on a Single Market for Digital Services (Digital Services Act or DSA) entered into force on 16 November 2022 and will apply as of 17 February 2024.

The DSA aims at regulating the obligations of digital service providers that act as intermediaries by connecting consumers with goods, services, and content (e.g. online marketplaces) by establishing a transparency and accountability framework for online platforms.

Online platforms had to publish their number of active users by 17 February 2023. Based on the figures provided, the European Commission assessed whether a platform should be designated as a very large online platform (VLOP) or a very large online search engine (VLOSE).

The first designations were made on 25 April 2023. Designated VLOPS's include Alibaba AliExpress, Amazon Store, Apple AppStore, Booking.com, Facebook, Zalando and Youtube, while Google Search and Bing were designated as VLOSE.

Once the European Commission has designated a platform or search engine, it has four months to comply with the DSA.

Read more info on the DSA [here](#).

4. AI Act

A few days before the start of summer, an important milestone was reached in the field of artificial intelligence.

In April 2021, the European Commission proposed the first EU regulatory framework for artificial intelligence (AI)

Pursuant to the new framework, AI systems will be analysed and classified according to the risk they pose to users, and the new rules establish obligations for providers and users depending on the level of risk. The new framework will furthermore impose obligations on a.o. general purpose AI and generative AI models such as ChatGPT.

On 14 June 2023, the European Parliament adopted its negotiating position on the AI framework. The EU institutions are now negotiating to finalise the new legislation.

Read more in that respect [here](#).

For more information on this subject, do not hesitate to reach out to one of the members of the IP/IT/Data protection team of Liedekerke on their individual e-mail address or via ip/it-team@liedekerke.com.

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