

SHOOSMITHS

PRIVACY & DATA | GLOBAL EDITION

# Data protection

July 2023 roundup

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FOR  
WHAT  
MATTERS



Legislation



Guidance & consultations



Enforcement & legal action

THE **BIG** STORY



Commission adopts adequacy decision on EU-US Data Privacy Framework

10 JULY 2023



Industry & sector news



INDEX

# Index

	JURISDICTION
<b>Legislation</b>	
07  Retained EU Law (Revocation and Reform) Act receives Royal Assent.....	<b>UK</b>
08  US Announces Fulfilment of EU-US Data Privacy Framework Requirements.....	<b>US</b>
09  EU Data Act wording agreed.....	<b>EU</b>
10  Council of Europe publishes model contractual clauses for transfers under Convention 108+.....	<b>EUROPE</b>
11  Court delays enforcement of revised CCPA Regulations.....	<b>US (California)</b>
12  Delaware passes comprehensive privacy bill.....	<b>US (Delaware)</b>
13  Three US state privacy acts come into force.....	<b>US (Oregon, Colorado and Connecticut)</b>
14  Decree on Protection of Personal Data enters into force.....	<b>VIETNAM</b>
15  EU member states vote in favour of EU-US Data Privacy Framework.....	<b>EU/US</b>
16  Commission adopts adequacy decision on EU-US Data Privacy Framework.....	<b>EU</b>
17  European Commission proposes additional rules for GDPR enforcement.....	<b>EU</b>
18  Seven potential gatekeepers submit notifications under the Digital Markets Act.....	<b>EU</b>
19  Montana passes law regulating public use of facial recognition.....	<b>US (Montana)</b>
20  UK signs Accession Protocol for CPTPP.....	<b>UK</b>
21  Government lays draft connectable products regulations before Parliament.....	<b>UK</b>
22  European Parliament endorses new laws on digital information exchange in terrorism cases.....	<b>EU</b>
23  Commission publishes plans for common European tourism data space.....	<b>EU</b>

**Key:**

- General 
- Accountability & governance 
- Commercialisation & competition 
- Data rights 
- Marketing, adtech & cookies 
- Emerging technology 
- Law enforcement & intelligence 
- Cybersecurity 
- Sensitive data & vulnerable individuals 
- Transfers 

# Index

## Guidance & consultations

25	 UK releases updated cybersecurity toolkit.....	<b>UK</b>
26	 US Department of Commerce launches DPF website for EU-US data transfers.....	<b>US</b>
27	 European Commission seeks feedback on cross-border enforcement rules.....	<b>EU</b>
28	 ICO submits data protection and journalism code of practice for parliamentary approval.....	<b>UK</b>
29	 Ofcom calls for evidence on categorisation of online services.....	<b>UK</b>
30	 ICO approves new data sharing schemes to protect gamblers.....	<b>UK</b>
31	 AEPD updates its guide on the use of cookies.....	<b>EU (Spain)</b>
32	 EDPB adopts information note on Data Privacy Framework.....	<b>EU/US</b>
33	 EDPB adopts statement on Japan adequacy decision review.....	<b>EU/JAPAN</b>
34	 ICO publishes annual report for 2022-2023.....	<b>UK</b>
35	 ICO publishes FOIA and EIR research report.....	<b>UK</b>
36	 Government releases 2023 counter-terrorism strategy.....	<b>UK</b>
37	 House of Lords publishes report on Artificial intelligence.....	<b>UK</b>
38	 FTC seeks public comment on new parental consent mechanism under COPPA.....	<b>US</b>

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# Index

## Enforcement & legal action

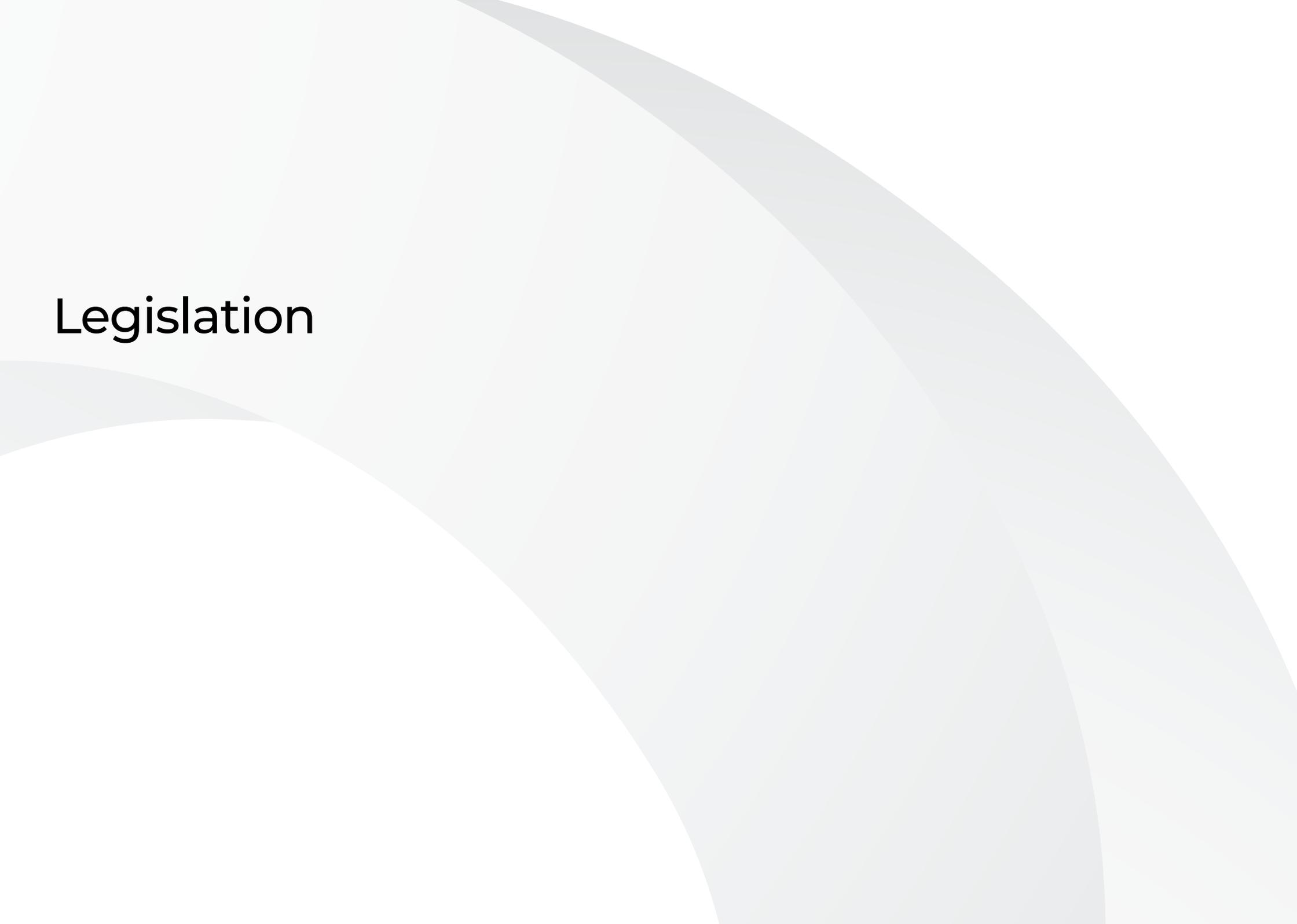
- 40  CJEU competition law ruling undermines personalised advertising on the basis of GDPR “legitimate interests”. **EU**
- 41  Swedish DPA imposes fine of €1.1m on Bonnier for profiling without consent..... **EU (Sweden)**
- 42  Garante fines website owner €60,000 for illegal web scraping practices..... **EU (Italy)**
- 43  Sweden’s DPA publishes Google Analytics enforcement actions..... **EU (Sweden)**
- 44  Norwegian DPA puts temporary ban on behavioural marketing on Facebook and Instagram.... **EEA (Norway)**
- 45  AEPD confirms €60,000 fine of Birou Gas for failure to respond to information request..... **EU (Spain)**
- 46  Garante publishes €1m fine of Autostrade per L’Italia for incorrect data processing role allocation..... **EU (Italy)**
- 47  OpenAI confirms that FTC has launched investigation into ChatGPT..... **US**
- 48  Instagram plans to settle \$68.5m class action under Illinois Biometric Information Privacy Act (BIPA)..... **US (Illinois)**

## Industry & sector news

- 50  UK and Singapore sign MoU on Data cooperation ..... **UK/SINGAPORE**
- 51  Breach affecting largest NHS trust under NCSC investigation ..... **UK**
- 52  ‘Threads’ not launched in EU because of DMA concerns..... **EU**
- 53  Google Bard made available in EU..... **EU**
- 54  Swiss FDPIC launches new registration portal for DPOs..... **SWITZERLAND**
- 55  HCA Healthcare announces data breach affecting 11 million patients..... **US (20 States)**
- 56  FBI and Microsoft warn of Outlook hacks affecting US government agencies..... **US**
- 57  Alleged leak of millions of US military emails to Mali web operator..... **US**
- 58  New Cybersecurity Labelling programme for smart devices announced..... **US**
- 59  White House announces new voluntary commitment to safe AI..... **US**

### Key:

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Legislation



## Retained EU Law (Revocation and Reform) Act receives Royal Assent

29 June 2023

### Key details

The REUL Bill has now received Royal Assent on 29 June 2023 and is now an Act of Parliament. It removes special status and EU-derived features from “retained EU law” at the end of 2023.

Retained EU law will be known as “assimilated law”.

There are various mechanisms to significantly change the content and operation of retained EU law, and it confers extensive powers on the government. The scope of this is not yet clear.

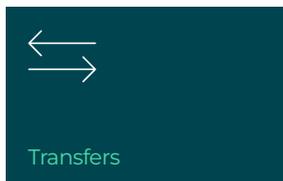
The Act will have a more limited impact on data protection law than as originally conceived. However, it does include changes to the Investigatory Powers Act and may affect the status of past CJEU decisions in UK courts such as Schrems 2 on international data transfer.

SHOOSMITHS SAYS...

[Changing the REUL book.](#)

### Links to further information

[Legislation](#)



## US Announces Fulfilment of EU-US Data Privacy Framework Requirements

3 July 2023

### Key details

The US Secretary of Commerce has confirmed that the US has fulfilled its commitments for implementing the EU-US Data Privacy Framework to facilitate cross border data transfer.

The EU and EEA countries will qualify for the new data subject redress mechanism under Executive Order 14086. It confirms that the US Intelligence Community has “adopted its policies and procedures” pursuant to the order.

Next step will be the expected EU adequacy decision.

### WHAT THEY SAY...

**“represents the culmination of months of significant collaboration between the United States and the EU”**

### Links to further information

[Statement](#)



## EU Data Act wording agreed

27 June 2023

### Key details

The Council, European Parliament and Commission negotiators have reached a provisional agreement on the final text of the proposed EU Data Act. The regulation aims to create an EU-wide system for sharing data generated by the internet of things.

It currently includes:

- Rights individuals or businesses using connected devices to access the data they generate by using the devices and by related services
- Protection from unfair B2B contractual terms
- Freedom for customers to switch between various cloud data-processing service providers
- Measures to promote common standards.

Subject to formal approval. Once adopted, it will enter into force 20 days after publication in the Official Journal (likely to be autumn 2023) and will become applicable 20 months after entry into force.

### Links to further information

[EU Commission -Q&A](#)

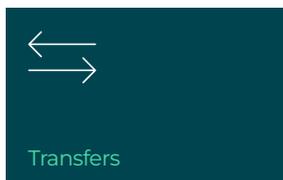
[Press release](#)

[EP Press release](#)

SHOOSMITHS SAYS...

MEPs see exciting opportunities for business:

**“will allow factories, farms and construction companies to optimise operational cycles, production lines and supply chain management ... enables easy access to an almost infinite amount of high-quality data”**



## Council of Europe publishes model contractual clauses for personal data transfers under Convention 108+

27 June 2023

### Key details

Convention 108+ is an international personal data transfer mechanism for use by convention countries (which include the EEA, UK and some wider European territories such as Turkey). The Committee has published the first module of Model Contractual Clauses for cross-border data flows (“MCCs”). These are designed for controller-to-controller transfer. Likely to be most useful for transfers involving convention countries within Europe which are outside current transfer mechanisms.

The clauses are recommended to be used as adopted and are “ready for pre-approval by competent national authorities”.

Further modules including controller-to-processor transfer clauses are in the pipeline.

### WHAT THEY SAY...

**“these much-awaited clauses have the potential to bridge similar transfer tools... and to contribute to the convergence towards appropriate data protection standards globally”**

### Links to further information

[Model contractual clauses](#)

[Press release](#)



## Court delays enforcement of revised CCPA Regulations

3 July 2023

### Key details

The Superior Court in Sacramento has confirmed a delay to enforcement provisions under the newly revised California Consumer Privacy Act of 2018 Regulations, pending resolution of a lawsuit brought by the California Chamber of Commerce (CalChamber).

The revised rules are now subject to a deadline of 29 March 2024. Until then, the existing version remains in effect.

Businesses will still have to comply with the removal of historic exemptions covering employee, job applicant, independent contractor, and business-to-business data use, which changed on 1 January 2023.

SHOOSMITHS SAYS...

**Still California dreamin'.**

**“it would be unfair to enforce new regulations when the impacted businesses did not even know what was going to be required of them”**

### Links to further information

[CalChamber press release](#)



## Delaware passes comprehensive privacy bill

30 June 2023

### Key details

The bill creates the Delaware Personal Data Privacy Act.

It will cover businesses that produce products or services targeted to residents of the state that control or process personal data on more than 35,000 consumers, or derive 20% of revenue from selling the data of more than 10,000 consumers.

Many of the definitions and concepts are GDPR-derived.

The Act does not apply where there are existing privacy laws (such as financial institutions), though it does cover non-profit organisations as well as companies. There is no private right of action, but the Act is enforceable by the Department of Justice.

It permits a transitional 60-day cure provision to aid compliance, which will end on 31 December 2025.

Assuming it receives governor approval, it will be in force from 1 January 2025.

### SHOOSMITHS SAYS...

**Small wonder: relatively tough European-style rules from a soundly Democratic state.**

### Links to further information

[Bill](#)

Jurisdiction: **US (Oregon, Colorado and Connecticut)**



## Three US state privacy acts come into force

1 July 2023

### Key details

The Oregon Consumer Data Privacy Bill, The Colorado Privacy Act (CPA and CPA Rules) and The Connecticut Act Concerning Personal Data Privacy and Online Monitoring (CTDPA) all come into force on July 1 2023.

Provisions in each state are different, but the laws grant consumer rights in respect of businesses operating within the relevant state. None carries a private right of action but is enforceable through action by the attorney general.

SHOOSMITHS SAYS...

Three more squares sewn into the patchwork of US state privacy laws.

### Links to further information

[Oregon bill](#)

[CPA bill](#)

[CTDPA bill](#)



## Decree on Protection of Personal Data enters into force

1 July 2023

### Key details

The first comprehensive data protection law in Vietnam, the “Decree on the Protection of Personal Data (PDPD)” is now in force.

The PDPD applies to data processing activities in Vietnam, and to processing by Vietnamese organisations and individuals outside the territory.

Obligations include:

- Privacy notices
- Impact assessments prior to international transfer
- Organizational and technical measures and appropriate safety and security measures
- Recording and logging
- Contracts with data processors
- Appointing personnel in charge when processing sensitive personal data.

No SCCs, but Vietnam is part of the APEC Privacy Framework and ASEAN Framework on Personal Data Protection.

### Links to further information

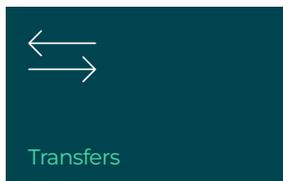
[Press release](#)

[Bill \(Vietnamese only\)](#)

SHOOSMITHS SAYS...

Good morning Vietnam!

100 million people in a vibrant economy pursuing growth-friendly policies. 50% of Samsung phones manufactured here, exported to 128 countries.



## EU member states vote in favour of EU-US Data Privacy Framework

6 July 2023

### Key details

The Committee established under Art. 93 of the GDPR has published the results of its voting procedure on the revised draft adequacy decision on the EU-US Data Privacy Framework (DPF) to allow US personal data transfers from the EU.

Twenty-four member states voted in favour of the Framework, indicating that they believe this offers an adequate level of protection of personal data. Three member states abstained and there were zero votes against the revised DPF.

Committee approval is a pre-requisite to adoption of the adequacy decision and DPF.

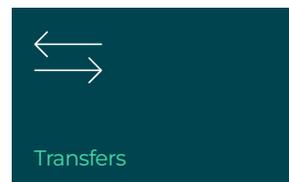
### SHOOSMITHS SAYS...

**US transfers juggernaut at full throttle.**

**The three abstentions are from member states representing 22m people in total: so we know that Germany, Spain, France, Italy and Poland must all have said yes.**

### Links to further information

[Written vote](#)



## Commission adopts adequacy decision on EU-US Data Privacy Framework

10 July 2023

### Key details

Following the Committee vote (previous item) the European Commission has voted to adopt the adequacy decision for the EU-US DPF. The decision concludes that the US now provides a level of protection essentially equivalent to the EU for transfers of personal data under the DPF from a controller or a processor. Transfers in the EU to certified organisations in the US, those on the DPF list, may take place without additional data protection safeguards in place.

The decision provides that the Framework principles apply on certification, but organisations are required to re-certify annually. The decision also specifies that an independent supervisory authority must be in place.

There are new binding safeguards as part of the decision, which address concerns raised by the European Court of Justice. These include limits to ensure US intelligence activities are necessary and proportionate, complaint procedures and the ability for the US Data Protection Review Court to order intelligence agencies to take remedial actions, which include deleting data and changing collection practices.

Organisations that persistently fail to comply with the principles will be removed from the EU-US Framework list and will need to return or delete any data received under it.

### Links to further information

[Press release](#)

[Adequacy decision](#)

[Q&A on the DPF](#)

[Shoosmiths Overview Note on the EU-U.S. Data Privacy Framework](#)

### WHAT THEY SAY...

**“will ensure safe data flows for Europeans and bring legal certainty to companies on both sides of the Atlantic.”**



## European Commission proposes additional rules for GDPR enforcement

4 July 2023

### Key details

The European Commission has adopted a proposal for a Regulation which puts forward additional procedural rules for enforcement of the GDPR.

It has been made in response to perceived differences in national procedures and interpretations of concepts in the GDPR, and to make cross-border cases more efficient and harmonised across the EU.

The proposed Regulation:

- Harmonises requirements for cross-border complaints
- Gives parties who are under investigation the right to be heard at various stages
- Gives some new rights to complainants to “make their views known”, and to be heard if a complaint is rejected
- Introduces an obligation for the lead supervisory authority to send to others a “summary of key issues” early in the process.

However, the European Consumer Organisation (BEUC – which has two pending data protection complaints against Google) has immediately criticised the proposal on the ground that it does not go far enough to improve complainants’ rights. They would like more expanded rights of information and hearing for individuals and representing organisations. The proposed rules are subject to feedback (see later item) and formal adoption.

### Links to further information

[Proposal](#)

[EC press release](#)

[Q&A](#)

[BEUC press release](#)

WHAT THEY SAY...

**“Weak and slow enforcement only suits Big Tech...the Commission has recognised the situation but the cure it is proposing is unlikely to help the patient”**



## Seven potential gatekeepers submit notifications under the Digital Markets Act

4 July 2023

### Key details

The European Commission has announced notifications from Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft and Samsung, which consider they meet the “gatekeeper” thresholds under Art. 3 of the EU Digital Markets Act (DMA), the new competition law framework for digital markets.

Potential DMA gatekeepers had until 3 July to notify the Commission of their core platform services.

The Commission now has until 6 September 2023 to confirm designations. If confirmed, gatekeepers must comply with the DMA by 6 March 2024.

SHOOSMITHS SAYS...

The big kids in the digital playground must put their hands up and play nicely.

**“the DMA defines a series of specific obligations that gatekeepers will need to respect, including prohibiting them from engaging in certain behaviours”**

### Links to further information

[Press release](#)



## Montana passes law regulating public use of facial recognition

5 July 2023

### Key details

The new Facial Recognition for Government Use Act will give rights to state and local authorities, including the police, to use facial recognition to look for suspects, victims of, or witnesses to “serious crime.”

The Act prohibits “continuous” facial recognition (i.e. without “a particularized suspicion of a specific target”) and puts in place procedures for human review and audits in order to ensure compliant use of the technology.

Businesses selling the technology must provide written information to individuals on how biometric data is collected, stored and used and must get written consent to obtain the data. Public agencies are also required to have written use and privacy policies, and obtain consent from individuals.

Law enforcement agencies must obtain a warrant to use facial recognition except in an emergency “posing an imminent threat to a person”.

Fines of up to \$10,000 per violation are available and there is a private right of action.

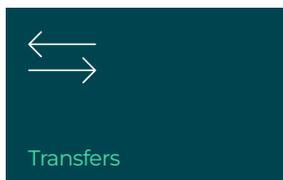
The Act is effective immediately with existing contracts having until 1 January 2024 to comply.

### SHOOSMITHS SAYS...

**Likeliest to be caught on camera: possibly a grizzly bear. One of the least populated states in the US.**

### Links to further information

[The bill](#)



## UK signs Accession Protocol for CPTPP

16 July 2023

### Key details

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership is a free trade agreement covering various goods and services including financial services and digital trade.

CPTPP members are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. Would be the first UK trade deal with Malaysia.

When in force it will establish zero-tariff trade, enable British companies to establish in the bloc without a local base, and remove data localisation barriers where these exist.

Despite some positive wording the agreement will not affect UK data protection law or UK rules on international transfer.

It is not yet ratified and will be subject to independent scrutiny and implementing legislation in the UK.

SHOOSMITHS SAYS...

**“remotely delivered services from the UK to CPTPP countries were worth £23 billion in 2021”**

**Not just digital trade: the government sees export opportunities for whisky, chocolate and cars.**

### Links to further information

[Summary](#)

[Full document suite](#)



## Government lays draft connectable products regulations before Parliament

10 July 2023

### Key details

The government has issued new draft regulations under Part 1 of the Product Security and Telecommunications Infrastructure Act 2022 (PSTIA).

The regulations aim to make connectable products more secure against cyberattacks and are due to come into force 29 April 2024.

They will apply to manufacturers of relevant connectable products.

The main requirements are stronger default passwords, information on how consumers can report security issues and supply a point of contact, and minimum support periods. These must be accompanied by a statement of compliance (as normal under product compliance legislation).

Excepted products include those made available in Northern Ireland, EV charge points, medical devices, smart meter products, and “desktop computers, laptop computers, and tablet computers which do not have the capability to connect to cellular networks” unless designed for children under 14.

The regulations are subject to approval by Parliament under the affirmative procedure.

### Links to further information

[Draft regulations](#)

[Draft impact assessment](#)

SHOOSMITHS SAYS...

**Making the Fitbit a bit fitter.**

**“Too many insecure consumer connectable products remain on the market and we need to take steps to ensure that in future, these products can be used with confidence”**



## European Parliament endorses new laws on digital information exchange in terrorism cases

12 July 2023

### Key details

The European Parliament has voted to endorse legislation, already agreed with the Council, which aims to make data sharing easier in cross border terrorism cases. Forms part of a wider package of laws aimed at making digital communication channels the default in cross border judicial cases.

There will be a new regulation and a directive.

The laws:

- Strengthen the role of the Agency for Criminal Justice Cooperation (Eurojust)
- Impose requirements on member states to share information on counter-terrorism investigations with Eurojust
- Allow Eurojust to store, share and cross-check data on current and past investigations
- Establish a modern case management system for sensitive data
- Strengthen provisions on data protection, with tests of necessity and limits on retention.

The regulation and directive will be formally adopted by Parliament and the Council.

### Links to further information

[Press release](#)

[Regulation](#)

[Directive](#)

WHAT THEY SAY...

**“more effective and structured information-sharing so that the authorities have access to the big picture and can draw links between different investigations”**



## Commission publishes plans for common European tourism data space

20 July 2023

### Key details

The proposed tourism “data space” adds to those envisaged by the Commission in 2020 in its ‘European data strategy’. Existing sectors for data spaces include health, mobility, energy and environment.

The plan is to facilitate data sharing between public and private bodies to promote sustainability, make public planning easier, and help small business (SMEs make up 99.9% of European tourist businesses).

Examples of how it might work:

- Monitoring hotel energy consumption
- AI-driven tourism services.

There will be a phased rollout with no end point as yet. The proposals do not include new regulation or data collection obligations, though they are considering incentives to encourage bigger players to share data. They will not displace the current legal framework including the EU Data Act and GDPR.

### Links to further information

[Commission communication](#)

[European strategy for data](#)

WHAT THEY SAY...

**“shaping a data governance model, based on the respect of existing EU and national legislation on data, which will increase fairness by making sure that all the stakeholders involved benefit from the new value created by more data being shared and used”**

**The cynical view: a trip to cloud-cookoo-land without any real drivers.**

# Guidance & consultations



Jurisdiction: **UK**



## UK releases updated cybersecurity toolkit

26 June 2023

### Key details

The National Cyber Security Centre's (NCSC) 'risk management toolkit' has been updated for the first time in five years.

New elements include:

- An eight-step cybersecurity risk management framework,
- A cyber security risk management "toolbox"
- A basic risk assessment method to help businesses get started
- A four-part assurance guide to help businesses assess their current approach.

SHOOSMITHS SAYS...

Top models from the UK's best in class.

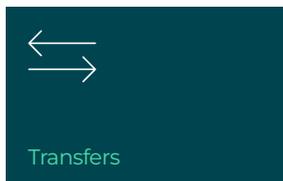
**“our guidance is backed by our practical experience of working on the most challenging risk management problems, feedback from users, and expert research”**

### Links to further information

[Press release](#)

[Cyber security framework](#)

Jurisdiction: **US**



## US Department of Commerce launches DPF website for EU-US data transfers

7 July 2023

### Key details

The United States International Trade Administration under the US Department of Commerce has launched its website for the EU-US Data Privacy Framework.

The website provides mechanisms for self-certifications for organisations and contains further information aimed towards US and European businesses, European individuals and data protection authorities.

SHOOSMITHS SAYS...

Looks like the Framework is still under construction.

The website is not complete and says:

**“Welcome to the Privacy Shield”**

### Links to further information

[Website](#)

Jurisdiction: **EU**



## European Commission seeks feedback on cross-border enforcement rules

7 July 2023

### Key details

The European Commission has invited stakeholders to feedback on the newly released draft procedural rules for EU General Data Protection Regulation enforcement in cross-border cases (see earlier item).

Comments are publicly available. The feedback period will close on 4 September 2023.

### SHOOSMITHS SAYS...

Detailed comment has already been posted on the difficulties of confidentiality and redaction of documents for complainants.

### Links to further information

[Feedback form](#)



## ICO submits data protection and journalism code of practice for parliamentary approval

6 July 2023

### Key details

The ICO has published its code of practice on data protection considerations for journalism and submitted it to the Secretary of State for Science, Innovation and Technology. It builds on an earlier code published following the Leveson enquiry into press standards in 2014. Follows feedback from media organisations, industry representatives and the public.

Among other things, the code (together with reference notes) :

- Lays out the journalism exemptions in the DPA 2018
- Clarifies the use of DPIAs when undertaking “surveillance or subterfuge”
- Clarifies that journalism may apply to “citizen journalism” as well as traditional publications
- Sets out key case law
- Advises on difficult issues such as naming suspects and dealing with children.

The Secretary of State will now lay the code before Parliament under s. 125 DPA 2018 and if there are no objections it will come into force 21 days after.

### WHAT THEY SAY...

**“rightly a challenging task... there will always be strongly held views and convictions whenever fundamental rights are concerned”**

### Links to further information

[Code of practice](#)

[Reference notes](#)

Jurisdiction: **UK**



## Ofcom calls for evidence on categorisation of online services

11 July 2023

### Key details

The Office of Communications (Ofcom) is seeking evidence from interested parties on how to count user numbers for the purpose of putting services into relevant categories under the Online Safety Bill.

The duties for regulated user-to-user and search services will vary depending on whether the platform is designated as a category 1, 2A or 2B service. These categories will depend (in part) on user numbers.

Ofcom has duties to carry out research into setting thresholds and counting user numbers once the bill is enacted. It is particularly interested in “how companies measure user numbers on the relevant user-to-user parts of their services”.

The consultation closes 12 September 2023.

SHOOSMITHS SAYS...

Ofcom playing nicely with its regulatory targets.

**“Each service is different and what counts as a user might be different for different services... We’re engaging openly with industry to ensure we get it right”**

### Links to further information

[Ofcom press release](#)

[Call for evidence](#)



## ICO approves new data sharing schemes to protect gamblers

13 July 2023

### Key details

The Information Commissioner's Office (ICO) has reported on its work with the Gambling Commission, Betting and Gaming Council (BGC, the industry body) to approve an industry scheme aimed at protecting customers from harm. The scheme, originally called the "Single Customer View" or "SVC" Solution, will now be rolled out as "GamProtect".

A major pillar is new requirements for gambling operators to carry out financial risk checks with credit reference agencies as a gambling licence condition.

In its report and letter, the ICO says:

- Operators and agencies can share customer data relying on Art. 6(1)(f) legitimate interests, but data must be limited to what is "necessary" (Art. 5(1)(c))
- Credit reference agencies must carry out a DPIA and a "compatibility assessment" to check what data they can share under Art. 5(1)(b) (purpose limitation)
- Mental health data is special category data under Art. 9
- Operators must only use information for the purpose of financial risk checks
- All parties sharing with agencies must update their privacy notices.

It also notes that the situation will be clearer under the new DPDI2 Bill as processing for a new purpose will be automatically treated as compatible where "necessary for safeguarding vulnerable individuals".

### Links to further information

[Letter to UK Finance](#)

[Sandbox report](#)

[ICO press release](#)

WHAT THEY SAY...

**"aims to enable a more unified and proactive intervention by gambling operators to reduce incidents of gambling related harm"**

Jurisdiction: **EU (Spain)**



## AEPD updates its guide on the use of cookies

11 July 2023

### Key details

Spain's data protection authority, the Agencia Española de Protección de Datos (AEPD), has updated its guide on the use of cookies to reflect EDPB Guidelines 03/22 on deceptive design patterns which were finalised in February 2023.

The clarifications include:

- Incorporation of the EDPB position on accept/reject buttons
- Personalisation cookies used by users to determine (e.g.) language options are technical cookies which do not require consent, but personalisation cookies used by the publisher to dictate content must be subject to informed consent
- Where cookie-free services must be provided because of lack of user consent to cookies, this alternative need not necessarily be free.

The new criteria must be implemented by 11 January 2024.

SHOOSMITHS SAYS...

Ensuring the Euro-cookie has a nice consistency.

### Links to further information

[AEPD press release](#)

[Guide \(Spanish only\)](#)

Jurisdiction: **EU/US**

Transfers

## EDPB adopts information note on Data Privacy Framework

21 July 2023

### Key details

The European Data Protection Board (EDPB) has adopted an information note which explains the impact of the Data Privacy Framework (DPF) for data subjects in the EU and organisations transferring data from the EU to the US.

The note confirms that:

- Transfers to US importers named in the Data Privacy Framework List (DPF list) may be based on the adequacy decision alone without Art. 46 GDPR safeguards and supplementary measures
- Transfers to US data importers not on the DPF list still require an Art. 46 safeguard and supplementary measures
- US government national security safeguards (including the redress mechanism) apply to all data transferred from the EU to the US, regardless of the mechanism used (so where required, TIAs can make use of the updated Commission assessment of US adequacy)

- Data subjects can complain about DPF-listed organisation through various mechanisms, though they are encouraged to complain to the US organisation first
- EU data subjects can submit a complaint to their supervisory authority to make use of the DPF redress mechanism in the area of national security regardless of the mechanism used and without having to prove that their data was collected by US intelligence.

The first review of the decision will take place one year after adoption (so July 2024).

The US Dept. Of Commerce note issued 17 July 2023 (linked below) addresses US businesses on how to sign up, together with deadlines and transitional arrangements.

SHOOSMITHS SAYS...

250 organisations (including Meta) already signed up...

### Links to further information

[Information note](#)

[Press release](#)

[Search the DPF list](#)

[US Dept. of Commerce note](#)

Jurisdiction: **EU/JAPAN**

Transfers

## EDPB adopts statement on Japan adequacy decision review

18 July 2023

### Key details

The EU granted Japanese businesses adequacy in January 2019, with the decision reviewed by the Commission in 2021 and again in April 2023. They are now moving to a four-yearly cycle, a change supported by the EDPB.

The EDPB statement reviews the April 2023 decision, and supports continuing adequacy, but raises concerns about:

- Onward transfers of EEA data in Japan based on consent
- Exemptions under Japanese law for pseudonymised data
- Onward transfers of EEA data made (unlawfully) under APEC CBPRs
- Lack of SCCs.

They ask the Commission to monitor these in preparation for the next adequacy review.

SHOOSMITHS SAYS...

Overall, a good effort with room for improvement.

**“EDPB welcomes several recent amendments in the Japanese data protection legislation that have brought further convergence with the GDPR”**

### Links to further information

[Statement](#)



## ICO publishes annual report for 2022-2023

18 July 2023

### Key details

The annual report and financial statements contain lots of interesting insight – including timelines and full stats. Some interesting things:

- ICO will now be permitted to keep up to £7.5m per year from fines to cover their costs
- Is a repeated focus on delivering outcomes quickly
- BCRs – acknowledge a failure here with only three approved over the year
- Intend to update consultations policy next year
- New AI chatbot used by 20,000 per month
- ICO contacted more than 2.9 million UK organisations about registering and added another 100k
- Only 5% of reported data breaches are investigated
- 19 penalties totalling £1.88m for serious breaches of PECR
- Of 395 investigations, issued one enforcement notice and two penalty notices totalling £7.6m.

### SHOOSMITHS SAYS...

ICO “mission and strategic goals” are centred on the economy rather than enforcement.

### Links to further information

[ICO report](#)

[Announcement](#)

Jurisdiction: **UK**



## ICO publishes FOIA and EIR research report

21 July 2023

### Key details

The ICO has published an “Upstream Regulation Research Report” which is about trying to reduce public requests for information under the Freedom of Information Act 2000 and Environmental Information Regulations 2004, by improving public access to information in the first place.

It will help the ICO consider what additional tools and training are needed, and whether it should go further in trying to drive more “amenable” attitudes and responses in the public sector, together with more guidance for people making requests.

Follows ICO interviews with 30 staff from 5 public sectors to check how they are getting on and what could improve.

SHOOSMITHS SAYS...

ICO playing referee between inarticulate requesters and stressed responders.

### Links to further information

[FOI report](#)

[Announcement](#)



## Government releases 2023 counter-terrorism strategy

18 July 2023

### Key details

The UK's updated Strategy for Countering Terrorism (produced by a Home Office Unit called CONTEST) includes some consideration of the role of data and technologies:

- Terrorist threat is increased by end-to-end encryption, AI, international data localisation, online content and anonymisation techniques
- Government is looking to strengthen border controls using techniques like biometric identification
- Setting international data standards and the UK/US Data Access Agreement will enable access to data needed
- Data Protection and Digital Information (No.2) Bill will allow UK law enforcement and UK intelligence services to form joint processing under a single regime
- Online Safety Bill a key goal.

The report reveals that counter-terrorist efforts since 2018 “have largely been successful”, and reports a reduced number of casualties, attacks and economic impact.

### Links to further information

[Press release](#)

[Strategy](#)

SHOOSMITHS SAYS...

Government terrorised by the threat of the unknown.

**“We judge that the risk from terrorism is once again rising”.**

Why? Hard to say, but seems to be due to risks posed by “technology”.

Jurisdiction: **UK**

## House of Lords publishes report on artificial intelligence

18 July 2023

### Key details

The House of Lords has published a report on the government's approach to AI regulation and suggests alternative options for the UK in the light of calls for rapid regulatory adaptation.

Contains a very useful short summary of AI and recent history, and a clear description of diverging approaches to regulation in the EU and US.

Also summarises the recent Blair/Hague report (published by the TBIG) on a suggested path for the UK in response to the government's recent White Paper.

It repeats the key recommendations of that report:

- EU prescriptive and pre-emptive approach is “likely to entrench large firms to the detriment of open-source developers, limit academic freedom and reduce competition”
- The US is reluctant to invest in state AI capability which means it is unlikely to be in a position to lead regulation (this year is spending 2.4% of what it did during key space race year)
- UK should have a dedicated AI regulator, and a national AI body called “Sentinel”
- UK should diverge from EU regulation but allow voluntary alignment to promote export; it should “broadly align” with US sectoral standards for now.

### Links to further information

[HoL report](#)

[TBIG report](#)

SHOOSMITHS SAYS...

Very nice play from the Lords.

Jurisdiction: **US**



## FTC seeks public comment on new parental consent mechanism under COPPA

19 July 2023

### Key details

The Federal Trade Commission (FTC) is consulting on a new mechanism for obtaining parental consent under Children's Online Privacy Protection Act (COPPA), which it has been asked to approve under the COPPA rules as a permitted methodology for determining if users are adults (and therefore able to give consent for under 13s).

The Entertainment Software Ratings Board and two companies have together requested approval for the use of technology which analyses the geometry of a user's face to confirm whether they are an adult.

FTC is seeking comments on whether this meets the requirements of COPPA and whether it poses a privacy risk to consumers' biometric information.

Consultation closes 21 August 2023.

SHOOSMITHS SAYS...

The face of the future.

### Links to further information

[Press release](#)

[Consultation notice](#)



Enforcement & legal action

Jurisdiction: **EU**

Marketing, adtech &amp; cookies

## CJEU competition law ruling undermines personalised advertising on the basis of GDPR “legitimate interests”

4 July 2023

### Key details

The case was referred by the German competition authority (the Federal Cartel Office, or Bundeskartellamt, “FCO”) in the context of an investigation into the dominant position of Facebook and Instagram.

In its investigation, the FCO considered Meta’s data protection compliance even though it is not a “supervisory authority” under EU GDPR.

The CJEU has found that:

- A national competition authority (NCA) can look at a company’s data protection compliance, and can even make a finding of GDPR infringement, but it must defer to the relevant national data supervisory authority and cannot itself directly enforce that finding under GDPR
- If the NCA finds that a company has a dominant position, that may mean that users are not able to freely give consent to processing under Art. 6(1)(a) GDPR
- The imbalance of power may also allow the company to impose conditions of service which entail processing not necessary for the performance of a contract (and therefore not lawful under Art. 6(1)(c))
- Visiting websites or apps does not constitute “manifestly making public” so as to permit processing of special category data under Art. 9(2)(e), but entering information, liking or sharing content may do so, if consent has been given “with full knowledge of the facts”
- Linking data with other social media accounts or third party data will only be “necessary” so as to satisfy Art. 6(1)(b) if this “objectively indispensable”
- Processing by a social network operator cannot come under the lawful basis in Art. 6(1)(f) (legitimate interests) as user rights will override.

The matter will go back to the national court for application to the facts.

### Links to further information

[Ruling](#)

[CJEU press release](#)

[NOYB response](#)

SHOOSMITHS SAYS...

Legitimately, a bit of a bombshell – and a whole new set of regulators allowed into the personalised ad ring.

**Schrems: “This is a huge blow for Meta, but also for other online advertisement companies. It clarifies that various legal theories by the industry to bypass the GDPR are null and void.”**

Jurisdiction: **EU (Sweden)**Marketing, adtech &  
cookies

## Swedish DPA imposes fine of €1.1m on Bonnier for profiling without consent

27 June 2023

### Key details

Bonnier News is the largest news organisation in Sweden with over 8,000 employees and a number of print and online publications. The fine (SEK 13m) has been imposed by the Swedish data protection authority, IMY, after it found that Bonnier was using data collected from various sources to conduct user profiling for advertising purposes without a lawful basis under GDPR. In particular it was combining information about browsing and purchasing habits with information bought from data brokers about household profile.

IMY found that Bonnier could not do this on the basis of legitimate interest and required consent under Art. 6(1) GDPR. Legitimate interest would however justify marketing by email and telephone using data which excluded browsing history.

It was also reprimanded (without fine) for deficiencies in its privacy notice.

SHOOSMITHS SAYS...

A further blow for legitimate interest as a basis for profiling.

**“data subjects cannot expect their behavioural data to be collected for marketing purposes just because they visit a website”**

### Links to further information

[IMY Press release](#)[Ruling \(Swedish only\)](#)

Jurisdiction: **EU (Italy)**

## Garante fines website owner €60,000 for illegal web scraping practices

28 June 2023

### Key details

Following an investigation by the Garante, the owner of the website 'www.trovanumeri.com' has been fined €60,000 and ordered to change its practices GDPR violations.

Several individuals among the 26m data subjects complained about unauthorised publication of personal data, lack of information about the controller, lack of contact details, and no way to ask for deletion.

The website owner found phone numbers by data “scraping” (i.e. trawling publicly available data from the internet). This requires a lawful basis for processing, which can be hard to establish. The website owner had also not complied with GDPR provisions about data subject rights. Therefore, the owner was in found to be breach of Arts 5, 6, 12, 13, 15, 16, 17, 24, and 25 of the GDPR.

SHOOSMITHS SAYS...

**“The sole proprietorship had already suffered a fine in 2022 for a similar violation”**

**...but didn't take it on board.**

### Links to further information

[Newsletter](#)[Decision](#)

Jurisdiction: **EU (Sweden)**Marketing, adtech &  
cookies

## Sweden's DPA publishes Google Analytics enforcement actions

3 July 2023

### Key details

Based on complaints brought by NOYB, Sweden's data protection authority, the Integritetsskyddsmyndigheten (IMY), has issued enforcement actions against four companies (CDON, Coop, Dagens Industri and Tele2) for unlawful EU-U.S. data transfers using Google Analytics version 4 (GA4), which measures and analyses website traffic.

IMY found that the transfers made by GA4 do constitute personal data "because the data can be linked with other unique data that is transferred".

IMY has issued an administrative fine of 12m SEK (£887,000) against Tele2 and 300k SEK (£22,000) against CDON, which had not taken the same extensive protective measures as Coop and Dagens Industri. Tele2 has recently stopped using the statistics tool on its own initiative. IMY has ordered the other three companies to stop using the tool.

SHOOSMITHS SAYS...

[Analyse this.](#)

### Links to further information

[IMY press release](#)

Jurisdiction: **EEA (Norway)**Marketing, adtech &  
cookies

## Norwegian DPA puts temporary ban on behavioural marketing on Facebook and Instagram

14 July 2023

### Key details

Based on the recent CJEU competition ruling on Meta activity in the context of behavioural advertising, Datatilsynet is using Art. 66 EU GDPR to impose a temporary ban from August 4 2023 for three months or “until Meta can demonstrate that it has acted in a lawful manner”.

Art. 66 contains a derogation from the usual consistency mechanism between member states “in exceptional circumstances where ...there is an urgent need to act in order to protect the rights and freedoms of data subjects.”

The order prohibits “processing personal data for behavioural advertising based on Art. 6(1) (b) or (f) (consent; legitimate interests) in the context of Facebook and Instagram services”.

They “may decide” to impose a fine for non-compliance of up to 1m NOK (£76,000) per day.

The DPA intends to request an urgent binding decision from the EDPB pursuant to Art. 66(2). The EDPB has made “procedure in case of urgent requests” a top agenda item in its meeting of 18 July.

The decision only applies to users in Norway. Meta can appeal to the national court.

### Links to further information

[DPA letter to Meta](#)[Press release](#)[EDPB Agenda](#)

SHOOSMITHS SAYS...

**Norway out.**

**Reports are that WhatsApp has just changed its EU privacy policy to “legitimate interests” as a result of being fined in January. Wrong move?**

Jurisdiction: **EU (Spain)**



## AEPD confirms €60,000 fine of Birou Gas for failure to respond to information request

12 July 2023

### Key details

The Spanish data protection authority has imposed a fine of €60,000 (reduced to €48,000 for early payment) on utilities company Birou Gas S.L..

AEPD sent out two requests for information to Birou Gas, after initiating a sanctioning procedure as part of an investigation. The company was given 10 business days to respond but did not do so for about 5 months.

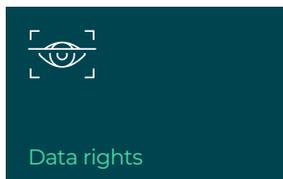
AEPD found that this failure to respond obstructed their investigation and this violated Art. 83(5) EU GDPR.

SHOOSMITHS SAYS...

**Foot on the gas for the Spanish regulator.**

### Links to further information

[Decision](#) (Spanish only)

Jurisdiction: **EU (Italy)**

## Garante publishes €1m fine of Autostrade per L'Italia for incorrect data processing role allocation

17 July 2023

### Key details

The company (also known as ASPI) runs 3,000 km of toll motorways in Italy and has over 7,000 employees. It has been fined for a technical violation of EU GDPR in relation to an app developed by a supplier to enable refunds to customers following road delays on toll motorways.

The Garante found that ASPI incorrectly designated the App developer, Free to X, as data controller when in fact it was a processor on behalf of ASPI. This led to incorrect privacy notices and violations of Art. 28. There were no complaints or allegations of prejudice to data subjects.

The fine was based on the number of data subjects whose data was unlawfully processed (100k) and the size of the company.

SHOOSMITHS SAYS...

[The Garante on a role.](#)

### Links to further information

[Ruling](#)

Jurisdiction: **US**



## OpenAI confirms that FTC has launched investigation into ChatGPT

13 July 2023

### Key details

The Washington Post has published a redacted letter apparently from the Federal Trade Commission asking OpenAI to respond to enquiries over the nature of its ChatGPT service. It is asking about the technology's potential to create harmful or misleading content about individuals, and about the company's approach to data privacy and model training.

OpenAI has not made an official response but its CEO has confirmed that it will co-operate with the investigation.

SHOOSMITHS SAYS...

Should keep OpenAI busy: 49 detailed questions plus disclosure of a huge number of documents.

...perhaps something for a large language model to help with?

### Links to further information

[FTC letter](#)

# Enforcement & legal action

Jurisdiction: **US (Illinois)**



## Instagram plans to settle \$68.5m class action under Illinois Biometric Information Privacy Act (BIPA)

17 July 2023

### Key details

The settlement is of a class action brought in 2020 in favour of Instagram users in Illinois between 10 August 2015 and 16 August 2023. It stems from the alleged collection and storage of biometric information without complying with BIPA requirements.

There will be a final approval hearing for the settlement in October 2023. Follows similar suit settled by Facebook.

Parris v Meta Platforms, Inc, No 2023LA000672

### SHOOSMITHS SAYS...

To benefit, you don't need to be resident and the deadline hasn't expired. Anyone for a trip to Illinois to take some pics?

### Links to further information

[Settlement notice](#)



Industry & sector news

Jurisdiction: **UK/SINGAPORE**



## UK and Singapore sign MoU on Data cooperation

28 June 2023

### Key details

The UK's Department for Science, Innovation & Technology and Singapore's Ministry of Communications and Information and the Smart Nation and Digital Government Office, have announced new memoranda of understanding on data cooperation, research and regulation on the use of data and emerging technologies.

The MoU on data cooperation commits the countries to:

- Increase digital trade
- Discuss data regulation, data protection and international data transfer
- Share best practice on data management in government and business
- Work to a new set of standards on publishing anonymised government datasets.

The aim of the second MoU is to encourage collaboration on research into emerging technologies, align technical standards for AI use and improve connectivity for future developments in digital communications.

WHAT THEY SAY...

**“will further UK and Singapore’s world-leading positions on cyber security, connectivity and AI”**

**...and first steps down the road to UK/Singapore adequacy, perhaps**

### Links to further information

[Press release](#)

Jurisdiction: **UK**



## Breach affecting largest NHS trust under NCSC investigation

5 July 2023

### Key details

The U.K.'s National Cybersecurity Centre (NCSC) is investigating an alleged breach of data belonging to Barts Health NHS Trust, the UK's largest, which runs 5 hospitals and serves 2.5m patients. The ALPHV, or BlackCat, ransomware group has claimed access to 70 terabytes of internal documents. The ICO is also investigating the incident.

SHOOSMITHS SAYS...

We think this Bart may be having a cow.

Jurisdiction: **EU**



Marketing, adtech & cookies

## 'Threads' not launched in EU because of DMA concerns

7 July 2023

### Key details

A spokesperson for Ireland's Data Protection Commission has reportedly said that Meta's new Twitter alternative, Threads, will not be launched in the EU in the foreseeable future. It has been launched in the US and UK.

The service imports data from Instagram, and there are reports of concerns at Meta over new rules in Art. 5(2) of the EU Digital Markets Act which prohibits gatekeepers from combining personal data obtained from subsidiaries without explicit consent.

SHOOSMITHS SAYS...

**The threads unravel.**

**Why? EU data laws nearly sewn up.**

### Links to further information

[Digital Markets Act](#)



## Google Bard made available in EU

13 July 2023

### Key details

Google's generative AI tool was launched earlier in the year to cover 180 countries, but notably not the EU or Brazil. It has now been made available in these territories and the company has said that it has addressed concerns raised by the Irish DPC.

Bard differs from ChatGPT (which is largely financed by Microsoft) by sourcing answers from the internet rather than from pre-loaded training data.

The new roll out contains new features including information on data use, opt outs for personalisation and model training, and management of saved and deleted conversations.

Google must apparently report to the DPC in three months to assess progress, though the DPC has made no official announcements about its dialogue with Google.

SHOOSMITHS SAYS...

**No longer Bard.**

Jurisdiction: **SWITZERLAND**



## Swiss FDPIC launches new registration portal for DPOs

13 July 2023

### Key details

The Federal Data Protection and Information Commissioner (Swiss data protection authority) has launched its new reporting portal for Data Protection Officers.

The new portal allows for private individuals and federal bodies (as well as companies, it seems) to submit DPO contact details online and allows for these to be modified.

A revised Federal Act on Data Protection was passed in 2020 and will come into force 1 September 2023. Under this law, only federal bodies are obliged to name a DPO. Private companies may also do so if they wish to take advantage of lighter touch regulation.

SHOOSMITHS SAYS...

**Should go like clockwork.**

### Links to further information

[Press release](#)

[Reporting portal](#)

Jurisdiction: **US (20 States)**

## HCA Healthcare announces data breach affecting 11 million patients

10 July 2023

### Key details

HCA Healthcare (a US based health services company with 184 hospitals and 2,000 surgeries) has reported a data breach affecting 11 million patients in the US.

An “unauthorised party” appears to have obtained information and made it available online. The leaked information consists of 27m lines of data and includes names, home and email addresses, DOB, gender, appointment dates and locations. The company says that the list does not include “clinical information” but it does contain “reminders that patients may wish to schedule an appointment and education on healthcare programs and services”.

It also runs hospitals in the UK but to date says that information is kept separately and is not affected.

### SHOOSMITHS SAYS...

The world's largest private healthcare provider perhaps a touch confused about what constitutes “clinical information”.

### Links to further information

[Press release](#)

Jurisdiction: **US**

## FBI and Microsoft warn of Outlook hacks affecting US government agencies

12 July 2023

### Key details

A flaw in Microsoft Outlook has permitted unauthorised access by Chinese hackers to 25 email accounts belonging to US government agents including the State Department. The flaw has now been remedied but there has been no announcement on what data has been exposed. All affected organisations have been consulted. CISA has issued an advisory to “critical infrastructure organisations” to ensure they can log future attacks.

WHAT THEY SAY...

**“We assess this adversary is focused on espionage”**

### Links to further information

[CISA and FBI joint advisory](#)

[Microsoft press release](#)



## Alleged leak of millions of US military emails to Mali web operator

17 July 2023

### Key details

According to a report in the Financial Times, millions of US military emails have been misdirected as a result of being sent to domain names with the “.ML” suffix (which is in Mali) rather than “.MIL”.

The “.ML” domain has been managed on behalf of the Malian government by a Dutch entrepreneur since 2013, but his licence expires on 24 July. He has repeatedly reported the problem to the US but to no avail. He is now concerned that emails will go to Mali’s government, which is closely allied with Russia.

Leaked information includes diplomatic documents, personnel tax returns, passwords and travel details for top officers. He has also received emails directed to “army.NL”, intended for the Dutch military.

### SHOOSMITHS SAYS...

Giving new meaning to the phrase “bulk collection”:

117,000 stray emails collected since January this year alone.

Or “SNAFU”, as the military folk like to say.

Jurisdiction: **US**

## New Cybersecurity Labelling programme for smart devices announced

18 July 2023

### Key details

The White House has announced a new voluntary code of conduct intended to improve cybersecurity and information standards for connected devices. Several major electronics, appliance, and consumer product manufacturers, retailers, and trade associations have already signed up to the new “U.S. Cyber Trust Mark”, to be rolled out in 2024.

Other initiatives include:

- FCC use of a QR code linked to a national registry of device information
- NIST to define cybersecurity requirements for routers
- Plans to improve cybersecurity labelling for smart meters and power inverters.

### SHOOSMITHS SAYS...

US showing customary reluctance for centralised regulation.

Signatories to date include Amazon, Cisco, Google, LG, Logitech and Samsung.

### Links to further information

[Announcement](#)

Jurisdiction: **US**

## White House announces new voluntary commitment to safe AI

21 July 2023

### Key details

Seven leading artificial intelligence companies have voluntarily committed to safe, secure, and transparent development of AI technology. Amazon, Anthropic, Google, Inflection, Meta, Microsoft and OpenAI have promised to:

- Develop robust safety testing,
- Consider risks posed by weapons development, self-replication, and system interaction
- Adopt shared standards and best practice
- Contain insider threats
- Keep model weight IP secure
- Include AI in bug bounty programmes
- Develop watermarking for AI-generated content
- Publish safety evaluations
- Support AI research for the public good, such as climate modelling.

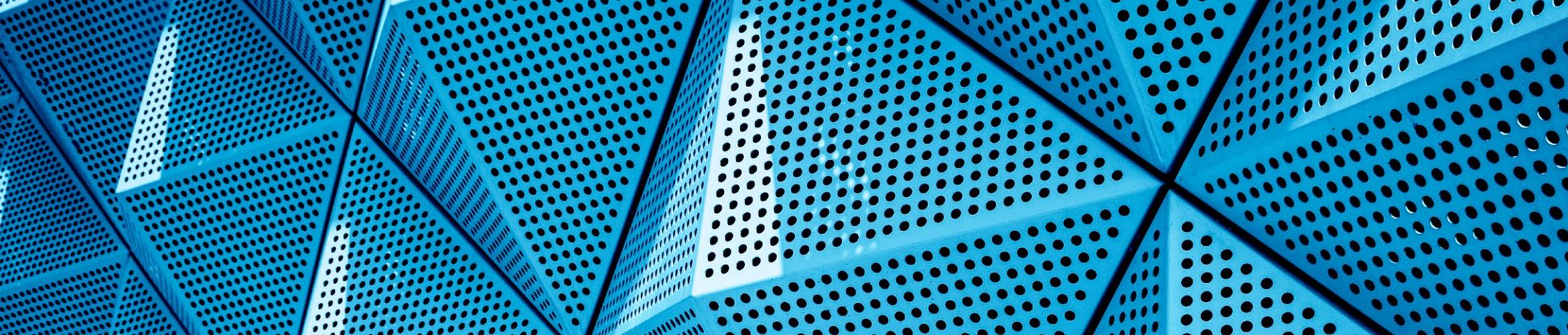
SHOOSMITHS SAYS...

AI regulation on the back of an envelope.

But “commitments are only a first step in developing and enforcing binding obligations to ensure safety, security, and trust”.

### Links to further information

[Text of Commitments](#)[Announcement](#)



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Issued: August 2023

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WHAT  
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