FIVERS

# Regulatory update
# Data protection, AI, IT and IP

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## DATA PROTECTION

**12 August 2024 – EU Commission: until 6 September 2024 it will be possible to send feedback on the EU-US data transfer agreement (Data Privacy Framework) in view of its revision.**

The European Commission has published a call for evidence to obtain public feedback in view of the drafting of the first report for the purpose of revising the EU-US Data *Privacy Framework (DPF*). As is well known, in fact, the adequacy decision of the EU Commission adopted in July 2023, and with which transfers of personal data from the EU to the US were liberalized for American companies that certify themselves to the DPF system, provides for a periodic review, the first of which must take place within a year to assess whether all the elements of the agreement are in force and applied. The results and conclusions of the first review will be presented by the Commission in a report expected in autumn 2024.

Each interested party can submit their feedback on the dedicated website until 6 September 2024.

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**10 August 2024 – Italian Data Protection Authority: FAQ and guidance document on the application of the legislation on the so-called "oncological oblivion" for banks, financial intermediaries, insurance companies and public and private employers.**

The Italian Data Protection Authority has published FAQs on the recent legislation on so-called oncological oblivion, introduced by Law No. 193 of 7 December 2023 containing *provisions for the prevention of discrimination and the protection of the rights of people who have been affected by oncological diseases*.

The FAQs, in addition to providing clarifications to citizens on the right to be forgotten about cancer, provide useful information to all public and private employers and banks, insurance companies, credit and financial intermediaries so that they can correctly apply the new legislation, whose task of monitoring and verifying correct application is precisely entrusted to the Italian Data Protection Authority who, in the event of any violations of the data protection regulations, may impose sanctions provided for by Regulation 679/2016 (GDPR).

The legislation on oncological oblivion prohibits banks, insurance companies, and all employers (both in the personnel selection phase and during the employment relationship), from requesting information from the user and the employee on an oncological pathology from which he or she has previously been suffering and whose treatment has been concluded - without episodes of recurrence - for more than ten years (reduced to five if the subject was under 21 years of age at the time of the disease has arisen).

The law also establishes special protections for couples who apply for adoption to the Juvenile Court. The Court, in the selection of couples, cannot collect information on previous oncological pathologies when more than ten years have passed since the conclusion of the treatment of the pathology - in the absence of recurrences or relapses - or more than five years if the pathology manifested itself before the age of 21 (the rule also applies in the case of adoption of foreign minors).

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**10 August 2024 - EU Court of Justice: a guardian who has ceased to hold office is an external third party, data controller, and must grant access at the request of the interested subject previously represented.**

The clarification was given by the EU Court of Justice in its judgment in Case C 461/22.

The affair involved a German lawyer, who served for a time as a guardian for a person. The latter, at the end of the service rendered by the lawyer, initiated an action against the lawyer to obtain, pursuant to Article 15 of the GDPR, access to his personal data, collected by the lawyer himself during the performance of his duties. During the proceedings, the German judges had doubts about the qualification

of the guardian, i.e. about the possibility of attributing him the role of "data controller", a necessary prerequisite for the request for access to data.

The EU Court's answer distinguishes the guardian in service (who is obviously a legal representative and not an external third party) from those who have performed the task in the past and have ceased.

The terminated guardian is no longer a representative of the client and is, therefore, a third party vis-à-vis a person previously followed. Furthermore, the administration provided by a professional is not an activity carried out for exclusively personal purposes (to which the GDPR does not apply) even if the professional is chosen – as in the case – from the circle of acquaintances of the represented person and carries out activities free of charge. On the basis of this reasoning, the CJEU clarified that a previous guardin who has performed his or her functions in a professional capacity in relation to a person he or she has assisted, must be qualified, pursuant to Article 4 of the GDPR, as a 'controller' of the personal data in his or her possession concerning that person, and is therefore required to comply with a request for access to data pursuant to Art. 15.

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## ARTIFICIAL INTELLIGENCE.

**19 August 2024 – USA: first AI operational Guide for the Federal Government for the application of Artificial Intelligence in public administration enacted.**

The Department of General Services at the Federal Administration of the United States of America has made available the *AI Guide for Government*, a Guide to artificial intelligence for US federal agencies (already recipients of the Executive Order on AI, issued by President Biden on October 26) with the aim of supporting government decision-makers.

The Guide is structured in seven Chapters and provides operational instructions for the correct application, development (including investments) and use of AI in the processes of US federal agencies.

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**10 August 2024 – Italian Data Protection Authority: favourable opinion adopted on the Italian Government's bill on Artificial Intelligence.**

The Italian Data Protection Authority has adopted a favourable opinion on the draft government law on AI, which also contains legislative delegation for adaptation to the EU Regulation on Artificial Intelligence (no. 2024/1689 – AI Act).

The bill regulates research, experimentation, development, adoption and application of Artificial Intelligence (AI) systems and models in the various sectors of society (health, justice, work and professions, national security and defense, etc.).

In giving its favourable opinion to the text, the Authority nevertheless asked the Government to integrate it in several parts to ensure greater protection of citizens' personal data.

In particular, the Authority asked for the introduction of a new article to specify that the processing of personal data carried out through artificial intelligence systems must comply with national and European privacy legislation. The text must also be supplemented with a specific reference to adequate age verification systems (so-called "Age Verification Systems"). *age verification*) capable of guaranteeing limitations or prohibitions on the use of AI systems by minors.

In the case of the use of AI systems in high-risk healthcare, the Authority has asked to indicate particular limitations for the use of data (storage, prohibition of transmission, transfer or communication) and the preference for the use of synthetic or anonymous data.

It was also requested to indicate the Authority - as provided for in the AI Act - as the competent Authority for high-risk Artificial Intelligence systems used, for example, for law enforcement, remote biometric

identification, emotion recognition, border management, administration of justice and democratic processes.

## DIGITAL MARKETS

**16 August 2024 – EU Commission sends request for information to Meta under the Digital Services Act.**

Following the discontinuation of CrowdTangle on 14 August 2024, the EU Commission is requesting Meta to provide more information on the measures it has taken to comply with its obligations to give researchers access to data that is publicly accessible on the online interface of Facebook and Instagram, as required by the DSA, and on its plans to update its election and civic discourse monitoring functionalities.
Specifically, the Commission is requesting information about Meta's content library and application programming interface (API), including their eligibility criteria, the application process, the data that can be accessed and functionalities.

On 30 April 2024, the Commission opened formal proceedings against Meta under the DSA, which are ongoing. One of the grievances focused on the non-availability of an effective third-party, real-time civic discourse and election-monitoring tool ahead of the elections to the European Parliament and national elections, as well as shortcomings in Meta's provision of access for researchers to publicly available data. To alleviate the Commission's concerns in view of the European Parliament elections, at the end of May Meta deployed new functionalities in CrowdTangle, notably 27 new public real time visual dashboards, one for each Member State, to allow third party real time civic discourse and election monitoring. These functionalities have now been discontinued.

Meta must provide the requested information by 6 September 2024. Based on the assessment of the replies, the Commission will determine the next steps, which could include interim measures, and non-compliance decisions. The Commission can also accept commitments made by Meta to remedy the issues raised in the proceedings. Pursuant to Article 74(2) of the DSA, the Commission can impose fines for incorrect, incomplete, or misleading information in response to an RFI. In case of failure to reply, the Commission may issue a formal request by decision. In this case, failure to reply by the deadline could lead to the imposition of periodic penalty payments.

## CYBERCRIME

**10 August 2024 - United Nations: Member States finalize a new cybercrime convention.**

After three years of work, the committee established by the UN General Assembly to negotiate a new convention on cybercrime agreed today on a draft convention text.

The draft convention is expected to be adopted by the General Assembly later this year, thus becoming the first global legally binding instrument on cybercrime.

This achievement represents the culmination of a five-year effort by UN Member States, with the input of civil society, academic institutions and the private sector.

The finalization of this Convention is a landmark step as the first multilateral anti-crime treaty in over 20 years and the first UN Convention against Cybercrime at a time when threats in cyberspace are growing rapidly.

As noted in the draft convention, technology has created opportunities for a greater scale, speed, and scope of crimes, from terrorism to drug trafficking to trafficking in persons, migrant smuggling, firearms trafficking, and more.

The draft convention – available here - provides tools that will enhance international cooperation, law enforcement efforts, technical assistance, and capacity-building relating to cybercrime.

## INFORMATION TECHNOLOGY

**11 August 2024 – Court of Cassation: on the subject of digital signature, no further checks are required if the deed has the extension pdf.p7m.**

With its judgment no. 31767 of 2 August 2024, the Supreme Court of Cassation – taking up a 2023 orientation – recalls that in general, the lack of the annotation of the digital signature on a document does not mean that the document has not been digitally signed.

In particular, digital signatures can be of two types: the so-called PAdES-BES or PAdES Part 3 or the CAdES-BES.

Only in the case of the PAdES signature does the file have a graphic representation of the signature, while in the second case (with the CADES signature, which has no graphic signature sign) the file has a .p7m extension and can be opened using the verification function offered by the same signature software. The printing of a digital document is never suitable for revealing whether or not it was digitally signed, by whom, when and if the signature was valid at the time of affixing it.

The verification of the existence and validity of the digital signature can in fact only be carried out with the appropriate signature software (Dike, Firma Certa, Firma Ok Gold etc.) or through the ministerial software. Or it can be inherent in the file extension itself.

For the purposes of verifying the existence of the digital signature of a deed, there is no need for further investigations if it appears in deeds that the file has the extension pdf.p7m as this extension is itself probative of the digital signature of the deed.