

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

No. 15 / 2024

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## DATA PROTECTION

### **19 November 2024 – French Data Protection Authority - CNIL publishes guide on recording employees when driving.**

The French data protection authority (CNIL) published a guide on the use of artificial intelligence (AI) augmented cameras in freight vehicles to record employees. In particular, CNIL noted that employers may use artificial intelligence (AI) augmented cameras in work vehicles to record employees for the purpose of detecting driver fatigue or driver distractions. CNIL noted that employees may use augmented cameras to: reduce the risk of road accidents and improve the safety of people; raise awareness and train drivers; and evaluate drivers. However, CNIL highlighted that the use of augmented cameras to record employee drivers must not lead to the continuous monitoring. The guide stresses that the only legal basis for recording is legitimate interest. It further emphasizes data minimization, the necessity of data for ensuring safety, and the prohibition of using data for continuous surveillance or disciplinary purposes. Employers must inform and consult with the labour unions and, while not mandatory, a data protection impact assessment is recommended due to the significant risk to drivers' privacy.

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## ARTIFICIAL INTELLIGENCE.

### **19 November 2024 – EU Commission publishes draft implementing regulation establishing scientific panel of independent experts on AI.**

The European Commission has published a draft implementing regulation to form a scientific panel of independent AI experts under the AI Act. This panel will support enforcement, provide advice, and assist the AI Office with its duties, ensuring experts are multidisciplinary, impartial, and free from conflicts of interest. Appointed for two-year terms, with renewal possible, the panel can request documentation from AI model providers, with considerations for trade secret protection. The AI Office may deny data access if data security or confidentiality risks are identified, and a secure interface for transmitting alerts from the panel will be established.

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## DIGITAL MARKETS

### **20 November 2024 - European Regulation 2024/2847 on horizontal (i.e. general) cybersecurity requirements for products with digital elements (Cyber Resilience Act - CRA) published in the Official Journal of the EU.**

The Cyber Resilience Act, published in the Official Journal of the EU on November 20, 2024, mandates cybersecurity requirements for products with digital elements. It specifies essential requirements for security and vulnerability handling, outlines obligations for manufacturers including conformity assessments and risk assessments, and sets reporting obligations for actively exploited vulnerabilities. Importers and distributors must ensure compliance and due care, with enforcement by Member States' authorities, including potential fines up to €15 million. The Act takes effect on December 10, 2024, and becomes applicable on December 11, 2027, with reporting obligations starting September 11, 2026.

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### **19 November 2024 - Directive 2024/2831 on improving working conditions in platform work published in the Official Journal of the EU.**

With the publication of Directive 2024/2831 in the Official Journal of the EU, new rules (to be transposed by Member States by 2 December 2026) are introduced to improve working conditions and personal data protection when working with digital platforms. The new regulation introduces measures to facilitate the determination of the correct employment status of persons performing work through digital platforms; promotes transparency, fairness, human supervision, security and accountability in the algorithmic



management of work through digital platforms; and improves the transparency of work on digital platforms, also in cross-border situations.

Minimum rights are established that apply to all persons performing work through digital platforms in the Union who have, or who on the basis of an assessment of the facts are deemed to have, a contract of employment or an employment relationship as defined by the law, collective agreements or practices in force in the Member States, taking into account the case law of the Court of Justice.

In addition, specific rules are also provided for to improve the protection of personal data of platform workers with regard to automated monitoring systems or automated decision-making systems, with specific measures on algorithmic management and worker profiling.

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### **18 November 2024 – The Product Liability Directive (EU) 2024/2853, published in the EU Official Journal and effective from December 8, 2024.**

The Product Liability Directive (EU) 2024/2853, published on November 18, 2024, and effective from December 8, 2024, replaces Council Directive 85/374/EEC, establishing liability for defective products.

It defines software and AI system developers or producers as 'manufacturers' and addresses the liability implications of product modifications through software updates, including AI learning.

The Directive also guides national courts to assess defectiveness and causality on a case-by-case basis, stating that claimants need not prove the technical complexities involved in AI systems for the courts to acknowledge excessive difficulties in determining product defectiveness.

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### **18 November 2024 – EIOPA requests DORA exemption for small insurance undertakings.**

The European Insurance and Occupational Pensions Authority (EIOPA) has requested a review of the Digital Operational Resilience Act (DORA) in relation to the Solvency II Directive, seeking an exemption for small insurance undertakings. EIOPA's concern arises from the impending increase in size thresholds for the Solvency II Directive, which would temporarily subject certain small undertakings to DORA's requirements from January 17, 2025, until the revised directive takes effect in 2026. EIOPA aims to prevent these undertakings from having to comply with DORA for a short two-year period before they are exempt again.

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## **INFORMATION TECHNOLOGY**

### **19 November 2024 - Supreme Court of Cassation, United Sections: the legal effects of serving to a certifies email full-box.**

The addressee of a notification by means of a Certified Electronic Mail (PEC) has the duty to diligently manage its certified mailbox, ensuring that it is not full (Article 20 of Ministerial Decree No. 44 of 21 February 2011). However, failure to comply with this obligation does not entail a correct serving in the absence of the receipt of correct delivery, but rather requires the serving party to promptly reactivate the serving procedure in the ordinary manner under Article 137 et seq. of the Code of Civil Procedure.

Thus established the Supreme Court in United Sections in its judgment of 05/11/2024, no. 28452.