
Intellectual Property, Media and IT

Newsletter | Portugal

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I. Framework for the free flow of non-personal data in the European Union – Regulation (EU) 2018/1807

On May 28, 2019, Regulation (EU) 2018/1807 of the European Parliament and of the Council, of 14 November 2018, on a framework for the free flow of non-personal data in the European Union entered into force.

This law was drawn up following the legislative initiative that gave rise to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, on the protection of natural persons with regard to the processing of personal data and the free movement of such data ("RGPD"), and it was approved by the Council of the European Union on November 9, 2018. This law was designed to reinforce the data economy and the development of emerging technologies such as autonomous crossborder systems and artificial intelligence.

This regulation overturns restrictions on geographic location of data imposed by Member States to store or process non-personal data, unless they are imposed for security reasons.

The law is intended to encourage the development of codes of conduct to help users of data processing services transition to a different provider and ensure the portability of their data back to their own computer systems. The competent authorities of the various Member States will continue to have access to the data, even when they are stored or processed in another country. A cooperation mechanism will also be created to ensure that no obstacles are placed on access.

Personal and non-personal data sets will be covered by the General Data Protection Regulation and non-personal data by the regulation on the free flow of data.

Andrus Ansip, vice president of the European Commission and responsible for the Digital Single Market portfolio, has stated that, "In 2025, it is likely that the EU27 data economy will provide about 5.4% of GDP, equivalent to 544 billion euros. However, this enormous potential is limited by information that cannot flow freely. By removing information location restrictions, we generate opportunities for more people and businesses. The current guide expresses clearly how the non-personal information flow can interact with the laws that protect personal data."



II. National legislation

The Council of Ministers has approved the **decree-law amending the regime for collective management entities of copyright and related rights**.

Act 30/2019 introduces restrictions on advertising of energy food and beverages with a high content of salt, sugar, saturated fat acids and processed fat acids targeting children under 16, which becomes the fourteenth amendment to the Advertising Code approved by Decree-Law no. 330/90, of October 23

Resolution of the Council of Ministers no. 92/2019
Approving the National Cyberspace Security Strategy 2019-2023

Ministerial order no. 201-A/2019
Updates the amount of the fees and provides for new fees resulting from the acts inserted by the new Portuguese industrial property code, revoking the ministerial order no. 1098/2008, of September 30.

III. Case law

Judgement of the General Court of the European Union of June 19, 2019. Case no. T-307/17, adidas AG v EUIPO

The General Court of the EU confirmed the invalidity of the adidas EU trademark consisting of three parallel stripes applied in any direction.

The Court considered that adidas did not prove that that mark has acquired, throughout the territory of the EU, distinctive character following the use that had been made of it.

In 2014, the European Union Intellectual Property Office (EUIPO) registered, in favor of adidas, the EU trademark for clothing, footwear and headgear, consisting of three parallel equidistant stripes of identical width, applied on the product in any direction.

In 2016, following an application for declaration of invalidity filed by the Belgian undertaking Shoe Branding Europe BVBA, EUIPO annulled the registration of that mark on the grounds that it was devoid of any distinctive character, both inherent and acquired through use. According to EUIPO, the mark should not have been registered. In particular, adidas had failed to establish that the mark had acquired distinctive character through its use throughout the EU.



In this judgement, the General Court upheld the annulment, dismissing the action brought by adidas against the EUIPO decision.

The Court noted that the mark was not a pattern mark composed of a series of regularly repetitive elements but an ordinary figurative mark. It also found that the use that failed to respect the other essential characteristics of the mark, such as its color scheme (black stripes against a white background) could not be taken into account.

Therefore, the Court considered that EUIPO was correct to dismiss the numerous pieces of evidence produced by adidas on the grounds that they concern other signs, in particular, signs for which the color scheme had been reversed (white stripes against a black background).

IV. Regulation, resolutions, recommendations, opinions and other communications

Regulation no. 303/2019

ANACOM's regulation on the safety and integrity of electronic communications networks and services

2019/C 129/14

Amendments adopted by the European Parliament on March 1, 2018, on the proposal for a regulation of the European Parliament and of the Council on the definition, presentation and labelling of spirit drinks, the use of the denomination “spirit drink” in the presentation and labelling of other food products, and the protection of geographical indications of spirit drinks (COM (2016) 0750 – C8-0496/2016 – 2016/0392 (COD))

Decision of the European Data Protection Authority of April 2, 2019, on the internal rules on the limitations of certain rights of data subjects with regard to the processing of personal data in the context of the activities carried out by the European Data Protection Authority

Decision (EU) 2019/682 of the Council, of April 9, 2019, authorizing the Member States to sign, in the interest of the European Union, the Protocol amending the Convention of the Council of Europe for the Protection of People with regard to automated processing of personal data

Decision 2019/C 163/01 of the Bureau of the European Parliament, of April 3, 2019, on the rules implementing the limitation of certain rights of data subjects with regard to the transfer of personal data by the European Parliament to the national authorities in the



context of criminal or financial investigations

Directive (EU) 2019/789 of the European Parliament and of the Council, of April 17, 2019, establishing the rules on the exercise of copyright and related rights applicable to certain online broadcasts of broadcasting organizations and the retransmission of television and radio programs, amending Council Directive 93/83/EEC

Directive (EU) 2019/790 of the European Parliament and of the Council, of April 17, 2019, on copyright and related rights in the digital single market, amending Directives 96/9/EC and 2001/29/EC

Council Regulation (EU) 2019/796, of May 17, 2019, on restrictive measures against cyber-attacks that constitute a threat to the Union or its Member States

Directive (EU) 2019/770 of the European Parliament and of the Council, of May 20, 2019, on certain aspects relating to contracts for the supply of digital content and services

Directive (EU) 2019/771 of the European Parliament and of the Council, of May 20, 2019, on certain aspects of contracts for the purchase and sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC and repealing Directive 1999/44/EC

Communication from the European Commission to the European Parliament and the Council, of May 29, 2019. Guidelines on the regulation concerning a framework for the free flow of non-personal data in the European Union

Commission implementing regulation (EU) 2019/1026, of 21 June 2019, laying down technical provisions for the development, maintenance and use of electronic systems for the exchange of information and for the storage of such information under the Community Customs Code



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