



Editorial

As we write this editorial, the EU continues its substantial legislative and regulatory activity in the field of technology. Key legal instruments such as the Artificial Intelligence Act (AIA) or the Cyber Resilience Act are due to be published soon in the Official Journal, the Data Act will become applicable in September 2025, and the duo Digital Markets Act (DMA) and Digital Services Act (DSA) are already proving to be significant enforcement instrument for the regulation of platforms and digital “gatekeepers”. Additionally, work is progressing on the GDPR Enforcement Regulation and there might still be hope for the long-awaited e-Privacy Regulation.

It is in a context, it is not wonder that a great deal of research also emerges to consider and reassess the measures that are being taken, to account for the successes, but also the setbacks and propose improvements. It is in this spirit that the articles featured in this issue are framed, as they discuss the right to data protection, the growing data economy in which we currently operate, and the regulation of Artificial Intelligence from different lenses. Bearing this in mind, we now turn to a brief overview of the articles that make up this issue:

The first contribution in this issue is entitled “Data protection and the transformation of rights in the digital society” by Francisco Balaguer Callejón, and it begins by approaching the centrality of the right to data protection in all spheres of life, considering the phenomenon of the third globalisation and the unfolding of the digital society. Thus, the author emphasises how there has been a shift in constitutional rights, now mediated by a technological perspective and more infused with an instrumental character; while also addressing the new developments introduced by generative artificial intelligence systems, whose impacts are of undeniable concern.

Next, Giovanni Maria Riccio – in his article entitled “Data protection and appropriate measures: too many uncertainties in judicial applications?” –, sets out to analyse the principle of accountability laid down in the General Data Protection Regulation (GDPR), its application by the courts of the Member States and its distillation in the provisions of non-EU countries, particularly China. In addition, the author draws an overview of the different understandings of the liability rules – from national courts, the Court of Justice of the European Union and the data protection authorities – and comes to the conclusion that judges are struggling

with the indeterminacy of accountability.

Considering the European Union’s own approach to Artificial Intelligence, which is intended to be human-centred and ethically sound, the following article “Building on the EU’s unique strategy for Artificial Intelligence (AI): can an ethical foundation be successfully integrated into its design and deployment?” – authored by Maria Inês Costa – aims at analysing how these elements have been incorporated into the said framework and discussing their tangible effectiveness, in light of relevant multi-disciplinary literature and the AIA. The author notes that applying a successful ethical framework to AI requires a deeper and broader knowledge of the field of ethics than is currently the case.

This is followed by “The role of Artificial Intelligence (AI) in rehabilitation and in the reduction of the use of imprisonment”, an article co-authored by Anabela Miranda Rodrigues and Sónia Fidalgo. In this article, AI is analysed in terms of its current state of challenges, but also its potential in the criminal justice system to improve rehabilitation practices and reduce incarceration. The authors stress that there is a strong reliance on a mechanised and securitised control approach in what they refer to as “our societies of fear”, which must be counterbalanced by an ethical use of AI and related technologies to tip the balance in the other direction – and this change must be a political effort, rather than one stemming from management or the technology itself.

The second-to-last article is authored by Ana Frazão and is entitled “Regulation of artificial intelligence in Brazil: examination of Draft Bill no. 2338/2023”. The article discusses the influence of the AIA on Brazil’s regulation of AI, by means of Draft Bill no. 2338/2023, which also aims to establish a regulation based on risk. The author explores the difficulties encountered in this process – namely the debate regarding the desirability of regulating this technology (e.g., regulation *versus* innovation) –, the urgency of governing AI appropriately and provides an in-depth analysis of the structure of the Brazilian Draft Bill on AI.

The last article of this issue – “Is it worthwhile for Latin American countries to obtain adequate level of personal data protection from the European approach, or is it better to promote the use of contractual clauses to export such information?” – is by Nelson Remolina Angarita and its purpose is to analyse the “adequate level of data protection” framework and its possible replacement by standard data protection clauses, since the former requires a qualification by international bodies that may be influenced and cannot be guaranteed to be totally objective, and has proved to be lengthy, time-consuming and uncertain. In the author’s opinion, the latter could be more reasonable and effective tools given the current socio-technological reality.

Editorial Team