

Roles and competences of Data Protection Authorities under the AI Act

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About the speaker

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Roles and competences of Data Protection Authorities under the AI Act?



What is the role of data protection authorities under the AI Act?



Gearbeitet für 2s



Under the EU AI Act, data protection authorities (DPAs) play a significant but not exclusive role in oversight and enforcement. The AI Act primarily decentralizes oversight through member state market surveillance authorities and the new AI Office. However, DPAs **may be involved in the enforcement of the AI Act in certain circumstances**, especially where there is a clear intersection between data protection and AI regulation, such as with high-risk AI systems that process personal data.

The European Data Protection Supervisor (EDPS) acts as the competent authority for supervising AI systems used by EU institutions, bodies, offices, and agencies, including monitoring implementation and compliance, and can impose administrative fines for non-compliance edps.europa.eu .

The European Data Protection Board (EDPB) has advocated that DPAs, given their experience and expertise in dealing with the impact of AI on fundamental rights (especially the right to the protection of personal data), **should be designated as Market Surveillance Authorities (MSAs) for certain high-risk AI systems**. This would ensure better coordination, legal certainty, and stronger supervision and enforcement of both the AI Act and EU data protection law edpb.europa.eu +1 .

In summary, while the AI Act does not automatically make DPAs the main enforcers, it recognizes their important role—especially for high-risk AI systems—and encourages their designation as MSAs in relevant cases, leveraging their expertise in data protection and fundamental rights iapp.org +2 .

Ask Chat GPT – 1

ChatGPT

What is the role of data protection authorities under the AI Act?

Under the EU AI Act, **Data Protection Authorities (DPAs)** do not automatically become the primary AI regulators. Instead, their role is complementary and focuses on AI systems that process personal data or affect the right to data protection.

Key aspects of their role include:

- **Enforcing data protection law alongside the AI Act.** DPAs continue to enforce the GDPR (and, for EU institutions, the EUDPR). If an AI system processes personal data unlawfully, a DPA can investigate and take action regardless of whether the AI Act also applies. The AI Act expressly operates without prejudice to existing data protection law. [GDPS +1](#)
- **Potential designation as market surveillance authorities.** The AI Act requires each Member State to designate one or more **market surveillance authorities (MSAs)**. Some Member States may choose their DPA as an MSA for some or all AI Act responsibilities, but this is a national choice rather than an EU-wide requirement. The European Data Protection Board (EDPB) has encouraged Member States to designate DPAs where appropriate because of their expertise in AI and fundamental rights. [Digitale Strategi... +1](#)
- **Protecting fundamental rights.** Under Article 77 of the AI Act, authorities responsible for protecting fundamental rights—including data protection authorities—may access documentation relating to high-risk AI systems within their remit. If they suspect non-compliance but need technical verification, they can request the market surveillance authority to carry out technical testing. [Digital Austria +1](#)
- **Cooperating with AI regulators.** DPAs are expected to cooperate with market surveillance authorities, the European AI Board, and other competent authorities where AI systems raise both AI Act and data protection issues. This helps avoid conflicting enforcement and promotes consistent application of the law. [Digitale Strategi... +1](#)

Ask Chat GPT – 2

protection issues. This helps avoid conflicting enforcement and promotes consistent application of the law.  Digitale Strategi... +1

- **Guidance and oversight.** DPAs continue to publish guidance on the lawful use of AI under data protection law, including topics such as lawful basis, transparency, automated decision-making, and data protection impact assessments.  Europäischer Da... +1

For **EU institutions, bodies, offices, and agencies**, the situation is different: the **European Data Protection Supervisor (EDPS)** has a dual role. It remains the data protection authority under the EUDPR and is also designated as the AI Act's market surveillance authority for those EU entities, giving it direct AI Act enforcement powers in that context.  EDPS +1

In summary, DPAs' role under the AI Act is to:

- continue enforcing data protection law where AI processes personal data;
- contribute to oversight of high-risk AI systems from a fundamental rights perspective;
- cooperate with AI Act enforcement authorities; and
- in some Member States (or for the EDPS), serve directly as AI Act market surveillance authorities.

   Quellen

About Data Protection Authorities (DPAs)

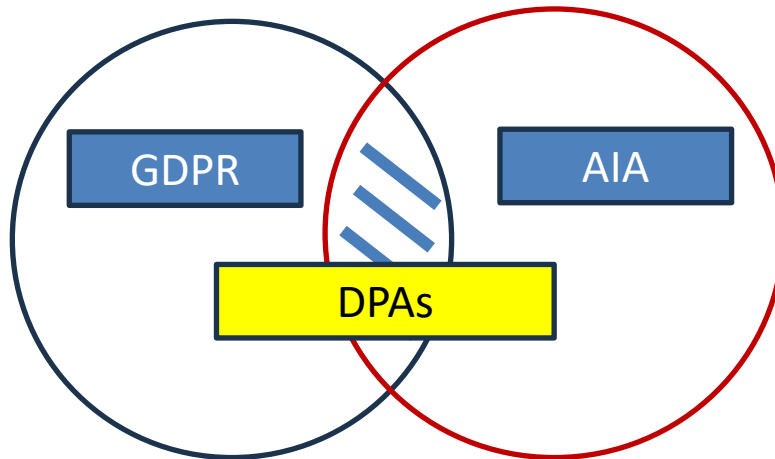
- Article 8(3) EU-FRC
- Articles 51 et seq. Regulation (EU) 2016/679 – GDPR
- „Complete independence“ – no external influence
- European Data Protection Board (EDPB)
- Focus: **monitor and enforce GDPR → protection of fundamental rights**

Data Protection and Artificial Intelligence

- Overlaps in practice → always when **personal data** (Art 4(1) GDPR) are **processed** (Art 4 (2) for **whatever** purpose (if LED or e-privacy Directive do not apply)
- AI „needs“ personal data for training purposes
- AI may generate results containing personal data
- **Opinion 28/2024** of the EDPB on certain data protection aspects related to the processing of personal data in the context of AI models: https://www.edpb.europa.eu/documents/opinion-of-the-board-art-64/opinion-282024-on-certain-data-protection-aspects-related-to_en
- **Guidelines 03/2026** on web scraping in the context of generative AI (version for public consultation): https://www.edpb.europa.eu/public-consultations/guidelines-032026-on-web-scraping-in-the-context-of-generative-ai_en#no-back

GDPR and AI Act (Regulation (EU) 2024/1689)

- GDPR and AI Act exist alongside each other (Art 2(7) AIA)
- As a rule: AIA is not a legal basis within the meaning of Art. 6 GDPR for processing personal data
- AIA is not a *lex specialis* in relation to the GDPR



DPAs under the AI Act – 1

- AIA = in principle **product safety regulation** → competence of **Market Surveillance Authorities (MSAs)**
- **Regulation (EU) 2019/1020** is applicable
- Art 1 AIA: *The purpose of this Regulation is to improve the functioning of the internal market and promote the uptake of human-centric and trustworthy artificial intelligence (AI), while ensuring a high level of protection of health, safety, **fundamental rights** enshrined in the Charter, including democracy, the rule of law and environmental protection, against the harmful effects of AI systems in the Union and supporting innovation.*
- AIA = product safety + safeguarding fundamental rights

DPAs under the AI Act – 2

- **Art 77(1) AIA:** National public authorities or bodies which supervise or enforce the respect of obligations **under Union law protecting fundamental rights**, including the right to non-discrimination, shall have the power to request and access any information or documentation created or maintained from the relevant market surveillance authority pursuant to this Regulation in accessible language and machine-readable format by electronic means where access to that information or documentation is necessary for effectively fulfilling their mandates within the limits of their jurisdiction. This Article is without prejudice to the competences, tasks, powers and independence of the relevant national public authorities or bodies under their mandates.
- **Recital 157:** [...] relevant national public authorities or bodies which supervise the application of Union law protecting fundamental rights, including equality bodies and **data protection authorities**. [...]

DPAs under the AI Act – 3

- **Art 77(1a) AIA:** Subject to the conditions specified in this Article, the market surveillance authority shall grant the relevant public authority or body referred to in paragraph 1 access to such information or documentation, including by requesting such information or documentation from the provider or the deployer, where necessary and without undue delay.
- **Art 77(1b) AIA:** Market surveillance authorities and public authorities or bodies referred to in paragraph 1 shall cooperate closely and provide each other with the mutual assistance necessary to fulfil their respective mandates, with a view to ensuring the coherent application of this Regulation and Union law protecting fundamental rights and streamlining procedures, while respecting their respective competences, tasks, powers and independence. This shall include, in particular, exchange of information where necessary for the effective supervision or enforcement of this Regulation and the respective other Union legislation.
- **Art 77: subject to amendment under the Digital Omnibus AI-Regulation (Regulation (EU) 2026/1744)**
- **DPAs as fundamental rights authorities**

DPAs under the AI Act – 4

- **Art 74 (8) AIA:** For high-risk AI systems listed in point 1 of Annex III to this Regulation, in so far as the systems are used for law enforcement purposes, border management and justice and democracy, and for high-risk AI systems listed in points 6, 7 and 8 of Annex III to this Regulation, Member States shall designate as market surveillance authorities for the purposes of this Regulation either the competent data protection supervisory authorities under Regulation (EU) 2016/679 or Directive (EU) 2016/680, or any other authority designated pursuant to the same conditions laid down in Articles 41 to 44 of Directive (EU) 2016/680. [...]
- **DPAs as sectoral MSAs**

Upcoming challenges for DPAs

- „Complete“ independence of DPAs vs. „normal“ independence of MSAs
- Different actors under the GDPR (controller, processor, data subject) and the AIA (provider, deployer)
- Workload of DPAs under the GDPR
- Increasing number of other Union legal acts with new tasks for DPAs: **Regulation (EU) 2024/900** (Transparency and Targeting of political advertisement); **Directive (EU) 2024/2831** (Platform work Directive)
- Adequate resources (incl. staff)
- Split competences: not all DPAs will have the same competences under the AIA (depends on Member State)
- **Protecting fundamental rights ≠ market surveillance**

Tasks of DPAs

GDPR

- Monitoring and enforcing (incl. handling of complaints and imposing fines)
- Participation in work of the European Data Protection Board

→ Protection of fundamental rights

AIA

- Fundamental rights authority under Art 77
- Sectoral MSA under Art 74
- Potential additional tasks (monitoring prohibited AI practices, Art 5)
- Participation in work of the European AI Board

→ Protection of fundamental rights + market surveillance



Implementation of the AI Act in Austria – role of the Austrian DPA





Implementation of the AIA in Austria

- No (official) draft legislation
- Role of the DPA as sectoral MSA under Art. 74(8) AIA
- Role as fundamental rights authority under Art. 77 AIA
- Possible additional power: enforcement of prohibited AI-practices under Art. 5 AIA

Further information on data protection and AI – 1

Website of the Austrian DPA (in German):

- Q & A: <https://dsb.gv.at/kuenstlichebrintelligenz/kuenstliche-intelligenz-datenschutz>
- Informationen der Datenschutzbehörde zum Verhältnis zwischen der DSGVO und der Verordnung (EU) über künstliche Intelligenz (KI-VO) für **Verantwortliche des privaten Bereichs:**
https://dsb.gv.at/sites/site0344/media/downloads/informationen_der_datenschutzbehoerde_zum_verhaeltnis_zwischen_der_dsgvo_und_der_verordnung_eu_ueber_kuenstliche_intelligenz_ki-vo_fuer_verantwortliche_des_privaten_bereichs.pdf
- Informationen der Datenschutzbehörde zum Verhältnis zwischen der DSGVO und der Verordnung (EU) über künstliche Intelligenz (KI-VO) für **Verantwortliche des öffentlichen Bereichs:**
https://dsb.gv.at/sites/site0344/media/downloads/informationen_der_datenschutzbehoerde_zum_verhaeltnis_zwischen_der_dsgvo_und_der_verordnung_eu_ueber_kuenstliche_intelligenz_ki-vo_fuer_verantwortliche_des_oeffentlichen_bereichs.pdf

Further information on data protection and AI – 2

Website of the EDPB:

- https://www.edpb.europa.eu/topics/ai-and-technology/artificial-intelligence_en

**Thank you for your
attention!**

