

Data Protection Ireland

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Headlines

- ODPIC to examine circumstances of Uber privacy breach, p.17
- LIBE Committee approves amended e-Privacy Regulation, p.18
- ODPIC to examine status of CCTV schemes and use of ANP cameras, p.19

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Working Party’s guidance on profiling creates uncertainty

A position adopted by the Article 29 Working Party within newly published guidance on automated decision-making under the GDPR has generated concern among legal experts.

The issue relates to the Working Party’s interpretation of Article 22(1), which sets out that “the data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling which produces legal effects concerning him or her or similarly significantly affects him or her.”

Argument has arisen over whether the provision should be read as a right available to data subjects or as a straightforward prohibition for controllers. In its guidance, the Working Party takes the latter view.

The result of this interpretation is that any processing activity which is wholly automated, and which leads to decisions that impact on individuals in a sufficiently significant way, is prohibited unless such processing can be justified on one of three bases: performance of a contract, authorised under

law, or explicit consent. Eduardo Ustaran, Partner at Hogan Lovells, said: “This is not an inconsequential legal point. Interpreting Article 22(1) as a prohibition potentially has wide-ranging ramifications. Given this interpretation, what is considered to be a decision that produces ‘legal effects or similarly significantly affects individuals’ becomes really key”.

The guidelines suggest that to qualify, the decision must have the potential to significantly

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Government publishes new Data Retention Bill

The government has published the general scheme of the Communications (Retention of Data) Bill 2017 (the ‘Bill’) which is intended to replace the 2011 Act and establish limitations on the retention of, and access to, data by law enforcement agencies.

The publication of the Bill is a response to previous EU judgments, specifically the 2014 Digital Rights Ireland case and the

2016 Tele2/Watson case. The 2014 Digital Rights Ireland case saw the Court of Justice of the EU ultimately ruling that the Data Retention Directive breached EU law for allowing indiscriminate surveillance of EU citizens.

The 2016 Tele2/Watson case set out that Member States cannot implement laws that require communications service providers to carry

out general and indiscriminate retention of relevant data. The CJEU also held that any retained data can only be accessed by law enforcement agencies in specific limited circumstances.

The new Bill, which is currently only in ‘heads’ form and likely to be significantly amended, presents parameters for the retention of metadata by

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