

Data Protection Ireland

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Headlines

- DPC issues draft Data Protection Impact Assessment list for consultation, p.18
- DPC publishes report into special investigation in the hospitals sector, p.19
- ICANN loses first GDPR ruling in Germany, p.20

Contents

<i>Expert comment</i>	2
<i>Part I: the GDPR, freedom of expression and a right to remember?</i>	5
<i>iConsent and pesky emails — why ‘do nothing’ is the sanest approach</i>	8
<i>The future of international data transfers</i>	11
<i>How much control makes a controller?</i>	14
<i>News & Views</i>	17

EDPB gets down to business

The European Data Protection Board held its first plenary meeting on May 25th 2018 — the same day the GDPR came into force — and adopted guidelines on two topics as its first order of business.

The EDPB is an independent European body composed of representatives of the national supervisory authorities of each EU Member State and the European Data Protection Supervisor. It replaced the Article 29 Working Party.

The two guidelines adopted were final guidelines on derogations to trans-

ferring personal data outside of the EU under Article 49 of the GDPR, and draft guidelines addressing certification mechanisms, and data protection seals and marks used to demonstrate compliance with the GDPR, in accordance with Articles 42 and 43.

The guidelines on derogations confirm that organisations transferring personal data outside of the EU should first endeavour to rely on one of the mechanisms described in Articles 45 and 46 of the GDPR (Binding Corporate Rules or Standard Model Contractual Clauses) before relying upon the

derogations in Article 49 of the GDPR (consent, contractual necessity and public interest).

Consent requirements issued by the Article 29 Working Party are applicable when assessing the conditions of an ‘explicit consent’ in the context of derogations. The guidance states that all derogations should be interpreted restrictively.

According to the guidance, the ‘contract’ and ‘legal claims’ derogations can only be relied upon for ‘occasional’ transfers. The EDPB provides

[\(Continued on page 17\)](#)

Guidance on limiting access rights

The ODPC has given new guidance on the application of Article 23 of the GDPR, the mechanism by which national governments can limit data subject access rights.

Article 23 requires national legislators to establish rules restricting the scope of the rights provided for in Articles 12 – 22 and Article 34 of the GDPR (these Articles set out all the major rights for data subjects, including the rights to erasure and

rectification, and the right to communication regarding breaches).

The GDPR gives an exhaustive list of requirements which must be met to lawfully impose a restriction, and the DPC’s guidance gives advice on interpreting them.

The conditions are that any restriction must happen via a legislative measure; respect the essence of the funda-

mental rights and freedoms; be necessary and proportionate in a democratic society; safeguard one of the interests set out in Article 23(1); and contain specific provisions set out in the GDPR as per Article 23(2).

With regard to the third condition, necessity, the guidance offers that the question is “a facts/ evidence-based concept which must be considered

[\(Continued on page 17\)](#)