

# Data Protection Ireland

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## Headlines

- Commission publishes guidance on DSARs, p.18
- DPC's decision on WhatsApp delayed due to company's concerns, p.19
- Third Privacy Shield Report released, p.20

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## CJEU ruling confirms implied consent is dead

The Court of Justice of the European Union ('CJEU') has delivered its judgment in Planet49, a case analysing the standard of transparency and consent for the use of cookies and similar technologies. Although it doesn't refer to them specifically, the judgment confirms the positions of national regulators on cookies.

Planet49 ran a promotional lottery on its website. As part of entering the lottery, users were presented with two tick-boxes. The first box, which users needed to tick in order to enter the

competition, was an unchecked tick-box to receive third party advertising. The second was a pre-ticked box allowing Planet49 to set cookies to track the user's behaviour online.

The German Federation of Consumer Organisations claimed that these two check-boxes did not satisfy German legal requirements, and sought an injunction requiring Planet49 to cease using them. The case reached the German Federal Court of Justice (the 'Bundesgerichtshof'), which referred it to the CJEU for preliminary

ruling.

The Court found that pre-ticked check-boxes authorising the use of cookies and similar technologies do not constitute valid consent under the e-Privacy Directive. Where consent is required for cookies under the e-Privacy Directive, the GDPR standard of consent applies.

The Court said that it did not matter whether the cookies constituted personal data — Article 5(3) of the e-Privacy Directive (i.e. the cookie

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## New exceptions to data protection rules for Central Bank

New regulations have come into effect in Ireland making it possible for a data subject's rights to be restricted to the extent necessary to allow the Central Bank of Ireland to carry out certain of its central functions.

The legal basis for the Data Protection Act 2018 (section 60(6)) (Central Bank of Ireland) Regulations 2019 is in section 60 (6) of the Data Protection Act 2018. That section

states that following a consultation process, a Minister may make regulations that restrict the obligations of controllers and rights of data subjects, where such restrictions are 'necessary to safeguard important objectives of general public interest'. The government consulted with the Data Protection Commission as it drafted the Regulations, and the Commission produced guidelines last year.

The Regulations apply to personal data (including special categories of personal data and criminal convictions/offences data), in respect of which the CBI is the controller, and are processed by the CBI in the pursuit of a 'relevant objective'.

A 'relevant objective' is defined as an important objective of general public interest, referred to in

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