

Data Protection Ireland

Volume 13, Issue 5

September / October 2020

Headlines

- Facebook and Belgian regulator face off at CJEU over jurisdiction issue, p.18
- European Commission presses Zoom for security assurances, p.18
- Latest GDPR fines, p.19

Contents

<i>Expert comment</i>	2
<i>There's no place like home — data protection implications of the move to remote working</i>	5
<i>Data protection contracts — what tends to be missing and what to do about it</i>	8
<i>AI ethics in the post-GDPR world: Part 2</i>	12
<i>News & Views</i>	17

First official guidance on international data transfers post Schrems II

The Commissioner for Data Protection and Freedom of Information for the German State of Baden-Württemberg ('German regulator') has issued specific guidance on how to navigate the *Schrems II* ruling. The guidance, issued in late August 2020, is the first to address the challenges raised by the judgment in depth.

The German regulator reiterates that the Privacy Shield no longer constitutes a valid legal basis for the transfer of data, and that any transfer of data based on the Privacy Shield is illegal and may result in fines and claims

for damages.

When it comes to the use of Standard Contractual Clauses, the regulator states that SCCs cannot bind authorities in the destination country and therefore without supplementary measures, are not sufficient to provide adequate protection in cases where authorities (i.e. law enforcement bodies) are empowered by law to interfere with data subjects' rights in a disproportionate way. Therefore, supplementary measures must be agreed where necessary.

In the event that even with additional measures in place an appropriate level of protection cannot be ensured — in particular if the destination country's legal system imposes obligations that contravene the measures agreed upon — the corresponding transfer of personal data must be suspended or stopped. Otherwise, unless an adequate level of protection cannot be established through other measures, the Supervisory Authority will be obligated to suspend or prohibit the transfer.

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

Court freezes DPC's probe into Facebook data flows and grants Schrems judicial review

Ireland's High Court has enacted a temporary freeze on a probe being carried out by the Data Protection Commission that threatened to halt Facebook's transatlantic data flows.

Facebook had sought a judicial review of the DPC's preliminary decision—issued in the wake of *Schrems II* — that the mechanism it used to transfer data from the EU to the US 'cannot

in practice be used.'

The Court granted a stay on the DPC's Section 11 order (issued under the Irish Data Protection Act 1998). No date has yet been set for the matter to return to the Court.

In seeking to derail the DPC's decision, Facebook argued that the mechanism in question, the Standard Contractual Clauses, had been deemed valid by

the Court of Justice of the European Union in July.

However, the July ruling also said that if SCCs are being used, then regulators must suspend or prohibit transfers outside the EU if data protection in other countries cannot be assured. The DPC's action seemed to be in alignment with that ruling.

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