

Data Protection Ireland

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- New rules on staff monitoring for FSA regulated Irish firms, p.20
- Personnel files found dumped in industrial estate, p.20

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Cookie law — the latest Dutch, French and Irish developments

Draft legislation mandating 'opt-in' consent for cookies in the Netherlands has been discussed before the Upper House of the Dutch Parliament.

The inclusion of the opt-in confirms that the Netherlands has taken a strict interpretation of the rules on cookies brought in by the revised e-Privacy Directive (2009/136/EC). Article 5(3) of the Directive requires only that organisations must obtain 'consent' from individuals in order to place cookies on their equipment, suggesting that something less than 'opt-in' might

be acceptable.

According to a recently published interim report, the Upper House raised several concerns about the Dutch proposals and, as a consequence, a large number of questions have now been referred back to the Dutch government for further consideration, with a response expected by 17th November 2011.

Key questions asked of the government include: will the cookie opt-in proposals put the Netherlands at a competitive disadvantage as against countries that adopt

a more 'lenient' implementation of Article 5(3); what will the impact be on the user experience of Dutch internet users; what will the impact be of consent regimes adopted by other Member States on users' internet experience; which party has to obtain the unambiguous consent; can responsibility to obtain consent be delegated from, say, a publisher to an advertiser; what cookies will fall within the scope of the proposed regulation; are analytics cookies exempt; and can opt-in consent be given via browser settings?

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EU companies using US cloud providers breaching DP law?

The Dutch minister who recently said that US cloud providers might be banned from doing business in the Netherlands due to US Patriot Act concerns has backtracked, saying that the issue is a "conflict of legislation" that the nations have to deal with.

The Dutch minister in question, Ivo Opstelten, was concerned by the apparent position under the US Patriot Act that vendors based in the US are capable of being com-

pelled to share data with US authorities, without informing affected individuals. As such, EU organisations utilising US-based servers could well be breaching various aspects of the Data Protection Directive (95/46/EC), including the restrictions on transfers of data and the requirement to inform individuals of the purposes for which their data are processed.

Members of the Europe-

an Parliament have demanded to know what EU lawmakers intend to do about the problems raised by the conflicts between US and EU laws — the issue is currently being considered at by EU lawmakers who are drafting the revised Data Protection Directive. Former UK information Commissioner, Richard Thomas, recently gave the impression that it is an issue that the law makers are really struggling with.