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Data Protection Ireland

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DPC investigating Schrems' complaint as Safe Harbor onslaught continues

The Data Protection Commissioner Helen Dixon is currently investigating the substance of Max Schrems' now three year old complaint about Facebook, at the direction of the Irish High Court (given on 20th October).

Schrems v DPC returned to the High Court from the European Court of Justice, which on 6th October ruled that the EU-US Safe Harbor pact was invalid due to the indiscriminate access to personal data given by US organisations (in particular Facebook) to US government agencies. (It was the existence of the framework which former Commissioner Billy Hawkes said 'tied his hands' in terms of hearing Schrems' complaint initially).

Since the Safe Harbor judgment, much confusion has persisted around the exact interpretation of the ruling. Specifically, regulators have diverged on whether the ruling meant that other forms of international data transfers between the EU and US are also illegal now.

The Article 29 Working Party made a joint statement advising organisations to make use of Model Clauses and Binding Corporate Rules to legitimise data transfers until a long term solution could be found. It called on EU and US officials to establish that solution urgently, and gave a deadline of January 2016.

If an agreement is not in place by that deadline, then the Working Party may begin taking coordinated enforcement action against organisations that are still using Safe Harbor at that date.

Meanwhile, the German

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European Court rules on which regulators can fine companies

The European Court of Justice has given another ruling (the *Weltimmo* case) that has vast ramifications for companies, affecting which data protection authorities have jurisdiction over their activities.

In *Weltimmo,* which was a case referred to the ECJ by the Hungarian authority, the Court said that if a company operates a service in the native language of a country, and has representatives in that country, then it can be held accountable by the country's national data protection agency.

The Hungarian authority's issue was with Slovakian property company (Weltimmo) which operates a property advertising service in Hungary.

The ECJ decided that Weltimmo could be liable for fines imposed by the Hungarian authority for breach of national data protection law.

It decided this on the basis that the property company had a representative in Hungary who (1) was responsible for recovering the debts resulting from the activity, (2) represented the controller in administrative and judicial proceedings, and (3) had a bank account and a letter box

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