

Data Protection Ireland

Volume 9, Issue 3

May / June 2016

Headlines

- GDPR published: D-day is 25th May 2018, p.17
- DPC successfully pursues prosecutions, p.18
- European Commission launches consultation on e-Privacy Directive, p.19

Contents

<i>Expert comment</i>	2
<i>What to do when dawn raids happen</i>	4
<i>The Privacy Shield explained — Part 1</i>	7
<i>Shifts in the key conditions for processing</i>	9
<i>Dual certification: a tale of two frameworks</i>	12
<i>The European Data Protection Board — more than a mere rebranding exercise</i>	14
<i>News & Views</i>	17

Future of Privacy Shield hangs in balance as progress stalls

The US government has expressed reluctance to change the terms of the carefully negotiated EU-US Privacy Shield following the Article 29 Working Party's rejection of the current version.

The US is still reviewing the Working Party's non-binding opinion issued in early April, which raised several serious flaws and asked the European Commission to address them before moving things forward.

Stefan Selig, US Undersecretary of Commerce for International Trade, said although the US

would evaluate the EU regulators' opinion very carefully, it would be wary of re-opening the agreement for fear of upsetting the "delicate balance that was achieved when we negotiated the original text."

The inflexible stance taken by the US doesn't bode well for the prospects of developing and passing a data transfer agreement in the very near future.

Although it raised a number of points that need to be addressed, the Working Party's major concern with the Privacy Shield is

that the US would not hold European citizens' data to the same privacy standards as it is held to with current European laws.

Specifically, its assessment called for increased clarity about 'massive and indiscriminate collection of personal data originating from the EU,' even in light of counterterrorism efforts.

To consider accepting a revised Privacy Shield agreement, the Working Party asks that the European Commission add a

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

Irish exam paper case referred to the CJEU

The Irish Supreme Court has unanimously agreed to ask the Court of Justice of the European Union to determine whether a man's accountancy exam paper counts as personal data.

The ruling follows a protracted legal battle starting firstly with a determination from the Data Protection Commissioner, then going through the Circuit Court and High Court.

Peter Nowak, a registered student with the Institute of Chartered Accountants Ireland, had passed the CAI's first-level accountancy exams and three of the second-level exams, but failed the strategic finance and management accounting exam on four separate occasions.

On the fourth occasion, he sought to challenge the result and submitted a data access request to

the CAI seeking all personal data. The CAI released 17 items but declined to release the exam script, saying it did not constitute personal data.

Mr Nowak then sought assistance from the Data Protection Commissioner, who advised that exam scripts 'would not generally constitute personal data'.

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