

Data Protection Ireland

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Headlines

- DPC publishes Annual Report 2015, p.17
- European Parliament adopts NIS Directive, p.18
- AG gives Opinion in data retention case, p.19

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Working Party still not satisfied with Shield, but gives grace period

The EU-US Privacy Shield has finally been agreed, but the Article 29 Working Party still isn't fully satisfied with the updates.

EU and US lawmakers have been tweaking the framework since it was first unveiled in February 2016, and after being 'sent back to the drawing board' with the delivery of the Article 29 Working Party Opinion, which identified several serious flaws with the framework.

Negotiations to implement the privacy regulators' recommendations concluded in late June,

after US officials provided more details about the circumstances in which it collects bulk amounts of data for national security purposes, and pledged that the Shield would not be used to justify mass surveillance.

The Working Party's latest concerns are the following: the lack of specific rules on automated decisions; the lack of a general right to object; the applicability of the Privacy Shield to processors; the independence and powers of the Ombudsperson mechanism; and the lack of concrete assurances that bulk data collection

does not take place. However, it appears to be granting a one year grace period until the first joint annual review of the Privacy Shield to resolve the issues.

The Working Party reminds organisations that the robustness of the Privacy Shield may impact on transfer tools such as Binding Corporate Rules and Standard Contractual Clauses.

Eduardo Ustaran, Partner at Hogan Lovells, comments: "All in all, the uncertainty about the long

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Schrems and Facebook unite against DPC

The Data Protection Commissioner is being criticised for her approach to handling Max Schrems' case against Facebook.

The criticisms stem from the latest proceedings issued in June 2016 in the High Court to determine the safety and adequacy of Standard Contractual Clauses as a mechanism for international data transfers. The challenge followed the toppling of

Safe Harbor last year. The proceedings were accepted by all parties as merely a vehicle for the DPC to get a reference to the Court of Justice of the EU ('the CJEU') to challenge three decisions of the European Commission on the use of standard contractual clauses.

But it appears as though the DPC could simply refer the question herself.

In a recent Commercial Court hearing, the Court heard disgruntled arguments from both Schrems and Facebook, who are united in saying that the DPC is wrong to ask for the CJEU to make a ruling prior to issuing a decision herself.

The DPC is also criticised for not questioning the validity of other channels of data transfers in the

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