

Data Protection Ireland

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Headlines

- Irish organisations struggle to comply fully with GDPR, p.17
- Ireland ranked second in Europe for data breach notifications, p.18
- DPC is ‘overwhelmed’ says German regulator, p19

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AG delivers Opinion in Schrems II, and its good news

The Advocate General of the Court of Justice of the European Union (‘CJEU’) has given his opinion in the ‘Schrems II’ case, and although there are some complexities, it is overall positive news for organisations conducting international data transfers.

The AG recommended that the CJEU upholds the validity of the Standard Contractual Clauses as a mechanism for transferring personal data outside of the EU. SCCs are the key data transfer mechanism used by many organisations to transfer personal data outside of the EU.

The AG was giving his opinion in a case stemming from the complaint of Max Schrems, an Austrian privacy advocate who has already been a force for change in the area of global data transfers (a previous complaint of his led to the invalidation of Safe Harbor). Mr Schrems filed a claim with the Irish Data Protection Commissioner in 2015, challenging Facebook Ireland’s reliance on the SCCs as a legal basis for transferring personal data to the company’s US base. Facebook had turned to SCCs for legitimising data transfers after Safe Harbor collapsed. Mr

Schrems’ central argument was that US legislation does not explicitly limit interference with an individual’s right to protection of personal data unless strictly necessary, as provided for by EU data protection law. Accordingly there was no remedy that would allow data subjects to ensure protection of their personal data once it had been transferred to the US. Mr Schrems requested that the Irish DPC suspend the transfer of personal data by Facebook Ireland to the US. The DPC brought pro-

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DPC clarifies ‘lawful basis’ in new guidance

The Data Protection Commission has published guidance on the lawful bases for processing personal data, aimed at assisting controllers in identifying the correct legal basis for data processing, and to recognise the obligations which stem from that legal basis.

The DPC emphasises the importance of a controller correctly determining which legal basis they are relying on in order to

ensure that any processing they undertake is lawful. The guidance provides a detailed overview of each potential legal basis available to controllers.

Regardless of the legal basis or bases relied upon, says the guidance, controllers should ensure that each processing operation is necessary as a specific and proportionate way of achieving a transparent

stated purpose or goal, which could not reasonably be achieved by some other less intrusive means, or by processing less personal data.

The DPC recommends that controllers carefully consider whether consent is the most appropriate legal basis and are aware of the requirements and obligations that come with reliance upon con-

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