

# Data Protection Ireland

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## Headlines

- DPC queries source of details used to block benefit payments, p.17
- TikTok to open data center in Ireland, p.19
- Grace period for cookies compliance to end soon, p.20

## Contents

<i>Expert comment</i>	2
<i>Past, present and future of DPC activity — the 2020 Regulatory Activities Report</i>	5
<i>Top ten data protection considerations when outsourcing</i>	7
<i>EDPB's guidelines on territorial scope — clarifications and uncertainties</i>	10
<i>AI ethics in the post-GDPR world: Part I</i>	13
<i>News &amp; Views</i>	17

## SCCs can stay, but Privacy Shield is out — CJEU's surprising ruling

The Court of Justice of the EU has unexpectedly invalidated the US-EU Privacy Shield with immediate effect.

On 16th July when delivering its much anticipated 'Schrems II' judgment, the Court held that US national security powers and programmes conflict with the fundamental rights of people in the EU (in part due to overly broad data collection), and do not provide adequate remedies for EU citizens who suspect their fundamental rights have been violated.

Although the decision was unexpected in the sense that the CJEU was not asked to make a decision about the Privacy Shield (see below), both Member State national courts and the CJEU have previously expressed concerns regarding US national security laws and related executive orders, protocols and programmes.

The CJEU was supposed to be ruling on the legality of EU Standard Contractual Clauses ('SCCs'), after being referred the question by the Irish Courts. The referral was made as part of a long-

running dispute which started in 2013 when Austrian lawyer, Max Schrems, filed a complaint with the DPC, arguing that Facebook was illegally sharing his personal data in the US.

In what appears to be a victory for US organisations that rely on SCCs as their lawful basis under the GDPR for transferring EU personal data from the US, the Court examined the European Commission's Decision 2010/87/EC on Standard Contractual Clauses and considered

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

## GDPR receives its first assessment

The European Commission has published its highly anticipated report evaluating the GDPR, addressing international transfer issues, the cooperation/consistency mechanisms between the European Data Protection Board ('EDPB') and Supervisory Authorities ('SAs') and various other topics, including regulator resourcing.

The review is based on input from the Council of the European Union,

the European Parliament, the EDPB, SAs, an independent expert group and various other stakeholders.

Although the review makes clear that it would be premature to draw definitive conclusions regarding the GDPR's application, the Commission's view is that SAs have made 'balanced use' of their enforcement powers, citing the range of fines issued. However, the Commission re-

minded SAs that the territorial scope of the GDPR should be reflected in enforcement actions, and suggests involving a controller or processor's EU representative where necessary.

Noting that bans on processing may be an equal or higher deterrent than fines, the review did not speak to concerns that fines have been limited in scale and number.

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