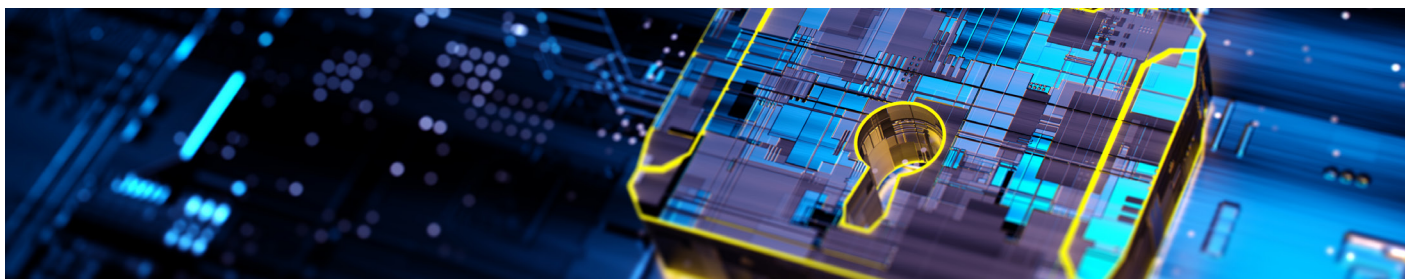


MAZARS DATA PROTECTION NEWSLETTER

Issue 8

Since our last newsletter in June, we have observed the Court of Justice deliver a decision on the anticipated Schrems II case, an increase of media attention surrounding the privacy concerns of the COVID tracker app and guidance from the DPC on website cookies.



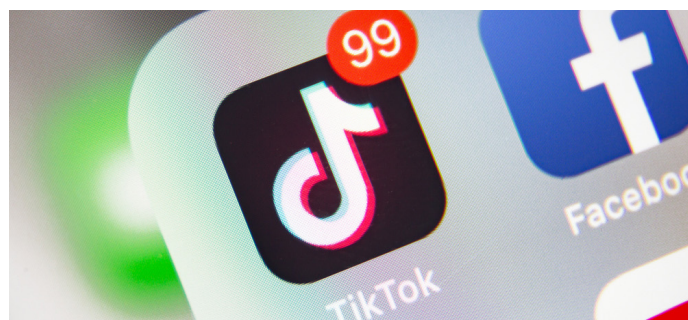
Cookie Deadline Fast Approaches

In April 2020, the DPC published a [report](#) into the use of Cookies and have issued new [guidance](#) based on their findings after a review across a selection of industries.

The DPC have set a **deadline of 5th October** to make the necessary changes, and meet compliance standards, before any enforcement action is taken.

Key highlights for organisations to consider include:

- **Implied consent for non-exempt cookies:** an over-reliance on implied consent disclaimers e.g. “by continuing to browse this site you consent to the use of cookies.” Others relied on pre-ticked boxes, which are not permitted. Some websites set non-essential cookies without any user engagement.
- **Labelling cookies as “necessary” or “strictly necessary” where they are not exempt:** Consent is not required only where the use of the cookie is necessary “for the sole purpose of carrying out the transmission of a communication over an electronic communications network,” or where “strictly necessary in order to provide an information society service explicitly requested by the user.”
- **Insufficient information on the use of cookies and their purposes.**
- **Poorly designed cookie banners:** many websites offered no choice other than “accept,” without providing any additional information about the cookies.
- **Bundling of consent for all purposes:** users were unable to provide specific consent to different cookie uses (e.g. necessary, analytics, marketing).
- **Inability to vary or withdraw consent:** the user interface of most websites had **no obvious functionality to change settings** or **withdraw consent** at a later stage. Under Article 7(3) of the GDPR, for consent to be “freely given” and therefore valid, **users must be able to withdraw their consent** to the processing of their personal data at any time.

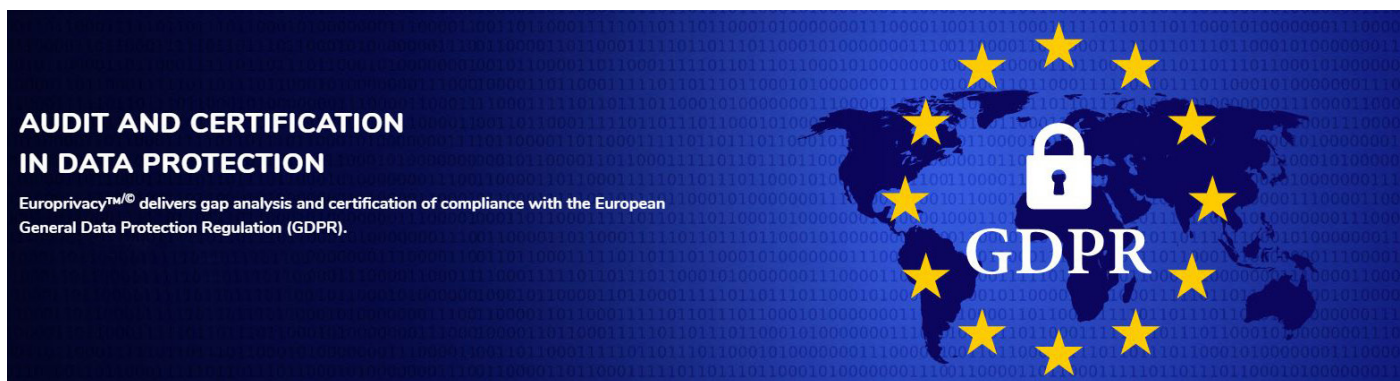


TikTok Investigation

As [TikTok declared](#) its plans to invest €420m in a Dublin data centre, creating hundreds of new jobs, the French data protection supervisory authority, CNIL, [announced their privacy investigation](#). This is following both a [\\$5.7 million](#) fine from the US for illegally collecting children’s data, and the [ongoing investigation](#) by the UK for similar violations.

EuroPrivacy Data Protection Certification

- Our team of consultants are now certified Europrivacy Implementers and are ready to prepare your organisation for the EuroPrivacy GDPR certification scheme.
- Certify your GDPR compliance, providing your organisation with a competitive edge.
- The certification process will include documentation review, technical tests and interviews.
- Benefits include reduction in likelihood and impact of risks and enhancing consumer trust .
- If you are interested in discussing this further, **please get in touch with Liam.**



The Highly Anticipated Schrems Case

- On 16th July, the Court of Justice of the European Union (CJEU) made a [ruling](#) that invalidated the EU-US Privacy Shield and data transfers that had previously relied on that mechanism.
- The decision also cast doubt over SCCs, Data Controllers are now required to assess the level of data protection the SCCs can provide, taking into account the data importers national legislation.
- All organisations should review their processing and identify transfers that rely on either Privacy Shield or SCCs including any processors they rely on that transfer data.
- Undertake a Transfer Impact Assessment on the relevant processing activities to ensure risks to the rights and freedoms of the data subjects are properly taken into account.
- If relying on Privacy Shield identify a new transfer mechanism, if relying on SCCs, consider the nature and complexity of the processing. Note the EC is preparing new SCCs in the medium term
- In the meantime, national supervisory authorities are taking time to assess how they plan to apply and enforce the ruling. We also expect some guidance on Transfer Impact Assessments



Further Complaints Made by NOYB

- NOYB (the not for profit Max Schrems is a part of) issued [101 complaints](#) in August.
- These focused on company websites that use Google Analytics or Facebook Connect as part of their cookies, Irish based companies include RTE, AIB, and UCD
- This appears to be an attempt by Schrems to force national Supervisory Authorities to act on the above ruling

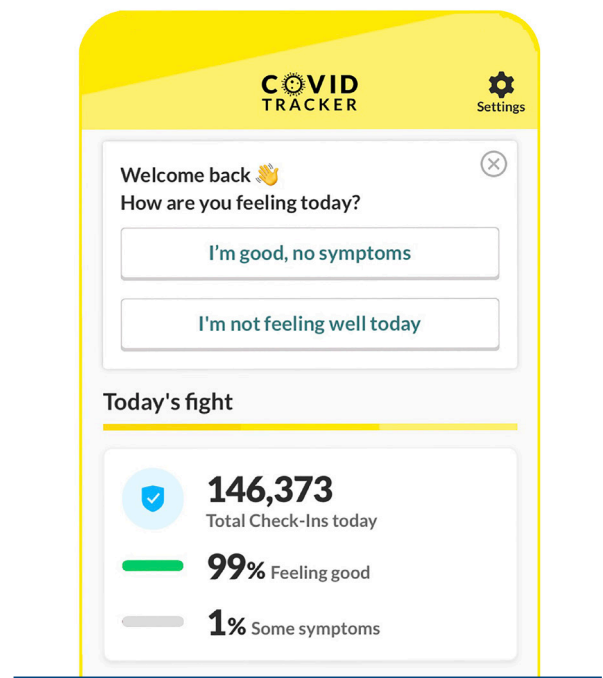
HSE COVID Tracker App Causes Concern

[Concerns](#) have been raised over the **privacy impact of the newly released HSE COVID Tracker app** designed to slow the spread of COVID-19 in Ireland in 3 ways:

- alert the user where they have been in close contact with another user who has tested positive, track user's symptoms and; anonymously warn other users that you were in close contact with, if you test positive

The concerns are based around Google Play Services, on Android devices, sending highly sensitive personal data to Google servers every 20 minutes. Additionally, the potential for allowing IP based location tracking.

- The [HSE CIO has said](#) that the app was designed to be privacy-focused
- A [DPIA](#) has also been completed, incorporating feedback from the Attorney General's Office and the DPC.



The DPC has issued guidance for parties who mistakenly receive personal:

[Individuals](#) should identify and contact the controller, ensure the data is secured, not use the data for other purposes such as identifying or contacting the intended recipient as this is further processing of data and can incur sanction.

- [Organisations](#) who wrongly receive data should act in a way that respects their [obligations as a data controller](#) including application of the principles of data protection
- [Controllers](#) who lose control of the data to a third party, and that third party does not cooperate in the return or deletion of the data, should take steps up to and including contacting the Gardaí.

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