

Data protection newsletter

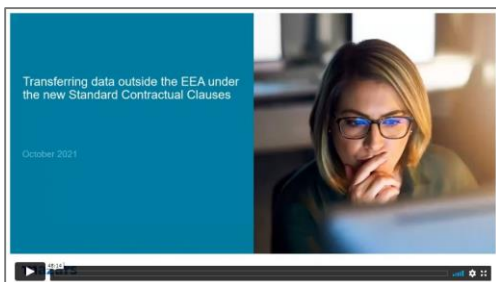
Issue 13

The CJEU has ruled on identifiable data and inferred special category data, NOYB has issued another round of complaints against cookie banners, the DPC is expanding with two new commissioners, and the deadline for new SCCs is fast approaching.

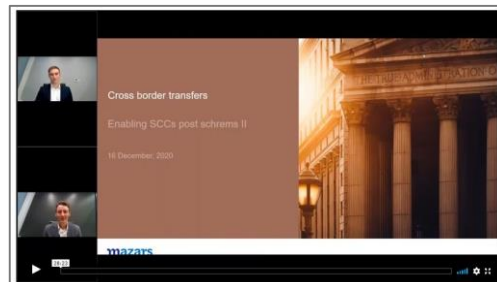
Deadline on new Standard Contractual Clauses fast approaching

The new SCCs that were issued in June of last year are set to fully replace the older SCCs from 27th December this year, any transfers relying on the old SCCs may have to be ceased. While this may seem like a relatively long timeline remember that to use these SCCs a data transfer impact assessment is required first. This can take some time as it necessitates engagement with the data importer, and an assessment of the laws and practices in the importing country. And this is before the SCCs can be negotiated or executed with the data importer.

We have two webinars available on the Mazars website to provide more information:



[Transferring data under SCC's](#)



[International data transfers](#)

Key action: Get started with your DTIAs!

CJEU ruling on special category data – [C-184/20](#)

On this case the CJEU was asked a number of questions of law, two of which have some bearing on data protection:

1. Is the legislation that requires the publication of independence and conflict of interest information relating to persons working in the public sector fair and proportionate, and does it meet the public interest criteria?
2. Can the marital status and name of spouse be used to infer the sexual orientation of an individual and constitute special category personal data.

In relation to the first question the Court found that while the collection and processing of the data was fair and proportionate, the publication of it was not, and did not meet the objective of public interest

The second question has more of an impact on all organisations. It was found that this data does constitute special category personal data, and as such requires additional protections. This ruling clears up some disagreements between supervisory authorities where we saw, for example, the Norwegian authority find that sexual orientation could be inferred by the fact that someone used a particular mobile app, while the authority found that the same app did not infer sexual orientation.

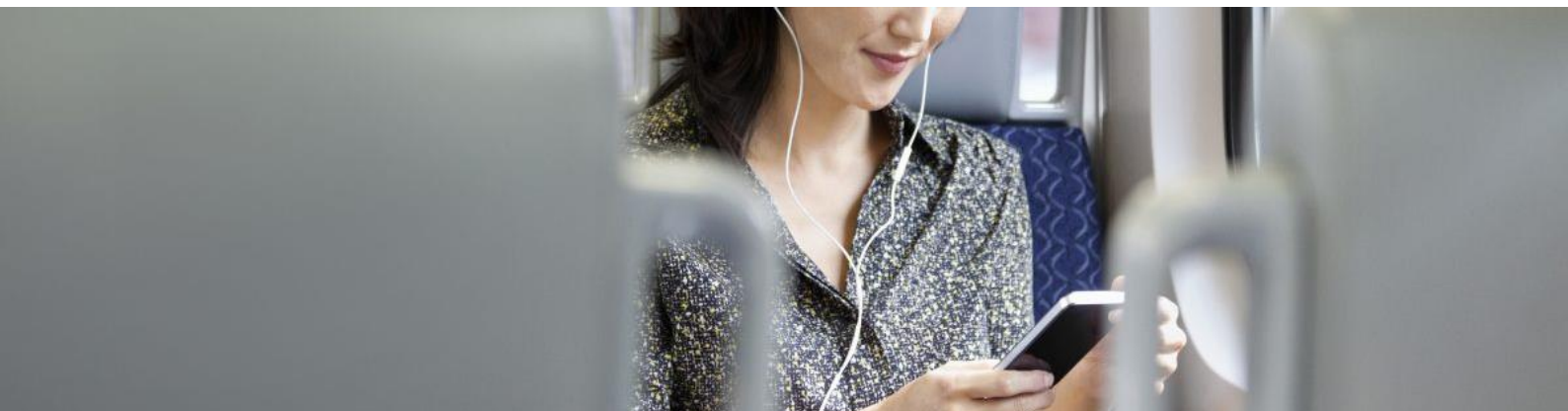
Key action: review your record of processing activities and identify any data that could infer special category data, then update protections accordingly.

NOYB complaints

As seen in [edition 8 of our newsletter](#), NOYB is making complaints against websites use of cookie management tools, including banners and consent management platforms, a link to the [complaints is available here](#). It is well known that cookie management can be complex, especially as some of the main cookies like Google Analytics have been found to be non-compliant with the GDPR, as outlined in our article [Website cookie consent changes 2022](#).

The basis of the NOYB complaints is that many cookie banners still use techniques to encourage people to accept them, or don't even have a reject all option available. This is in line with, but adds some more requirements than, [the Data Protection Commission report from 2020](#).

Key action: Undertake a cookie audit on your webpages to ensure compliance. Get in touch with Mazars for more details.



DPC expansion

At present there is one Data Protection Commissioner, Helen Dixon. However, the Data Protection Act 2018 allows for the appointment of up to three commissioners. In late July the minister for justice approved the [appointment of two new commissioners](#).

It will be interesting to see what impact this will have on enforcement and regulatory action from the Commission.

UK data reform casting doubts over adequacy

There has been a lot of talk recently that the UK plan to reform their data protection landscape. The UK government have now set out some details on how they plan to do this, in the [Data Protection and Digital Information Bill](#), which leaves some uncertainty around the Adequacy Decision relied upon for the free movement of information between the EU and the UK. Below are some key points that have been outlined;

- Organisations will be required to implement privacy management programmes
- Appointing a Data Protection Officer will no longer be required
- Data protection impact assessments will no longer be required. But organisations will need to complete risk assessments where required
- Records of processing activities will still be required
- Data breach reporting threshold will remain the same
- Fees for subject access requests will not be re-introduced
- It is expected that cookies will rely on an opt-out model and remove the need to unnecessary cookie consent banners
- Fines under the Privacy and Electronic Communications Regulation (“PECR”) will be increased
- Human oversight of automated decision making will be reconsidered in an attempt to create a broader approach to governing AI-powered automated decision making

Key action: ensure you have appropriate processing agreements in place, with the possibility of having to implement SCCs.



Contacts

Liam McKenna, Partner
T: +353 (01) 449 6454
lmckenna@mazars.ie

David O'Sullivan, Manager
T: +353 (01) 449 6444
DOSullivan@mazars.ie

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