

ANNUAL REPORT

2020



An Coimisiún um  
Chosaint Sonrai  
Data Protection  
Commission

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# Glossary

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- AG — Advocate General
  - BIIDPA — British, Irish and Islands' Data Protection Authorities
  - CJEU — Court of Justice of the European Union
  - CSA — Concerned Supervisory Authority
  - DPA — Data Protection Authority
  - DPC — Data Protection Commission
  - DPIA — Data Protection Impact Assessment
  - DPO — Data Protection Officer
  - EDPB — European Data Protection Board
  - GDPR — General Data Protection Regulation
  - IMI — Internal Market Information System
  - LED — Law Enforcement Directive
  - LSA — Lead Supervisory Authority
  - OSS — One Stop Shop
  - SCCs — Standard Contractual Clauses
  - SMC — Senior Management Committee



# Foreword

## Introduction

2020 was the second full year of application of the GDPR and the Law Enforcement Directive (LED).

This annual report details the extensive span of regulatory work completed by the Data Protection Commission (DPC) in 2020 in the discharge of its wide-ranging role in overseeing and regulating the application of EU data protection and e-privacy laws. During this period, the DPC has continued to drive compliance and accountability by organisations with their obligations under the EU's legal framework for personal data processing. In particular, the DPC has progressed over the last year definitive interpretations of key principles and requirements of EU data protection law through a range of enforcement actions and through the conclusion of the proceedings the DPC initiated in 2016 in the High Court seeking a reference to the Court of Justice of the European Union in relation to EU to US personal data transfers. While transfers of personal data occur from every EU member state to the US, the DPC has made a unique contribution as a data protection authority in bringing clarity to and pursuing enforcement of this aspect of EU data protection law.

## Large-scale inquiries

A headline feature of the GDPR in replacing the previous EU Directive were the dissuasive enforcement tools it offered to deal with cases posing significant risk to EU data subjects, including arising from intentional or negligent behaviour on the part of organisations. Accordingly, the DPC has pursued a range of cases to establish whether infringements of the GDPR were occurring and what actions and sanctions would be necessary to remedy any such infringements found. Several of the DPC's large-scale inquiries were concluded in 2020. Each inquiry concluded with a detailed decision, the identification of infringements in many cases and the imposition of a range of corrective measures including fines arising from the assessment of those infringements.

A number of the inquiries that progressed in 2020 were cross-border in nature and so, as required by the Article 60 procedure laid down in the GDPR, the DPC transmitted a draft decision for consideration by its fellow EU supervisory authorities before the decision could be finalised. In the case of Twitter International Company, a final decision was issued through the Article 60 procedure. This decision provided an important analysis of the data breach notification and documentation requirements imposed on organisations by Article 33 GDPR (a detailed

summary of that case can be found in the Appendix). Separately, a draft decision was also submitted to the Article 60 procedure by the DPC in the case of WhatsApp's compliance with its transparency obligations under the GDPR. That draft decision is currently progressing through the co-operation procedure at EU level. Cross-border cases in relation to Ryanair and Groupon were also concluded through Article 60 by DPC in 2020.

As the pipeline of inquiries being concluded by DPC continues to yield final detailed decisions, it assists all organisations in their understanding of how the law applies. These large-scale inquiry cases are detailed in chapter four of the report.

## Law Enforcement Directive (LED)

A sufficient number of inquiries have also now been concluded under the LED to support a view that there has been significant under-engagement with — and implementation of — the requirements of the Law Enforcement Directive in Ireland. This perhaps reflects the dominant nature of the preparations relevant organisations were making for the more general framework law (the GDPR). Nonetheless, this is an important area of protection of rights that requires personal data processing for law enforcement purposes to be specified in terms of its objectives and purposes in law. The outline of the DPC decisions arising from inquiries in respect of personal data processing by local authorities and An Garda Síochána in chapter 6 of this report illustrate the point.

## Complaints

Aside from the larger-scale inquiries, day-to-day work in handling the tens of thousands of queries to the office from organisations and individuals continued throughout 2020 serviced by an expanded and dedicated team at the DPC. 4,476 complaints against organisations from individuals were resolved last year. The complaints raised by individuals ranged from issues with securing access to their personal data from all types of organisations, to complaints about excessive personal data collection, to unauthorised and unnecessary disclosure of personal data to third parties. Cases concerning employment law disputes continue to be heavily represented in the range of complaints we received.

In terms of identifiable trends, it's becoming an increasing feature of the complaints received by the office that issues are being raised with the DPC that, in truth, have little or nothing to do with data protection. While the DPC delivers meaningful and effective outcomes in those cases where an identifiable data protection issue is discernible from the complaint received, the DPC is concerned that the overall volume of complaints it receives — a growing number of which disclose no identifiable data protection issue at all — reflects a desire on the part of many individuals to have access to an independent and easily-accessible, no-cost dispute resolution service for general grievances originating in a disparate range of personally challenging events. These can include events associated with their working environment, medical treatment, a marital/rela-

tionship dispute, problems with builders working on their home, issues with where or how their neighbours park their car on the street, how their child was dealt with at school following an incident with another child, and so on. However, the DPC, no matter how empathetic it might be to the issues raised, cannot operate beyond its statutory remit. And the risk that arises if both complainants and the DPC over-reach is that data protection regulation as intended is rendered meaningless because it becomes the law of absolutely everything.

## An unwelcome trend

Another phenomenon we continued to see in 2020 was that of both organisations and individuals attempting to misuse the GDPR to obfuscate or pursue other agendas. That said, there can be genuine confusion on the part of many as to how GDPR does and does not apply, and sometimes issues are just not black and white. Where inaccurate assertions circulate — whatever the reason or motivation — these will only be resolved over time as we call them out. As an example, an ongoing issue arises with organisations deleting CCTV footage after they are on notice of an access request for that footage claiming the GDPR requires them to delete it every seven days.

## Breach notifications

The number of breach notifications to the DPC remained high in 2020 but the DPC is more convinced than ever of the value of the mandatory requirement to notify under the GDPR. It allows the DPC to gain insights into the risks around the security and processing of personal data arising in organisations on a case-by-case basis and to intervene and guide on mitigation measures around those risks, where appropriate. In general, the responses we receive from organisations encourage the DPC in the view that most organisations want to comply and value the input of the DPC. Details of breaches notified to the DPC are set out in chapter three.

## Special projects relating to Children, Cookies

Special projects undertaken by the DPC in 2020 included the publication of comprehensive draft guidance on the specific protections required for processing children's data under the GDPR which underlines that the best interests of the child must always be to the fore. This draft guidance now open for public consultation is the product of a focussed consultation run by the DPC around the issues of children's data and which involved specific consultation directly with children through their teachers and youth groups. The guidance will benefit children across the EU in particular when implemented by the many platforms operating from Ireland that process the data of EU children. A synopsis of this guidance is set out in chapter eleven of the report.

In addition, the DPC completed early in 2020 a "regulatory sweep" of some of the frequently visited websites in Ireland in order to establish the levels of compliance with

e-privacy regulations (“cookies” regulation) in Ireland. The results of the sweep which were published in April 2020 made for disappointing reading. Following the completion of the exercise, the DPC produced specific and detailed guidance of what is necessary to comply with the regulations. By year-end the DPC had also investigated and commenced enforcement action against a number of website operators. This process of cookies investigations followed by enforcement action will continue throughout 2021. It’s worth equally commenting that the EU Commission has proposed a range of new legislative measures to regulate digital services in the form of the Digital Services Act and the Digital Markets Act. Whatever the final form these laws take, it appears as a positive to the DPC that regulation in this area is being looked at more broadly.

## Guidance

The DPC continued its focus on issuing guidance useful to individuals and controllers. In particular, the DPC has also sought in 2020 to increase the supports it provides to the over 2000 Data Protection Officers (DPO) now appointed in organisations across Ireland. The DPO role is a challenging one demanding a range of hard and soft skills. Data protection is a rapidly evolving and advancing area of law and requires specific resources and abilities. The DPC will continue to populate the dedicated area on its website for DPOs and is keen to see skill and resourcing levels rise in this area as responsibility and accountability under GDPR necessarily rest with the data controller in the first instance. Whilst ex-post enforcement by the DPC will always play a central role in the discharge of its regulatory functions, the DPC is also mindful of the importance of encouraging compliance at source.

This importance of encouraging compliance from the outset was well underlined through the intervention by DPC, partly delivered by means of an on-site inspection at Facebook’s premises in Dublin, in February 2020. The DPC had received short notice from Facebook that it planned to roll out a dating service for EU users from mid-February. The DPC sought documentation including the DPIA underpinning the decision to implement this service (and at such short notice) in the EU during its onsite inspection. Arising from this exercise, Facebook deferred implementation, pending resolution of a number of personal data processing issues pertaining to the service. While the newspaper headlines ran to the effect that DPC had “cancelled St Valentine’s Day”, the outcome was positive in terms of ensuring what was rolled out many months later had improved the position of data subjects.

In addition, the DPC continued its commitment to outreach and again spoke at a vast array of events nationally and internationally in order to share information, promote understanding, and debate and clarify its interpretation of the law. The feedback we receive is that these contributions by the DPC are very much appreciated and energise the sectoral groups we address in their efforts to comply.

## The Global Pandemic

There’s probably no foreword to any 2020 annual report that can be written without mention of the global pandemic that hit in 2020. For the part of the DPC, the pandemic provided some instructive and clear examples of the true value of the protective framework the GDPR represents. In the many mandatory consultations by Government with the DPC on new public health initiatives with personal data processing implications, the GDPR provided the guard-rails to ensure initiatives were proportionate and secure in terms of how rights of individuals were protected and balanced. The significant consultation and engagement between the DPC and public health authorities on the Covid-19 contact-tracing app provided one obvious example of this. The DPC was particularly pleased to see health authorities in Ireland show leadership — and demonstrate best practice — by publishing the Data Protection Impact Assessment and Source Code for the contact tracing app, helping to ensure a high level of trust amongst the public. Challenging issues around how Covid-19 PCR test results were communicated in certain workplace settings where mass testing was implemented also arose and the GDPR again underpinned the identification of the correct approach, and the balancing of interests required.

## Data Transfers, Litigation

In July 2020, the Court of Justice of the European Union delivered judgment in proceedings initiated by the DPC in the Irish High Court in 2016, where the DPC sought a reference on issues relating to the use of Standard Contractual Clauses to underpin personal data transfers from the EU to the US. The CJEU judgment set out a detailed ruling in relation to US laws and practices as they impact on the protection of EU personal data and clarified that regardless of what legal transfer mechanism is used to transfer data, EU users’ personal data must have equivalent protections to that which it enjoys in the EU. The DPC initiated an inquiry into Facebook’s transfers to the US following on from the judgment. This inquiry was the subject of a judicial review by Facebook, which was heard before the High Court in December 2020. Judgment is awaited.

2020 was a busy year overall for litigation for the DPC and a full outline of the cases in which DPC was a party and which concluded or judgment was delivered are set out on page 54. Details of the direct marketing prosecutions of organisations by the DPC which concluded during 2020 can be found in Appendix 3.

## EU Cooperation

The DPC’s participation at the European Data Protection Board remained intense in 2020 but logically easier. Resulting from travel restrictions, all meetings from April onwards were held virtually and in total the DPC contributed to almost 200 meetings of EDPB (between plenary and expert groups) last year, including acting as rapporteur on some files. The goals of harmonisation and democratic input in decision-making are an important

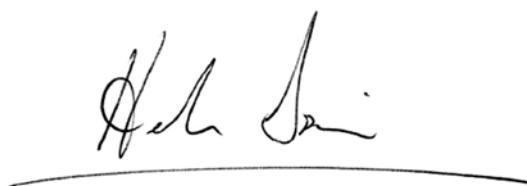
part of the regulatory regime introduced by the GDPR but their implementation in practice remains very much a work in progress.

## Brexit

Preparing for the final exit of the UK from the EU continued as a focus for the DPC in terms of ensuring Irish-based organisations understand the data protection implications of the UK becoming a “third country”. The EU-Commission’s short-term (and temporary) initiative to provide for continued data free flows between the EU and UK at the start of 2021 has eased the pressure on Irish organisations for the moment. The EU Commission has announced it will propose an adequacy decision in respect of the UK in the next few months which will require approval through the EU comitology process.

## Finally....

The progress the DPC has made in 2020 provides a solid platform on which to build in 2021 across our enforcement and complaint-handling functions in particular. There are many other areas of the GDPR that remain for exploration to the benefit of organisations and data subjects alike including codes of conduct and certification. The GDPR must be understood as a project for the now but equally for the longer-term. The DPC intends to continue as a leader in its full implementation.



**Helen Dixon**  
Commissioner for Data Protection





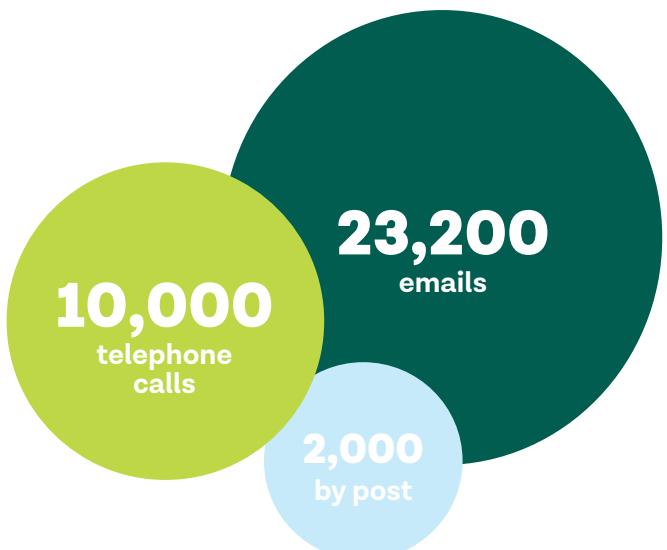
# Executive Summary

## Supporting Individuals

From 1 January 2020 to 31 December 2020:

- The DPC received in excess of **23,200** electronic contacts, almost **10,000** phone calls and **2,000** postal contacts;
- The DPC handled a total of **10,151** cases in 2020, up 9% on 2019 figures (9,337).
- The DPC received **4,660** complaints from individuals under the GDPR;
- Overall, the DPC concluded **4,476** complaints, including **1,660** complaints received prior to 2020;
- Over **60%** (2,186) of complaints lodged with the DPC in 2020 were concluded within the same calendar year; and
- The DPC continued to reduce conclusion times for cases (average days taken to conclude a case has reduced by **53%** since the GDPR came into application).

In 2020, the most frequent GDPR topics for queries and complaints continued to be: Access Requests; Fair-processing; Disclosure; Direct Marketing and Right to be Forgotten (delisting and/or removal requests).



<sup>1</sup> Electronic communications comprise both emails to the DPC's info@ account and webforms submitted

## Supporting Compliance

- Total valid breach notifications received in 2020 was **6,628**.
- Breach notifications up **10%** on 2019 figures.
- Of the total recorded breach cases, **90% were concluded** in 2020 (**5,932 cases**).

The most frequent cause of breaches reported to the DPC was unauthorised disclosure (**86%**).

The DPC launched a **redesigned website** in November 2020, making its resources more convenient for users and introducing a new section specifically for DPOs.

In the last year, the DPC has published almost **40 pieces of guidance**, including blogs and podcasts, to make information as accessible as possible for people.

In 2020, the DPC continued to develop its **DPO Network**, transitioning to online supports as a result of the pandemic. In addition to increased resources on its website, DPC staff presented at multiple webinars and events aimed at DPOs.

The DPC continued its partnership with the Croatian Data Protection Authority, AZOP, and Vrije University in Brussels on an EU-Funded project (**The ARC Project**) to provide practical supports to SMEs.

## Regulating

As of 31 December 2020, the DPC had **83 Statutory Inquiries** on-hand, including 27 Cross-Border Inquiries.

In May 2020 the DPC issued its first **fines** under the GDPR, levying two separate fines against an Irish state agency.

In the same month, the DPC sent Europe's first major-scale **Article 60 Draft Decision** to the Concerned Supervisory Authorities.

The DPC triggered the EDPB's Article 65 Complaint Resolution Mechanism in 2020, becoming the first supervisory authority to do so.

In December 2020, the DPC issued its **first fine in a cross-border case**, fining Twitter International Company €450,000.

Also in December 2020, the DPC sent forward its second major-scale Article 60 Draft Decision to Concerned Supervisory Authorities. This Draft Decision concerned WhatsApp and was ongoing at year-end.

In 2020 there were **14 judgments** delivered and/or final orders made in proceedings to which the DPC was a party.

Through **Supervision** action, the DPC has brought about the postponement or revision of three scheduled big tech projects with implications for the rights and freedoms of individuals.



**6,628**  
valid data security  
breaches  
recorded



**83**  
Statutory  
Inquiries



**Europe's**  
**First**  
major-scale Article  
60 Draft Decision  
(sent by DPC  
May 2020)

## Decisions

Some highlighted Decisions from 2020:

Organisations	Decision Issued
Kerry County Council	25-Mar-20
Waterford City and County Council	21-Oct-20
Tusla Child and Family Agency (3 breaches)	07-Apr-20
Tusla Child and Family Agency (1 breach)	21-May-20
Tusla Child and Family Agency (71 breaches)	12-Aug-20
Health Service Executive (HSE South)	18-Aug-20
Health Service Executive (Our Lady of Lourdes Hospital)	29-Sep-20
Ryanair	11-Nov-20
Twitter International Company	9-Dec-20
Groupon	16-Dec-20
University College Dublin	17-Dec-20

## Engaging with Civil Society

In 2020, the DPC opened an extensive consultation on its draft guidance on the rights of children as data subjects — ***Children Front and Centre: Fundamentals for a Child-Oriented Approach to Data Processing***. This consultation was still open at year-end.

## Engaging with Peers

Since 1 January 2020, the DPC:

- Received **354** complaints from peer Data Protection Authorities (DPAs) in which the DPC was identified as Lead Supervisory Authority;
- Attended over **180** EDPB meetings, most of which were conducted virtually due to pandemic-related travel restrictions;
- Continued to have representatives on all European Data Protection Board (EDPB) subgroups and act as co-coordinator of the Social Media Subgroup; and
- Hosted a virtual meeting of the British, Irish and Islands' Data Protection Authorities (BIIDPA) welcoming representatives from Bermuda, the Cayman Islands, Gibraltar, Guernsey, the Isle of Man, Jersey, Malta and the United Kingdom.

## Mainstreaming Data Protection

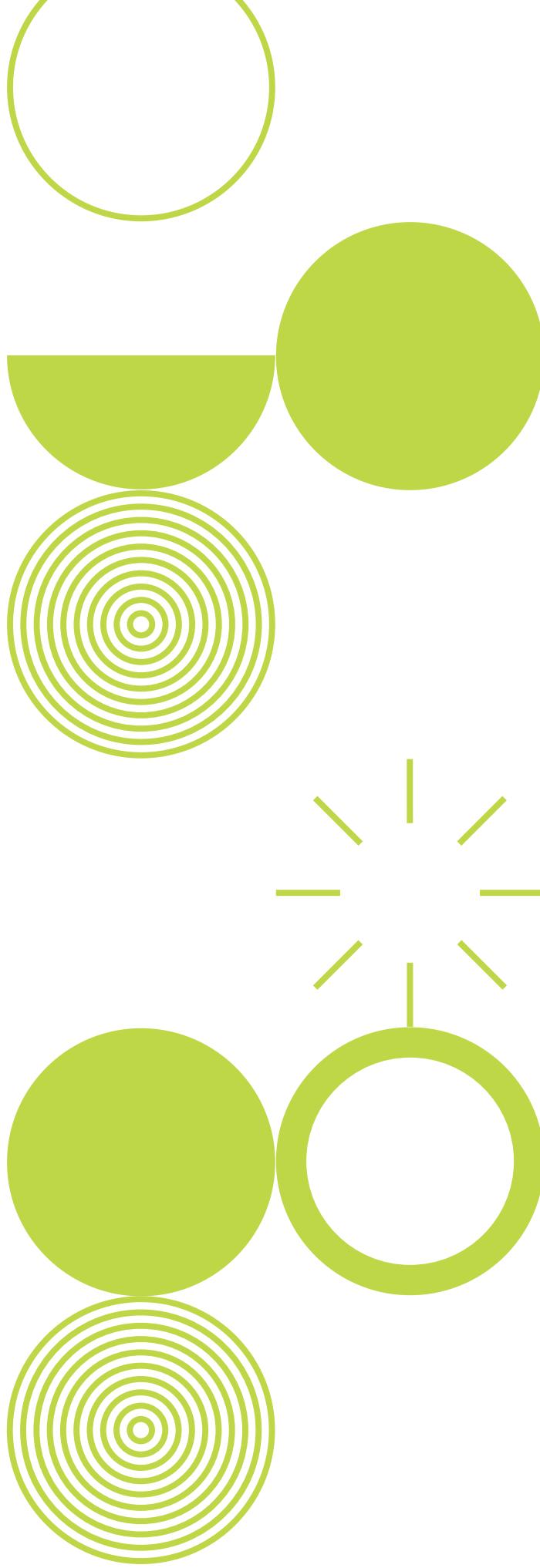
Staff of the DPC presented at almost 100 speaking events in 2020. Since Covid-restrictions came into effect, all staff-participation has been conducted online.

The DPC remains committed to driving awareness of data protection rights and responsibilities, producing almost 40 items of guidance, including technological advice, Cookie compliance and Covid-related concerns.

## Other Activity

In 2020 the DPC:

- Concluded **147 electronic direct marketing investigations**;
- **Prosecuted six companies** for sending unsolicited text messages or electronic mail to individuals;
- Handled **37 Law Enforcement Directive complaints**; and
- Increased DPO-registration compliance to **96%** for Public Sector bodies; and
- In April, the DPC published new guidance in relation to the use of cookies and tracking technologies.



# 1

# Roles and Responsibilities

## Functions of the DPC

The Data Protection Commission (DPC) is the national independent authority in Ireland responsible for upholding the fundamental right of EU persons to have their personal data protected. Accordingly, the DPC is the Irish supervisory authority tasked with monitoring the application of the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).

The core functions of the DPC, under the GDPR and the Data Protection Act 2018 — which gives further effect to the GDPR in Ireland — include:

- driving improved compliance with data protection legislation by controllers and processors;
- handling complaints from individuals in relation to potential infringements of their data protection rights;
- conducting inquiries and investigations into potential infringements of data protection legislation;
- promoting awareness among organisations and the public of the risks, rules, safeguards and rights incumbent in the processing of personal data; and
- co-operating with data protection authorities in other EU member states on issues, involving cross-border processing.

The DPC also acts as supervisory authority for personal-data processing under several additional legal frameworks. These include the **Law Enforcement Directive** (Directive 2016/680, as transposed in Ireland under the **Data Protection Act 2018**) which applies to the processing of personal data by bodies with law-enforcement functions in the context of the prevention, investigation, detection or prosecution of criminal offences or execution of criminal penalties. The DPC also performs certain supervisory and enforcement functions in relation to the processing of personal data in the context of electronic communications under the **e-Privacy Regulations** (S.I. No. 336 of 2011).

In addition to its functions under the GDPR, the DPC continues to perform its regulatory functions under the **Data Protection Acts 1988 and 2003**, in respect of complaints and investigations that relate to the period before 25 May 2018, as well as in relation to certain limited other categories of processing, irrespective of whether that processing occurred before or after 25 May 2018.

In addition to specific data protection legislation, there are in the region of 20 more pieces of legislation, spanning a variety of sectoral areas, concerning the processing of personal data, where the DPC must perform a particular supervisory function assigned to it under that legislation.

## DPC's Senior Team

The DPC's Senior Management Committee (SMC) comprises the Commissioner for Data Protection and the seven Deputy Commissioners. The Commissioner and members of the SMC oversee the proper management and governance of the organisation, in line with the principles set out in the Code of Practice for the Governance of State Bodies (2016). The SMC has a formal schedule of matters for consideration and decision, as appropriate, to ensure effective oversight and control of the organisation.

The DPC's SMC comprises:



**Helen Dixon**  
Commissioner for Data Protection



**Anna Morgan**  
Deputy Commissioner —  
Head of Legal



**Colum Walsh**  
Deputy Commissioner —  
Head of Regulatory Activity



**Dale Sunderland**  
Deputy Commissioner —  
Head of Regulatory Activity



**Graham Doyle**  
Deputy Commissioner —  
Head of Corporate Affairs,  
Media & Communications



**John O'Dwyer**  
Deputy Commissioner —  
Head of Regulatory Activity



**Tony Delaney**  
Deputy Commissioner —  
Head of Regulatory Activity



**Ultan O'Carroll**  
Deputy Commissioner  
(Acting) — Head of  
Technology & Operational  
Performance

## Funding and Administration — Vote 44

The DPC is funded entirely by the Exchequer. From 1 January 2020, the DPC was funded through a new Vote of the Oireachtas — Vote 44. The Commissioner for Data Protection is the Accounting Officer for the Commission's Vote. As a Vote body, the Accounting Officer must prepare the Appropriation Account for the DPC's Vote for submission to the Comptroller and Auditor General. As required, this includes the Accounting Officer's statement on the DPC's systems of internal financial control. The 2020 gross estimate provision for Vote 44 — Data Protection Commission was **€16.916M** of which **€10.552m** was allocated for pay-related expenditure, and **€6.364m** of which was allocated to non-pay expenditure. The funding for 2020 represented an **increase of €1.6M** on the 2019 allocation.

The DPC is preparing its financial statement for 2020 and this statement will be published on the DPC's website following the conduct of an audit by the Comptroller and Auditor General.

## 2

# Contacts, Queries and Complaints

### Contacts

Stakeholders contact the DPC in a variety of ways, including the DPC Helpdesk, online webforms, email and post. In 2020, the DPC received 23,226 electronic contacts,<sup>2</sup> 9,410 phone calls<sup>3</sup> and 1,881 postal contacts.

2020 presented unique challenges in terms of front-line service provision, including technical and logistical challenges incurred as a result of remote-working requirements. Despite these challenges, service provision was maintained throughout the year. No negative effect on response times or service levels was incurred as a result of remote working, and engagement was commensurate with pre-Covid rates.

<sup>2</sup> Electronic communications comprise both emails to the DPC's info@ account and webforms submitted through the DPC website.

<sup>3</sup> The number of phone contacts to the DPC was down in 2020, when compared to previous years. This is accounted for by the transition to remote working (Covid-19) and resulting diminished capacity to process calls (working via mobile phone). Full phone capacity was subsequently restored, once the DPC secured appropriate off-site call services and equipment.

New in 2020 were the significant number Covid-19 related queries the DPC received from individuals and organisations seeking to understand the interplay between data protection law and Covid-19 requirements. In many instances these queries were time sensitive in nature, and necessitated rapid turnaround.

### Complaints

The DPC processes complaints under two main legal frameworks:

- Complaints received from 25 May 2018 onwards (and which relate to matters which occurred on or after 25 May 2018) are dealt with under the GDPR, Law Enforcement Directive, and the Data Protection Act 2018; and
- Complaints and infringements occurring before 25 May 2018 are dealt with under the Data Protection Acts 1988 and 2003, even where they are notified to the DPC on or after 25 May 2018.

To constitute a complaint — and therefore trigger the DPC's statutory complaint-handling obligations — the matter must fall under one of the following headings:

- A complaint from an individual relating to the processing of their own personal data;
- A legally authorised person or entity complaining *on behalf of an individual* (e.g. a solicitor on behalf of a client or a parent/guardian on behalf of their child); or
- Advocacy groups which meet the requirements to act *on behalf of one or more individuals* under the GDPR, LED and the Data Protection Act 2018.

### Between 1 January 2020 and 31 December 2020:

- The DPC received 4,660 complaints from individuals under the GDPR and 59 complaints under the Data Protection Acts 1988 and 2003.
- Overall, the DPC concluded 4,476 complaints, including 1,660 complaints received prior to 2020.
- Over 60% (2,186) of complaints lodged with the DPC in 2020 were concluded within the same calendar year.

### Complaints Received under the GDPR — Top 5 Issues in 2020

Categories of Complaints	No	% of total
Access Request	1683	27%
Fair Processing	1623	26%
Disclosure	793	12%
Direct Marketing	429	7%
Right to erasure	423	7%

### Complaints Received under the Data Protection Acts 1988 and 2003 — Top Five Issues in 2020

Categories of Complaints	No	% of total
Disclosure	24	41%
Fair Processing	14	24%
Access Request	10	17%
Right to be forgotten	4	7%
Security	2	3%

The majority of cases concluded by the DPC in 2020 involved **Access Requests (30%)**. The next highest category of cases concluded involved **Fair Processing (19%)**, followed by **Disclosure (15%)**.

## Complaint Handling

Where possible, the DPC endeavours to resolve complaints amicably — as provided for in Section 109(2) of the Data Protection Act 2018. The option to have their issue dealt with by amicable means is afforded to individuals throughout the lifetime of their complaint, regardless of how far the issue may have progressed through escalated channels. Case studies illustrating these escalated channels in operation can be found at the end of this chapter.

Where amicable and early resolution is not possible, the DPC escalates issues according to complaint category:

### Access Rights Complaints

Article 15 of the GDPR provides that an individual may obtain from a data controller confirmation of whether or not personal data concerning them are being processed and, where that is the case, access to a copy of that personal. This is an important right and one which gives rise to the largest number of complaints to the Data Protection Commission DPC annually.

The right of access enables an individual to verify the lawfulness of the processing undertaken by the data controller and obtain copies of their personal data for their own records. It is one of the fundamental rights conferred on an individual by the GDPR. It is also a right contained in the Charter of Fundamental rights of the European Union. That said, an individual's right of access is not absolute and may be subject to certain restrictions, including but not limited to those set out at Sections 60 of the Data Protection Act 2018.

The GDPR prescribes a mechanism in Article 23 to permit the restrictions of rights in particular and specific circumstances. Each Member State is permitted to introduce their own exemptions in national legislation. Such restrictions must respect the essence of the fundamental rights and freedoms and must be a necessary and a proportionate measure in a democratic society. In Ireland this has been transduced through Section 60 of the Data Protection Act 2018.

In any examination of complaints undertaken by the DPC, much of the work focuses on an examination of the validity of the exemptions advanced by the data controller in justifying its refusal to provide personal data in response to an access request. In the examination of complaints, the DPC will determine whether or not the data controller has acted appropriately in responding to the access request, which will in most cases involve an examination of how the data controller interpreted the restrictions in the context of the particular circumstances of the case. This may result in additional personal data being released to the data subject.

By way of example, data controllers frequently assert legal privilege over documents containing personal data, as a justification for withholding personal data in response to an access request.

Section 162 of the Data Protection Act 2018 specifically deals with legal professional privilege (LLP). In addition, Section 60(3)(a)(iv) provides that the rights and obligations provided for in Articles 15 are restricted to the extent that data is processed in contemplation of, or for the establishment, exercise or defence of, a legal claim, prospective legal claim, legal proceedings or prospective legal proceedings — whether before a court, statutory tribunal, statutory body or administrative or out-of-court procedure. In both sections the underlining principles are the same and require an evaluation of privilege by the DPC.

When a data controller receives an access request it is required to comply with it without undue delay and at the latest within one month of receipt. In line with the risk-based approach to data protection, which is central to the GDPR, each individual data controller and data processor is required to put in place appropriate technical and organisational measures to ensure and demonstrate that the data processing undertaken complies with legislation. Accordingly a clear organisational policy on to how to action a subject access is prudent, and key to avoiding costly and time consuming repetition of work for organisations.

### Legal Privilege and the Right of Access

There are essentially two classes of legal professional privilege- legal advice privilege or litigation privilege. As a first step it is necessary for the DPC to establish the nature of privilege advanced by the data controller.

Legal advice privilege attaches to communications between a lawyer and client where the communication is confidential and for the purpose of giving or receiving legal advice. Where the dominant purpose of the communication is to prepare for "actual or apprehended" litigation, litigation privilege may be claimed.

Having established the category of privilege, the next step for the DPC is to assess the privilege status of the personal data. The question as to whether personal data contained in documents are ones to which privilege applies, is essentially a legal question and it is fair to say that the Oireachtas incorporated the common law principles as they apply to privilege in the Data Protection Act 2018.

In any examination of this nature the DPC will require considerable information, including an explanation as to the basis upon which the data controller, is asserting privilege so that we can properly evaluate the validity of reliance on Section 162. Essentially the DPC will seek a narrative of each document containing personal data. In relation to litigation privilege the primary focus when assessing personal data is when litigation came into the minds of the parties, i.e. when it was threatened or contemplated.

### Electronic Direct Marketing Complaints

The DPC actively investigates and prosecutes offences relating to electronic direct marketing under S.I.

336/2011 — European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 ('the ePrivacy Regulations'). The ePrivacy Regulations implement Directive 2002/58/EC ('the ePrivacy Directive') in Irish law.

The DPC received 144 new complaints in relation to electronic direct marketing in 2020. These included some 66 complaints in relation to email messages, 73 complaints in relation to text messages, and five complaints concerning phone calls. A total of 149 electronic direct marketing investigations were concluded in 2020. This figure comprises one complaint from 2018, 51 from 2019 and 97 from 2020. The DPC prosecuted 6 companies during 2020 for direct marketing infringements, the details of which are set out in Appendix 3.

### One-Stop-Shop Complaints

The One-Stop-Shop mechanism (OSS) was established under the GDPR with the objective of streamlining how organisations that do business in more than one EU member state engage with data protection authorities (called 'supervisory authorities' under the GDPR). The OSS requires that these organisations are subject to regulatory oversight by just one DPA, where they have a 'main establishment', rather than being subject to regulation by the data protection authorities of each member state. The main establishment of an organisation is generally its place of central administration and/or decision making. In the case of a data processor that has no place of central administration, then its main establishment will be where its main processing activities in the EU take place.

In 2020, the DPC received **354 cross-border processing complaints** through the OSS mechanism that were lodged by individuals with other EU data protection authorities.

### Data-Breach Complaints

The DPC also handles complaints relating to both notified and non-notified data breaches. The majority of data-breach complaints arise as a result of a notification to the DPC — from an organisation or entity — that there has been a breach in relation to the personal data for which they are the data controller. Data-breach complaints may also arise in circumstances where an individual has become independently aware of a data breach, often through media coverage, or through adverse impact arising from the breach (e.g. unauthorised access to email accounts, customer or bank accounts, etc.).

### Law Enforcement Directive Complaints

The EU Directive known as the Law Enforcement Directive (EU 2016/680) (the LED) was transposed into Irish law on 25 May 2018 with the enactment of the Data Protection Act 2018. The LED applies where the processing of personal data is carried out for the purposes of the

prevention, investigation, detection or prosecution of criminal offences, or the execution of criminal penalties. In order for the LED to be applicable, the data controller must also be a "competent authority" as set out in Section 69 of the Data Protection Act 2018.

In 2020, the DPC handled 37 LED complaints, in the majority of which the Irish police force, An Garda Síochána (AGS), were the data controller. Complaints also included organisations such as the Irish Prison Service, the Revenue Commissioners, the Department of Agriculture & Food, as well as several local authorities.

Section 91 of the Data Protection Act 2018 applies to the processing of personal data for law enforcement purposes and sets out the conditions for individuals to access, rectify or erase their personal data. Requests to access a copy of data recorded on AGS systems, details of a prosecution by the Revenue Commissioners against a person, or a litter fine imposed by a local authority are referred to as Section 91 LED subject access requests.

The DPC frequently encounters cases where data subjects make subject access requests seeking third party information such as the name and address of the perpetrator of an alleged assault, or the details of a person who reported a matter in confidence. Section 91(7) of the Data Protection Act 2018 provides that a data controller (competent authority under the LED) shall not provide individuals with personal data relating to another individual where doing so would reveal, or would be capable of revealing, the identity of the other individual. The only circumstances in which 91(7) does not apply is where a third party consents to the provision of their information to the data subject making the request as set out in 91(8) of the Act. Section 91(9) of the Act also provides that the right of access shall not apply to data that consists of an expression of an opinion about an individual by another person given in confidence or on the understanding that it would be treated as confidential.

### **Complaints received under the Data Protection Acts 1988 and 2003**

The DPC continues to receive and examine complaints that fall under the Data Protection Acts 1988 and 2003. Under both the 2018 Act and the 1988 and 2003 Acts, it is the statutory obligation of the DPC to strive to amicably resolve complaints that are received from members of the public. In 2020, the vast majority of complaints falling under the 1988 and 2003 Acts were concluded amicably between the parties to the complaint, without the necessity for issuing a formal decision under Section 10 of the 1988 and 2003 Acts. The Commissioner has issued 77 formal decisions under the Data Protection Acts 1988 and 2003 since January 2020 of which 50 fully upheld the complaint and 18 rejected the complaint. In a further nine instances, the complaint was partially upheld.

### **Complaints concluded with Decisions under the Data Protection Acts 1988 and 2003**

Complaint upheld	50
Complaint rejected	18
Complaint partially upheld	9
<b>Total:</b>	<b>77</b>

### **Data protection and the courts when acting in their judicial capacity**

Although the DPC is the supervisory authority for data protection laws in Ireland, special rules apply where the courts are engaging in processing activities. These special rules come from Article 55(3) of the GDPR, which prohibits the DPC, like other EU DPAs from supervising the data processing operations of the courts when they are acting in their judicial capacity. This is to ensure the independence of the judiciary in the performance of its judicial tasks, including decision-making.

Sections 157 to 160 of the Data Protection Act 2018 along with the relevant Rules of Court regulate how the Irish courts must process personal data and how certain data protection rules in the GDPR should be given effect (including any restrictions on data protection rights). This includes a provision for the assignment of a specific judge by the Chief Justice of Ireland to act as the data protection supervisor in relation to the processing of personal data, which occurs when the Irish courts are acting in their judicial capacity. More information on the supervision of data processing by the Irish courts when acting in their judicial capacity can be found at <https://www.courts.ie/courts-data-protection-notice>

### **Distinguishing the roles of the DPC and Assigned Judge**

Not all processing activities connected with the courts will necessarily come within the scope of the courts acting in their judicial capacity. For data protection matters that fall outside of that scope, the DPC will be the relevant supervisory authority. The DPC receives complaints from individuals where the issues raised may in fact relate to the courts acting in their judicial capacity and therefore are not matters that the DPC can handle. Other complaints relating to broader court activities come with the DPC's remit.

The following examples illustrate the areas where the DPC or the Assigned Judge is the appropriate supervisory authority.

**Example A:**

## **The Courts as an employer**

(Cases where the DPC is the competent supervisory authority)

**The Court Service admitted that a manager used CCTV to monitor an employee's working hours.**

As the matters complained of do not come within the data processing activities of the courts acting in their judicial capacity, the DPC was the appropriate authority to deal with this complaint.

**Example B:**

## **Disclosure of Court Orders held by third parties**

(Cases where the DPC is the competent supervisory authority)

**The complainant was party to Family Law proceedings in which the District Court Judge directed that the children of the parties be referred for play therapy. The solicitors for the mother disclosed two court orders (relating to access) to the play therapist. This was in the absence of a court order to do so or at the request of the play therapist. The information contained in the orders was not necessary for the purposes of the play therapy and disclosed information relating to other matters including maintenance.**

As the matters complained of do not come within the data processing activities of the courts acting in their judicial capacity, the DPC was the appropriate authority to deal with this complaint.

Example C:

## **Disclosure of personal data on a voluntary basis**

(Cases where the DPC is the competent supervisory authority)

The complainant's personal data was included in a voluntary Affidavit of Discovery sworn by a non-party to the proceedings. This happened in the absence of a Court Order compelling non-party discovery and therefore there was no legal basis to make the discovery.

As the matters complained of do not come within the data processing activities of the courts acting in their judicial capacity, the DPC was the appropriate authority to deal with this complaint.

Example D:

## **Access to the Court file**

(Cases where the Assigned Judge is the competent supervisory authority)

The complainant made an access request to a local court office for all personal data held by the Courts Service relating to him arising from an appearance before the court, including the court records and the digital audio recording of the hearing. The request was refused.

As the matters complained of come within the data processing activities of the courts acting in their judicial capacity, the Assigned Judge was the appropriate authority to deal with this complaint.

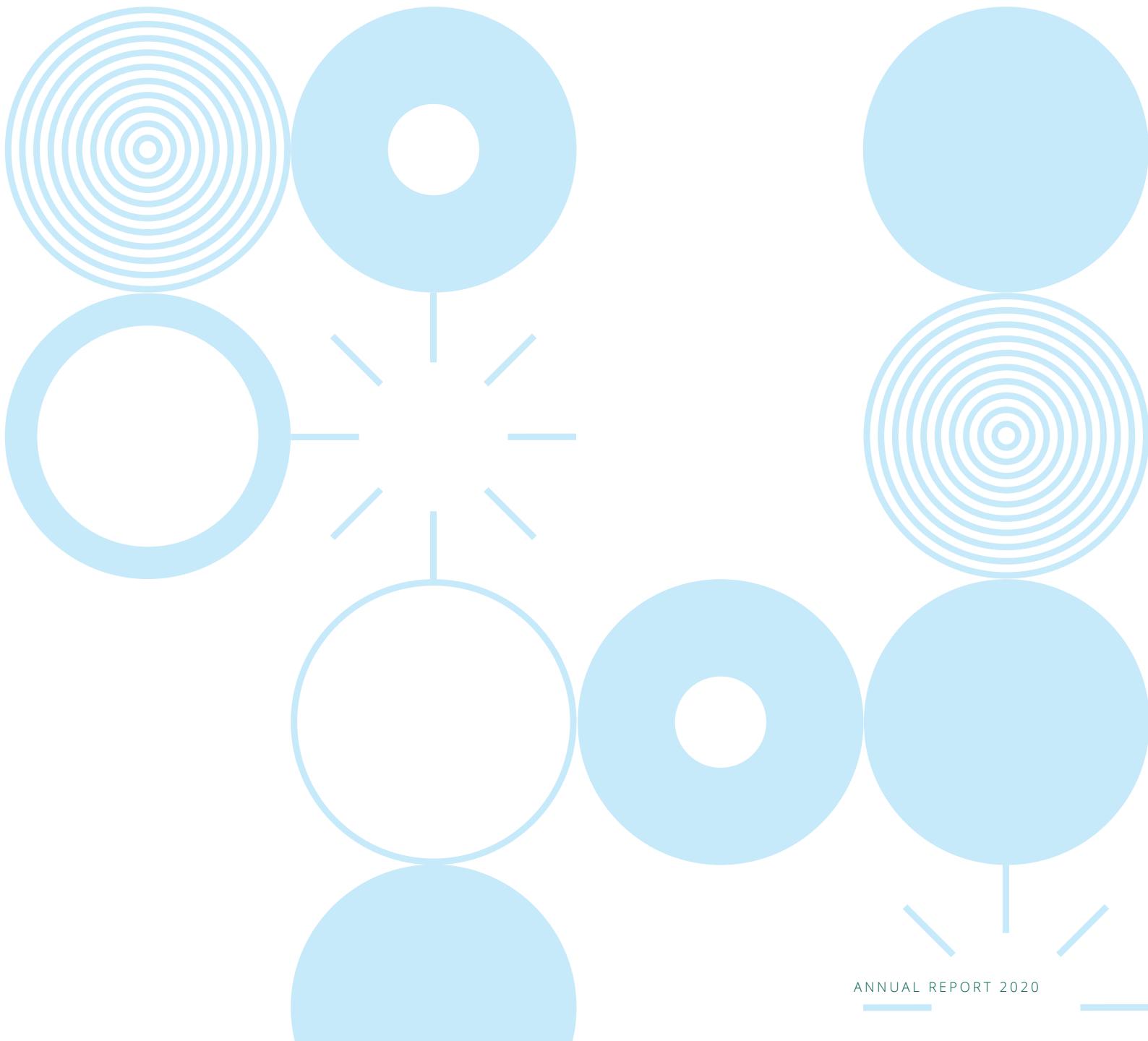
Example E:

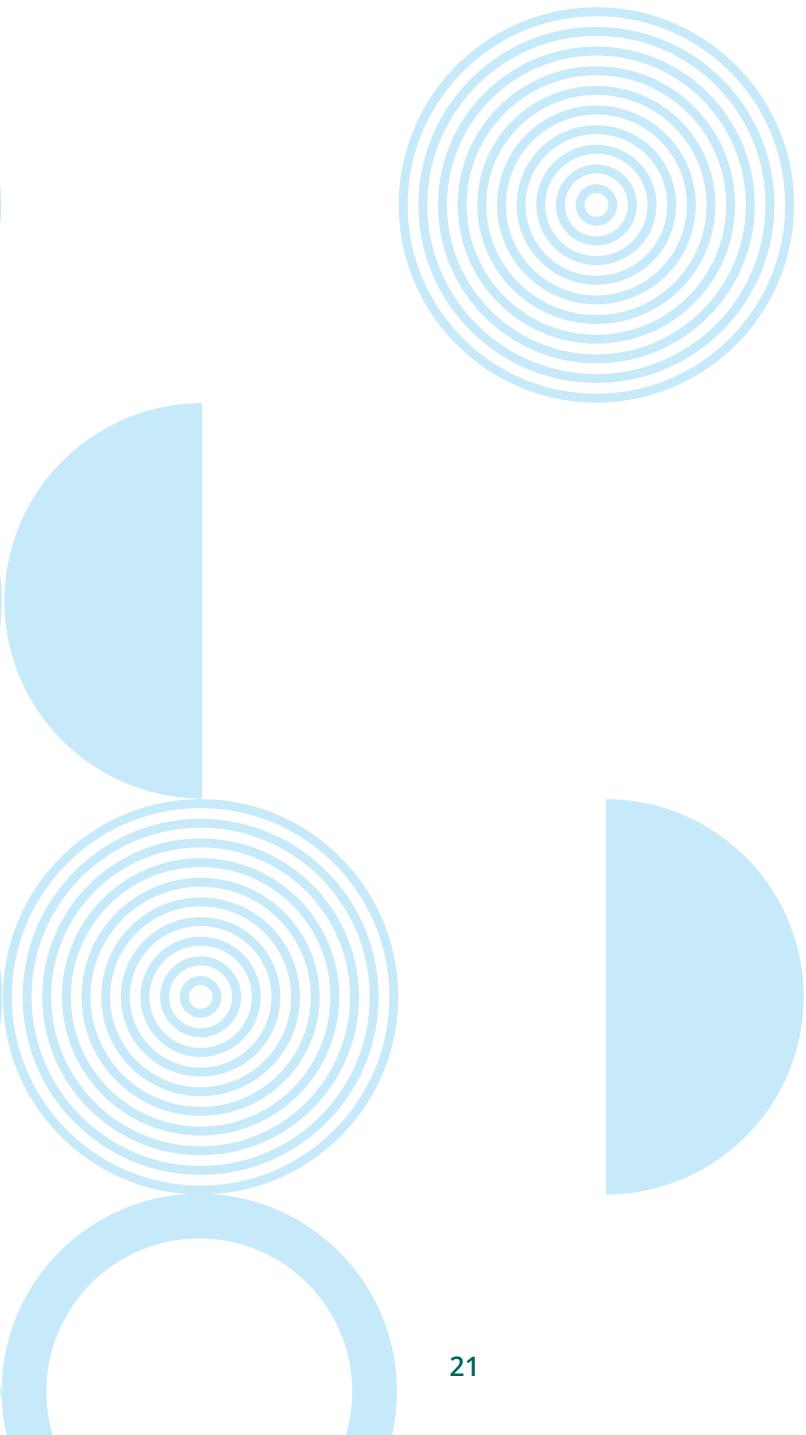
## Complaints about the Court Record

(Cases where the Assigned Judge is the competent supervisory authority)

The complainant (who was the defendant in proceedings before the courts) alleges irregularities in the orders made by the court and sought rectification of these.

As the matters complained of come within the data processing activities of the courts acting in their judicial capacity, the Assigned Judge was the appropriate authority to deal with this complaint.





# Case Studies

## Case Study 1:

### **Unauthorised publication of a photograph (Amicable Resolution)**

The DPC received a complaint from an individual regarding the publication of their photograph in an article contained in a workplace newsletter without their consent. The data controller, who was the individual's public sector employer, informed the individual that it should have obtained consent to use the photograph in the workplace newsletter as this was not the purpose for which the photograph was obtained. The data controller also informed the individual that a data breach had occurred in this instance.

This complaint was identified as potentially being amicably resolved under Section 109 of the Data Protection Act 2018, with both the complainant and data controller agreeing to work with the DPC to try to amicably resolve the issue.

The data controller engaged with the DPC on the matter, and advised that it had conducted an internal investigation and determined that a data breach did occur and that consent should have been obtained to use the individual's photograph in the workplace newsletter. The purpose(s) for which the photograph was initially obtained did not include publication in a newsletter. An apology from the employer was issued to the individual. However, the complainant did not deem this to be an appropriate resolution to the complaint at hand.

The DPC provided recommendations that a consent information leaflet be distributed to staff in advance of using photography, audio and/or video, and that a consent form for photography, audio and video be completed and signed prior to images or recordings being obtained, which the controller subsequently implemented.

Article 5(1)(b) of the GDPR states that "personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes ('purpose limitation')

The DPC was satisfied that the data controller further processed the individual's personal data without their consent (or other legal basis) for doing so when it published the employee photograph in the workplace newsletter. The DPC issued an outcome letter advising the complainant of same. The DPC was satisfied with the organisational measures subsequently introduced and as such no further actions by the controller in this case was warranted.

In this case study, the risks to the fundamental rights and freedoms of the individual could not be deemed significant, but nonetheless the personal data processing upset the individual and is an infringement of GDPR in the circumstances. This underlines the need for all organisations to train staff — at all levels and in all roles — to be aware of the GDPR and take account of its principles.

## Case Study 2:

### No response received to subject access request (Amicable Resolution)

The DPC received a complaint from an individual regarding a subject access request made by them to a data controller, an auction house whose platform the complainant had used to sell goods, for a copy of all information relating them. No response was received from the data controller despite the individual issuing two subsequent reminders.

This complaint was identified as potentially being capable of amicable resolution under Section 109 of the Data Protection Act 2018, with both the complainant and data controller agreeing to work with the DPC to try to amicably resolve the matter.

The data controller engaged with the DPC on the matter and informed us that while it previously had a business relationship with the individual in 2016, it did not hold any information relating to them as it had installed a new system in May 2018, and no data was retained prior to that. It further informed the DPC that it had shredded all paper files and that its legal adviser's informed them it was not a requirement to retain same.

The data controller also provided the DPC with screenshots from its electronic system of the results of a search against the individual's name, which did not identify any results to display.

Article 12(3) of the GDPR states that "*the controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request.*"

Having examined the matter thoroughly, it was apparent to the DPC that the data controller contravened Article 12(3) of the GDPR as controllers have an obligation to provide a response to the individual's subject access request within the statutory timeframe as set out in Article 12 of the GDPR, even where the controller is not in possession of any such data.

Regarding the individual's subject access request no further action on this matter was warranted as there was no evidence to suggest that any data relating to the individual was held by the data controller.

The DPC issued advice to the data controller, reminding it of its obligations specifically under Articles 12 and 15 and the requirement to provide information on actions taken in relation to a subject access request, even in circumstances where this is to inform an individual that it does not hold any data.

### Case Study 3:

## Retention of a minor's personal data by a State Agency (Amicable Resolution)

(Applicable Law — Data Protection Acts, 1988 and 2003)

In this case, the complainants involved had previously requested that an Irish state agency erase a file pertaining to an incident at school involving their young child which had originally been notified to the agency. However while the agency had decided that the incident did not warrant further investigation, it had refused to erase the minor's personal data — indicating that such files are retained until the minor in question reaches the age of 25 years.

The DPC requested that the state agency outline its lawful basis for the retention of the minor's personal data. The agency provided this and cited its retention policy as stated to the complainants, but the DPC did not consider a blanket retention period applicable in the particular circumstances.

The DPC informed both parties of the amicable resolution process and both expressed a willingness to engage on same. After iterative engagement between the complainants and the controller to discuss the matter, the state agency confirmed to the complainants that the file containing their child's personal data would be deleted.

### Case Study 4:

## Legal Privilege invoked to withhold personal data (Access Request Complaints)

The DPC dealt with a case which concerned an application by an individual to a hospital for their personal data. This individual had instructed their solicitor in relation to a negligence action against the hospital arising from care they received.

By the time the individual made a complaint the DPC through their solicitor the hospital had released some medical records, but the individual advised that they were awaiting non-clinical notes which the hospital was refusing to release on the basis that they were subject to litigation privilege. Specifically the individual (who was represented by their solicitor in the complaint to the DPC) was of

the view that various staff statements had been withheld. Through the complaint-handling process the DPC established that staff statements had been prepared in the course of an internal review by the hospital of the care of the patient.

The DPC requested sight — on a voluntary basis — of the documentation withheld from the individual in response to the access request, in order to be satisfied that their contents and eligibility for exemption from release had been validly applied.

In circumstances where the statement had been prepared for the dominant purpose of an internal review and no litigation had commenced or been threatened at the date of the creation of the statements, the DPC was not satisfied that litigation privilege applied and directed that they be released.

## Case Study 5:

# Attendance Monitoring and Facial Recognition at a secondary school (Direct Intervention)

**Following media reports regarding a facial recognition trial for attendance monitoring purposes in a secondary school, the DPC met with members of staff and the Board of Management of the school in February 2020.**

The DPC outlined the data protection issues surrounding the use of biometrics data, specifically facial recognition technology, in an educational environment, including processing the data of minors. The DPC referred to the Swedish data protection authority's first fine under GDPR, concerning a trial project in a secondary school where facial recognition technology was used to register student attendance.

The DPC stepped through the definition of biometric data as set out in Article 4(14) of the GDPR and highlighted additional GDPR provisions in Article

5 — Purpose limitation and data minimisation; Article 9 — Sensitive data; and Articles 35 and 36 — Data Protection Impact Assessment (DPIA) and Prior Consultation.

Subsequent to the meeting, the school provided the DPC with a full written report on the matter, including confirmation that it did not proceed to trial the attendance monitoring product in question.

European data protection authorities have traditionally adopted strong positions with regard to facial recognition in schools and the use of biometric attendance systems in the education sector. In Ireland, the DPC regularly conducts inspections of schools where reports of biometric attendance systems or trials are received. The DPC considers that exposure to intrusive methods of surveillance without sufficient legal basis or justification can desensitise students at a young age to such technology and lead to them ceding their data protection rights in other contexts also.

## Case Study 6:

# Handling an Irish data subject's complaint against German-based Cardmarket using the GDPR One Stop Shop mechanism

(Applicable law — GDPR & Data Protection Act 2018)

The DPC received a complaint from an Irish individual against Cardmarket, a German e-commerce and trading platform. The individual received an email from Cardmarket, notifying them that it had been hacked and that some of its users' personal information may have been leaked. The individual alerted the DPC and submitted a complaint in relation to the breach.

Under the One-Stop-Shop (OSS) mechanism created by the GDPR, the location of a company's main European establishment dictates which European authority will act as the lead supervisory authority in relation to any complaints received. Once the lead authority (LSA) is established, the authority that received the complaint acts as a concerned supervisory authority (CSA). The CSA is the intermediary between the LSA and the individual. Among other things, the reason for this separation is so that supervisory authorities can communicate with individual complainants in their native language.

In this case, the Berlin DPA acted as the LSA, as the company had its main establishment in the Berlin territorial area. The DPC acted as a CSA, communicating with the Berlin DPA and transmitting updates in relation to the investigation (once they were translated from German to English) to the individual complainant in Ireland.

The Berlin DPA concluded its investigation into the breach and the individual's complaint. It uploaded two draft decisions, one in relation to the overall breach which impacted many other users of the platform throughout Europe, and another in relation to the specific complaint which had been lodged by

the Irish individual with the DPC and communicated to the Berlin DPA.

An important aspect of the OSS mechanism is that a CSA may comment on a draft decision issued by a lead supervisory authority. This is to ensure that European supervisory authorities are applying the GDPR consistently i.e. that a final decision reached by the Berlin DPA would have the same conclusion as a decision of the DPC if the company had been located in Ireland and the DPC had investigated the complaint as the lead supervisory authority.

The DPC were satisfied with the Berlin DPA draft decisions and did not consider it necessary to raise any points of clarification or requests for amendment on this occasion.

The draft decision in relation to the overall breach described a number of measures taken by the platform to address the breach and mitigate its adverse effects. The measures included taking its servers off of their network and deleting all the data on them, as well as resetting all user passwords and ensuring new passwords were encrypted with the latest hashing methods. The draft decision considered that a repetition of the incident was unlikely, and that the mass disclosure of passwords had been rendered practically impossible in light of the measures taken.

The DPC informed the individual of the outcome of the Berlin DPA's investigation, providing them with a copy of the overall decision investigating the breach and the decision dealing with their specific complaint.

This case illustrates the challenging handoffs and handovers involved in the OSS mechanism established by the GDPR. It demonstrates the depth of cooperation between European supervisory authorities required for the consistent application of the GDPR in Europe.

## Case Study 7:

# The Operation of the Article 60 Procedure in Cross Border Complaints: Groupon

The DPC received a complaint in July 2018 from the Polish data protection authority on behalf of a Polish complainant against Groupon International Limited ("Groupon"). The complaint related to the requirements that Groupon had in place at that time to verify the identity of individuals who made data protection rights requests to it. In this case, the complainant alleged that Groupon's practice of requiring them to verify their identity by way of electronic submission of a copy of a national identity card, in the context of a request they had made for erasure of personal data pursuant to Article 17 of the GDPR, constituted an infringement of the principle of data minimisation as set out in Article 5(1) (c) of the GDPR, in circumstances where there was no requirement to provide an identity document when a Groupon account was created. In addition, the complainant alleged that Groupon's subsequent failure to act on the erasure request (in circumstances where the individual objected to providing a copy of their national identity card) constituted an infringement of their right to erasure under Article 17.

The DPC commenced an examination of the complaint upon receipt of same. In the course of its correspondence with Groupon on the matter, it became clear that Groupon's policy of requiring a requester to provide a copy of a national identity card, which had been in place since before the GDPR came into force (and which was in place at the time of the complainant's erasure request), had been discontinued since October 2018. In its place, Groupon had implemented an email authentication system which allowed Groupon users to verify their account ownership. The DPC attempted to amicably resolve the complaint (pursuant to section 109(2) of the Data Protection Act 2018), but the complainant

was unwilling to accept Groupon's proposals in respect of same. As such, the matter fell to be decided by way of a decision under Article 60 of the GDPR.

### (i) Initial Draft Decision

The first step in the Article 60 process entailed the DPC preparing a draft decision in respect of the complaint. In its initial draft decision, the DPC made findings of infringements of Articles 5(1)(c) and 12(2) of the GDPR by Groupon. The DPC provided the draft decision to Groupon to allow it to make submissions. Groupon subsequently provided a number of submissions, which (along with the DPC's analysis thereof) were taken into account in a further version of the draft decision.

### (ii) Provision of Initial Draft Decision to Concerned Supervisory Authorities

The second stage in the Article 60 process involved the DPC's initial draft decision being uploaded to the IMI to be circulated amongst the Concerned Supervisory Authorities (CSAs), pursuant to Article 60(3) of the GDPR. The DPC's draft decision was uploaded to the IMI on 25 May 2020 and, pursuant to Article 60(4) of the GDPR, CSAs were thereafter entitled to four weeks in which to submit any relevant and reasoned objections to the decision.

The DPC subsequently received a number of relevant and reasoned objections and comments on its decision from CSAs. In particular, certain CSAs argued that additional infringements of the GDPR ought to have been found, and in addition that a reprimand and/or administrative fine ought to have been imposed.

### (iii) Revised Draft Decision

The next stage of the Article 60 process required the DPC to carefully consider each relevant and reasoned objection and comment received in respect of its draft decision, and incorporate its analysis of same into a revised draft decision. In revising its draft decision, the DPC followed certain relevant and reasoned objections received, and declined to follow certain relevant and reasoned objections. The DPC's revised draft decision, taking into account its analysis of the relevant and reasoned objections and comments in respect of its draft decision, found additional infringements of

Articles 17(1)(a) and 6(1) of the GDPR by Groupon. In addition, the DPC proposed in its revised draft decision to issue a reprimand to Groupon, pursuant to Article 58(2)(b) of the GDPR. The DPC provided its revised draft decision to Groupon to allow it to make final submissions. A number of final submissions were received from Groupon, which (along with the DPC's analysis thereof) were taken into account in the DPC's revised draft decision.

(iv) Provision of Revised Draft Decision to Concerned Supervisory Authorities

The next stage of the Article 60 process entailed the DPC uploading its revised draft decision to the IMI, for circulation among the CSAs. Under Article 60(5) of the GDPR, CSAs were entitled to two further weeks in which to indicate if they planned to maintain their objections. This raised the prospect that the Dispute Resolution procedure under Article 65 of the GDPR would have to be engaged, which would have involved the European Data Protection Board (EDPB) adjudicating on the point(s) of disagreement, and which would have extended further the time in which the decision in respect of the case could be completed. However, the additional query was subsequently withdrawn.

(v) Adoption of Final Decision

Upon the withdrawal of the final relevant and reasoned objection, and the passing of the deadline for receipt of any further objections, the last stage of the Article 60 process entailed the DPC adopting the final decision, which was uploaded to the IMI and communicated to Groupon. The final decision

was uploaded on 16 December 2020. As per Article 60(6) of the GDPR, the CSAs were deemed at this point to be in agreement with the decision and to be bound by it. Pursuant to Article 60(7), the Polish data protection authority with which the complaint was initially lodged was responsible for informing the complainant of the decision.

In summary, the DPC found infringements of the following Articles of the GDPR in respect of this case: Articles 5(1)(c), 12(2), 17(1)(a) and 6(1).

This case study demonstrates that, where a cross border data protection complaint cannot be amicably resolved, the Article 60 procedure that follows as a result is particularly involved, complex and time-consuming, especially as the views of other supervisory authorities across the EU/EEA must be taken into account and carefully considered in all such cases. In this case, following the completion of the investigation of the complaint, the initial draft of the DPC's decision was uploaded to the IMI on 25 May 2020, and the final decision — incorporating submissions from Groupon, relevant and reasoned objections and comments from CSAs, and the DPC's analysis thereof — was adopted on 16 December 2020, some seven months later.

## Case Study 8:

# Amicable Resolution in Cross Border Complaints: MTCH

The DPC received a complaint in June 2020, via its complaint webforms, against MTCH Technology Services Limited (Tinder). Although the complaint was made directly to the DPC, from an Irish resident, upon assessment it was deemed to constitute a cross border complaint because it related to Tinder's general operational policies and, as Tinder is available throughout the EU, the processing complained of was therefore deemed to be of a kind "*....which substantially affects or is likely to substantially affect data subjects in more than one Member State*" (as per the definition of cross border processing under Article 4(23) of the GDPR).

The complaint related to the banning of the complainant from the Tinder platform, subsequent to which the complainant had made a request to Tinder for the erasure of his personal data under Article 17 of the GDPR. In response to his request for erasure, the complainant was referred by Tinder to its privacy policy for information in relation to its retention policies in respect of personal data. In particular, Tinder informed the complainant that "after an account is closed, whatever the reason (deletion by the user, account banned etc.), the user's data is not visible on the service anymore (subject to allowing for a reasonable delay) and the data is disposed of in accordance with [Tinder's] *privacy policy*".

The complainant was dissatisfied with this response and followed up with Tinder again requesting the erasure of his personal data. Tinder responded by reiterating that "...personal data is generally deleted "upon deletion of the corresponding account", further noting that deletion of such personal data is "only subject to legitimate and lawful grounds to retain it, including to comply with our statutory data retention obligations and for the establishment, exercise or defence of legal claims, as permitted under Art. 17(3) of GDPR." The complainant subsequently made his complaint to the DPC.

Upon the DPC's engagement with Tinder in respect of this complaint, Tinder informed the DPC that the

complainant had been banned from the platform as his login information was tied to another banned profile. Also, Tinder identified eleven other accounts associated with the complainant's device ID. All these accounts had been banned from the Tinder platform as it appeared that an unofficial client was being used to access Tinder (a violation of Tinder's terms of service). The DPC reverted to the complainant with this information, and the complainant advised that he had used the official Tinder client for Android and the official Tinder web site on Firefox. However, it transpired that he had been using a custom Android build on his phone with various security and privacy add-ons. As a result, his phone had a different device ID after each update/reboot. In the complainant's view, this was the likely cause of the issue that resulted in his being banned from Tinder. In light of such a ban, as per Tinder's policy on data retention, his personal data would have been retained for an extended period of time. However, in the circumstances, by way of a proposed amicable resolution, Tinder offered to immediately delete the complainant's personal data so that he could open a new account.

The complainant had certain residual concerns regarding the manner in which Tinder responds to erasure requests. Upon being informed that such matters were being examined by the DPC by way of a separate statutory inquiry, the complainant agreed to accept Tinder's proposal for the amicable resolution of the complaint. As such, the matter was amicably resolved pursuant to section 109(3) of the Data Protection Act 2018 (the Act), and under section 109(3) of the Act the complaint was deemed to have been withdrawn.

This case study demonstrates that a thorough examination of a seemingly intractable complaint can bring about its amicable resolution, which will often result in a fair and efficacious solution for the affected individual in a timely manner. In this case, the information gleaned by the DPC when it probed in more depth into the circumstances of the complainant's ban from Tinder — namely the fact that the complainant used a custom Android build with security and privacy add-ons — contributed to a greater understanding between the parties and led to Tinder making its proposal for the resolution of the case, which the complainant accepted.

## Case Study 9:

# Amicable Resolution in Cross Border Complaints: Facebook Ireland

The DPC received a multi-faceted complaint in April 2019 relating to requests for access (under Article 15 of the GDPR), rectification (under Article 16 of the GDPR) and erasure (under Article 17 of the GDPR) that the complainant had made to Facebook Ireland Limited ("Facebook"). The complaint was made directly to the DPC, from a data subject based in the UK. Upon assessment in the DPC, the complaint was deemed to be cross border because it related to Facebook's general operational policies and, as Facebook is available throughout the EU, the processing complained of was therefore deemed to be of a kind "*...which substantially affects or is likely to substantially affect data subjects in more than one Member State*" (as per the definition of cross border processing under Article 4(23) of the GDPR).

The complainant initially made his requests to Facebook because his Facebook account had been locked for over a year, without reason in the view of the complainant, and he believed Facebook held inaccurate personal data relating to him. Wishing to ultimately erase all the personal data that Facebook held in relation to him, the complainant was of the view that this inaccurate information was preventing him from being successfully able to log into his Facebook account to begin the erasure process. He had therefore made an access request to Facebook, but had been unable to verify his identity to Facebook's satisfaction. The complainant subsequently made his complaint to the DPC.

After a considerable amount of engagement by the DPC with both Facebook and the complainant with a view to amicably resolving the complaint, in the course of which the complainant was able to verify his identity to Facebook's satisfaction, Facebook agreed to provide the complainant with a link containing the personal data that it held in relation to him. The complainant accessed the material at the link, but remained dissatisfied because he

claimed that the material provided was insufficient. In particular, the complainant indicated that he wished to be advised of any personal data held in relation to him by Facebook beyond that which was processed in order to operate his Facebook profile.

Facebook responded to the DPC indicating that the material provided to the complainant via the link was the totality of the account data that it held in relation to him. The complainant remained dissatisfied with this response, indicating that he wished to obtain information regarding any personal data that Facebook held in relation to him that was not related to his Facebook account. He also reiterated his belief that some of this personal data, allegedly held by Facebook but not related to his Facebook account, may be inaccurate, in which case he wished to have it rectified.

In response, Facebook advised the DPC that, since the commencement of the complaint, it had made certain enhancements to its 'Download Your Information' tool. Following this update to its access tools, it had determined that a very small amount of additional personal data existed in relation to the complainant's Facebook account, and provided the complainant with a new link containing all of the personal data it held in relation to the complainant, including this additional data. The complainant accessed this additional material and, with a view to resolving his complaint, sought confirmation that, once the deletion of his account was effected, Facebook would no longer hold any personal data in relation to him. Facebook reverted to indicate that the material it had provided to the complainant was the totality of the data it held in relation to him that fell within the scope of Article 15, and indicated that it would proceed with the erasure of the complainant's personal data once he had indicated that he was now satisfied for it to do so.

The complainant was content to conclude the matter on this basis and, as such, the matter was amicably resolved pursuant to section 109(3) of the Data Protection Act 2018 (the Act), and under section 109(3) of the Act the complaint was deemed to have been withdrawn.

This case study demonstrates the benefits — to individual complainants — of the DPC's intervention by way of the amicable resolution process. In this case, the DPC's involvement led to the complainant

being able to verify his identity to Facebook's satisfaction, and to Facebook providing him with links containing his personal data on two occasions. The DPC's engagement with the controller also resulted in it confirming, to the complainant's satisfaction, that all the personal data that fell to be released in response to an Article 15 request had been provided to him. This resulted in a fair outcome that was satisfactory to both parties to the complaint.

This case study also illustrates the intense resource-investment necessary on the part of DPAs to resolve issues of this nature. The complainant in this case raises an issue of concern to themselves and is entitled to have that addressed. The question the case raises is whether the controller in this case should have been capable of resolving this matter without the requirement for extensive DPA-resources to mediate the outcome.

## Case Study 10: **Article 60 Non-response to an Access Request by Ryanair**

In this case, the complainant initially submitted their complaint to the Information Commissioner's Office (ICO) of the UK, which was thereafter received by the DPC, on 2 March 2019. The complaint related to the alleged failure by the Ryanair DAC (Ryanair) to comply with a subject access request submitted to it by the complainant on 26 September 2018 in accordance with Article 15 of the GDPR. The ICO provided the DPC with a copy of the complaint form submitted to the ICO by the complainant, a copy of the acknowledgement, dated 26 September 2018, that the complainant had received from the data controller when submitting the access request, and a copy of the complainant's follow up email to the data controller requesting an update in relation to their request.

Acting in its capacity as Lead Supervisory Authority, the DPC commenced an examination of the complaint by contacting the data controller, outlining the details of the complaint and instructing the data controller to respond to the access request in full and to provide the DPC with a copy of the cover letter that issued to the complainant. Ryanair provided the complainant with access to copies of their personal data relating to the specific booking reference that the complainant had provided to the ICO and data

relating to a separate complaint. Ryanair advised that it could not provide the complainant with a copy of the call recording they had requested as, due to the delay on Ryanair's part in processing the request, the call recording had been deleted in accordance with company policy and they had been unable to retrieve it. Ryanair advised the DPC that it had previously informed the complainant of this via its online portal. Ryanair stated that at the time the request was submitted, due to the volume of data subjects who did not verify their email address, access requests were not assigned to the relevant department until the email was verified by the data subject. Ryanair advised the DPC that the complainant responded to the request, verifying their email address, but the agent who was working on the request had ceased working on the online portal and therefore the request had not been assigned to the relevant department. Ryanair asserted that this error was not discovered until sometime later, when the request was then assigned to the Customer Services department to provide the necessary data, including the call recording, at which point the call record had been deleted in accordance with Ryanair's retention policy. Ryanair provided the DPC with a copy of its retention policy, in which it states that call recordings are retained for a period of 90 days from the date of the call. Ryanair advised that, as the complainant's call had been made on 5 September 2018, it would have been automatically deleted on 04 December 2018. Ryanair further stated that it does not have the functionality to retrieve deleted call recordings.

Pursuant to Section 109(2) of the Data Protection Act 2018, the DPC attempted to facilitate the amicable resolution of the complaint. However

the complainant was unwilling to accept Ryanair's proposals in respect of same. As such, the matter fell to be decided by way of a decision under Article 60 of the GDPR.

### **(i) Initial Draft Decision**

As the complaint related to cross border processing, the DPC was obliged, in accordance with the Article 60 process, to make a draft decision in respect of the complaint. In its initial version of the draft decision, the DPC made a finding of infringement of Article 15 of the GDPR in that Ryanair failed to provide the complainant with a copy their personal data that was undergoing processing at the time of the request. The DPC also found an infringement of Article 12(3) of the GDPR in that Ryanair failed to provide the complainant information on action taken on their request under Article 15 within the statutory timeframe of one month. The DPC provided the draft decision to Ryanair to allow it to make submissions. Ryanair subsequently provided a number of submissions, which (along with the DPC's analysis thereof) were taken into account in the draft decision.

### **(ii) Provision of Draft Decision to Concerned Supervisory Authorities**

In accordance with the Article 60 process, the DPC proceeded to submit its draft decision to the IMI to be circulated amongst the Concerned Supervisory Authorities (CSAs), pursuant to Article 60(3) of the GDPR. The DPC's draft decision was uploaded to the IMI on 25 May 2020 and, pursuant to Article 60(4) of the GDPR, the CSAs were thereafter entitled to four weeks in which to submit any relevant and reasoned objections to the decision.

The DPC subsequently received a number of relevant and reasoned objections and comments in relation to its draft decision from the CSAs. In particular, certain CSAs argued that additional infringements of the GDPR ought to have been found, and in addition that a reprimand ought to have been imposed.

### **(iii) Revised Draft Decision**

In accordance with Article 60(3) of the GDPR, the DPC is obliged to take due account of the views of the CSA's. In light of the objections and comments received from the CSAs, the DPC carefully considered each relevant and reasoned objection and comment received in respect of its draft decision. The DPC revised its draft decision to include a summary and analysis of the objections and comments expressed by the CSAs. In revising its initial draft, the DPC followed certain relevant and reasoned objections received, and declined to follow others. In its revised draft decision, the DPC proposed to issue a reprimand to Ryanair, pursuant to Article 58(2) (b) of the GDPR. The DPC provided its revised draft decision to Ryanair to allow it to make final

submissions. Ryanair noted that the DPC had found that it had infringed the GDPR, and that the DPC had exercised its powers in this case in line with Recital 129 and the due process requirements in Article 58 of the GDPR. Ryanair advised the DPC that it accepted the findings and the associated reprimand and did not wish to make any further submissions.

### **(iv) Provision of Revised Draft Decision to Concerned Supervisory Authorities**

In accordance with Article 60(5) of the GDPR, once the DPC submitted its revised draft decision to the CSAs for their views, the CSAs were entitled to two further weeks in which to submit any further objections to the decision.

Pursuant to Article 60(5) of the GDPR, the DPC submitted its revised draft decision to the CSAs for their opinion on 20 October 2020. As the DPC received no further objections or comments in relation to the revised draft decision from the CSAs within the statutory period, the CSAs were deemed to be in agreement with the revised draft decision of the DPC and bound by it in accordance with Article 60(6) of the GDPR.

### **(v) Adoption of Final Decision**

Upon the passing of the deadline for receipt of any further objections, the DPC proceeded to adopt the final decision, in accordance with Article 60(7) of the GDPR. The DPC then uploaded its final decision to the IMI and communicated it to Ryanair. The final decision was uploaded on 11 November 2020. Pursuant to Article 60(7), the ICO, with whom the complaint was initially lodged, was responsible for informing the complainant of the decision.

In summary, the DPC found infringements of Articles 12(3) and Article 15 of the GDPR in respect of this complaint.

This case study demonstrates that, where a complaint relating to the cross border processing of personal data cannot be amicably resolved, the Article 60 procedure that follows as a result is particularly involved, complex and time-consuming. In this case, the initial draft of the DPC's decision was uploaded to the IMI on 25 May 2020, and the final decision was not adopted until 11 November 2020, some six months later.

This case study also demonstrates — once again — the intensity of DPA resources consumed in delivering outcomes on issues that could have been resolved by the controller without recourse to the DPC, raising again the question of unwarranted DPA resource-drainage away from resolving wider systemic issues which would achieve improved outcomes for the maximum number of individuals.

## Case Study 11:

### Purpose Limitation — Law Enforcement Directive

The DPC examined a complaint where an individual alleged that data gathered in one particular law enforcement context was being used by the same data controller for another law enforcement purpose. The complaint concerned the prosecution of an individual for offences in the equine and animal remedies area by the Department of Agriculture, Food & the Marine (DAFM) and the separate referral by DAFM of allegations of professional misconduct to the Veterinary Council of Ireland (VCI) in relation to the same person.

Having examined the matters raised, the DPC referred the complainant to Section 71(5) of the Data Protection Act 2018:

*Where a controller collects personal data for a purpose specified in section 70 (1)(a), the controller or another controller may process the data for a purpose so*

*specified other than the purpose for which the data were collected, in so far as—*

- (a) the controller is authorised to process such personal data for such a purpose in accordance with the law of the European Union or the law of the State, and*
- (b) the processing is necessary and proportionate to the purpose for which the data are being processed.*

With regard to section 70(1)(a) and “the law of the State”, the DPC noted the provisions set out in the Veterinary Practice Act 2005 regarding the conduct of inquiries by the VCI into allegations of professional misconduct. In particular, section 76 of the Veterinary Practice Act 2005 outlines that the VCI or any person may apply for an inquiry with regards to the fitness to practice veterinary medicine of a registered person. On this basis, the DPC did not consider data protection legislation to disallow the separate referral by DAFM of allegations of professional misconduct to the VCI in relation to a person, in tandem with prosecution proceedings by DAFM against the same individual for offences in the equine and animal remedies area.

## Case Study 12:

# **Alleged disclosure of the complainant's personal data by a local authority (Data Breach Complaint)**

The DPC received a complaint from an individual concerning an alleged disclosure of the complainant's personal data by a local authority. The complainant alleged that the local authority had disclosed the complainant's name, postal address and information relating to the housing assistance payment in error to a third-party. The individual had been informed by the local authority that this disclosure had occurred. However, the individual was dissatisfied with the actions taken by the local authority in response to the disclosure and did not wish to engage further with the local authority with a view to seeking an amicable resolution of the complaint.

The DPC examined the complaint and contacted the local authority in order to seek further information regarding the individual's allegations. The local authority confirmed to the DPC that a personal data breach had occurred when the complainant's personal data was included, in error, in a Freedom of Information request response to a third-party.

In addition to the information provided by the local authority to the DPC in the context of its examination of the complaint, the incident in question was notified to the DPC by the local authority as a personal data breach, as required by Article 33 of the GDPR. In that context, the DPC engaged extensively with the local authority regarding the circumstances of the personal data breach, the data security measures in place at the time the personal data breach occurred and the mitigating measures taken by the local authority, including the local authority's ongoing efforts to retrieve the data from the recipient.

On the basis of this information, the DPC concluded its examination of the complaint by advising the individual that the DPC was satisfied that the complainant's personal data were not processed by the local authority in a manner that ensured appropriate security of the personal data and that an unauthorised disclosure of the complainant's personal data, constituting a personal data breach, had occurred. On the basis of the actions that had been taken by the local authority in response to the personal data breach and, in particular, the fact that the recipient of the complainant's personal data had returned the data to the local authority, the DPC did not consider that any further action against the local authority was warranted in relation to the subject matter of the complaint.



# 3

# Breaches



## Breaches under the GDPR

In 2020, the DPC received, 6,783 data-breach notifications under Article 33 of the GDPR, of which, 110 cases (2%) were classified as non-breaches as they did not meet the definition of a personal-data breach as set out in Article 4(12) of the GDPR. A total of 6,673 valid data protection breaches were recorded by the DPC in 2020, representing an increase of 10% (604) on the numbers reported in 2019.

As in other years, the highest category of data breaches notified under the GDPR were classified as Unauthorised Disclosures and accounted for 86% of the total data-breach notifications received in 2020. The majority occurred in the:

The DPC also saw an increase in the use of social engineering and phishing attacks to gain access to the ICT systems of controllers and processors. While many organisations initially put in place effective ICT security measures, it is evident that organisations are not taking proactive steps to monitor and review these measures, or to train staff to ensure that they are aware of evolving threats. In these instances, we continue to recommend that organisations undertake periodic reviews of their ICT security measures and implement a comprehensive training plan for employees supported by refresher training and awareness programmes to mitigate the risks posed by an evolving threat landscape.

Private Sector	4097
Public Sector	2559
Voluntary	16
Charity	1
<b>Total</b>	<b>6673</b>

Data breach notifications by category	Private	Public	Total
Disclosure (unauthorised)			5,837
Hacking			146
Malware			19
Phishing -incl. social engineering			74
Ransomware/denial of service			32
Software Development Vulnerability			5
Device lost or stolen (encrypted)			19
Device lost or stolen (unencrypted)			29
Paper lost or stolen			275
E-waste (personal data present on an obsolete device)			1
Inappropriate disposal of paper			21
System Misconfiguration			40
Unauthorised Access			146
Unintended online publication			61
Other			78
<b>Total</b>			<b>6,783</b>

## E-Privacy Breaches

The DPC received a total of **70 valid data-breach notifications under the e-Privacy Regulations** (S.I. No. 336 of 2011), which accounted for just over 1% of total valid cases notified for the year.

## Led Breaches

The DPC also received **25 breach notifications in relation to the LED**, (Directive (EU) 2016/680), which has been transposed into Irish law by certain parts of the Data Protection Act 2018.

## DPC Assessment of a breach

Once a breach notification is lodged with the DPC, the DPC assesses it taking account of multiple aspects of the breach and the risks it poses. The first of these is the nature of the breach, including whether it was intentionally or accidentally caused, whether data was exfiltrated or made inaccessible, and the modes of technology and organisation involved. A history of breaches of a particular type may indicate a systemic issue affecting an individual data controller, a particular location or an entire economic sector.

Characteristics of the personal data involved are central to the DPC's assessment. These include the types, format and sensitivity of the personal data, the number of persons and records affected, and the potential for the data to be read or disseminated. The DPC will look at whether aspects such as profiling, automated decision making, monitoring or tracking has been taking place.

Similarly, categorisation of the data subjects — such as whether they are children or vulnerable persons — and characteristics of the data controller and/or processor, such as statutory responsibilities or processing of other types of personal data, can be highly significant. The volume of data subjects and the location of these data subjects is taken into account.

Other factors to be considered are the potential harms to data subjects resulting from disclosure, misuse or loss of personal data affected by the breach. This aspect of risk assessment is often overlooked by data controllers. Harms can range from temporary inconvenience to very serious risks, such as identity theft, financial loss, and misdiagnosis of medical conditions or reputational damage. The DPC will consider what the impact to the affected individuals is, including the severity, scope and context of the persons.

Finally, the DPC assesses mitigating factors, such as whether backups are available, vulnerabilities are addressed, and whether the data is retrieved or further disclosure prevented. Often data controllers do not implement simple measures such as encryption of information shared via email, ensuring that all IT security measures are in place but also kept regularly updated. These factors are taken into consideration in the assessment.

If the facts are not fully known or remain unclear after the DPC's initial assessment of a breach, they will continue to engage with the controller until such time as all matters have been responded to, to the satisfaction of the DPC. In some cases, the controller or processor may be asked to reassess the causes and consequences of the breach and report on its findings. Breaches involving complex IT issues may require assessment and analysis by the DPC's technical specialists. In cases where the controller has either produced or commissioned a technical report or investigation report on the breach, a copy of this will be requested.

Pending completion of its investigation, the DPC may direct and monitor progress — on a rolling basis — of measures implemented to remedy or mitigate the effects of the breach. These could include informing data subjects of the breach under Article 34 of the GDPR, or the implementation of technical or organisational measures to address vulnerabilities.

Based on its assessment and on the controller's actions to prevent or mitigate against further similar incidents, the DPC may conclude its investigation at this point. If the DPC is not satisfied with the mitigations or responses from the controller, it can escalate the matter for further investigative/enforcement action.

# Case Studies

## Case Study 13:

### Breach Notification (Voluntary Sector) — Ransomware Attack

In May 2020, the DPC received a breach notification from an Irish data processor and subsequently a notification from an Irish data controller operating in the voluntary sector who had engaged this processor to provide webhosting and data management services.

The breach related to a ransomware attack that occurred in the data centre utilised by the data processor, and which was the result of malware gaining access via an RDP<sup>4</sup> port to the server.

<sup>4</sup> RDP — Remote desktop protocol

The DPC engaged with both the controller and processor and through a number of communications — including the issuing of technical and organisational questionnaires focusing on areas of potential non-compliance with data protection regulation. These areas included the processor's use of a data centre within the US to store back-up data without adequate agreements — and sufficient oversight by the controller over its processor — as required under Article 28 of the GDPR.

The DPC engaged intensively with both parties and the DPC concluded this case by issuing recommendations to both controller and processor. Thereafter the DPC continued to engage with both parties to ensure that implementation of the DPC recommendations had occurred.

## Case Study 14:

### Breach Notification (Public Sector) Erroneous Publication on Twitter

A public sector organisation notified the DPC that they had inadvertently published personal data via their social media platform (Twitter).

The personal data was posted in violation of its policy to anonymise all content, which could potentially identify an individual data subject. The organisation in question informed the DPC that the root cause of this incident was human error and the offending tweet was removed without undue delay.

Based on the action the data controller had taken to mitigate against the risk of this type of incident reoccurring the DPC concluded its examination of this matter and issued a number of further recommendations to the organisation centring on the appropriate use of its social media platforms and how its social media accounts should be secured and limited to a specified number of authorised personnel.

## Case Study 15:

### Breach Notification (Financial Sector) Bank Details sent by WhatsApp

A private financial sector organisation notified the DPC that a customer had made a request to obtain their IBAN and BIC numbers which were held on file. The customer making the request was personally known to the member of staff dealing with the request. The member of staff, deviating from approved practices, used their personal mobile phone to send a picture of what they believed to be the requested information over a messaging platform (WhatsApp). However the staff member erroneously sent details pertaining to another customer to the requesting customer.

The customer who received this information contacted the organisation to advise that the information received did not relate to their account and that they had undertaken to delete all offending material from their device. The organisation communicated with staff to remind them that only authorised methods of communication should be utilised when handling future requests of this nature. The organisation has also issued an apology to all affected data subjects.

The DPC issued a number of recommendations encompassing the use of only approved organisational communication tools, making staff fully aware of acceptable and non-acceptable behaviour when using organisational communications tools, and to ensure staff have undergone appropriate training in terms of their obligations/responsibilities under the provisions of the GDPR and the Data Protection Act 2018.

## Case Study 16:

# Breach Notification (12 Credit Unions) Processor Coding Error

**The DPC received separate breach reports from 12 credit unions that employed the services of the same processor which was based in the UK. The breach by the processor arose from a coding error made by the processor when implementing measures introduced in response to the Covid-19 pandemic.**

Credit unions are required to report information to the Central Bank of Ireland concerning their borrowers and the performance of their loans. The Central Bank utilises this information to maintain the Central Credit Register (or CCR). Lenders and credit rating agencies in turn use this information to verify borrowers' debts and credit histories. A large number of lenders, particularly credit unions, use the services of data processing companies to prepare such CCR returns and forward them to the Central Bank.

During 2020, the Irish Government introduced a series of measures to mitigate financial distress caused by the pandemic and resulting lock-downs. These included measures allowing financial institutions to pause loan repayments without adversely affecting borrowers' credit ratings. Lenders were instructed to use particular codes in the CCR returns to flag paused loans. This was intended to prevent those loans being interpreted as delinquent or otherwise suggesting that the relevant borrowers' credit-worthiness had deteriorated.

In this incident the processor employed by the 12 credit unions used incorrect codes on CCR returns dealing with paused loans. The incorrect codes indicated that the borrowers affected had undergone a 'restructuring event' — a restructuring event typically occurs when a borrower is unable to repay a loan over the agreed period, and the lender agrees to change the loan's terms to improve the borrower's ability to repay. This can greatly reduce a borrower's credit rating, so an inaccurate CCR record of a restructuring event could have serious consequences for the persons affected.

The credit unions in question became aware of the processor's coding error in relation to their CCR returns several weeks after the processor first sent CCR returns for them using the incorrect codes to the Central Bank. The issue was reported to the DPC as a breach and credit unions took the matter up with the processor directly and through a user group. This allowed affected records to be identified, the appropriate coding procedures to be worked out, and corrected CCR returns to be sent to the Central Bank.

These cases illustrate the importance of processing contracts that properly implement the requirements of Article 28 of the GDPR. Most relevantly to these cases, processing contracts must provide for the processor to assist the controller in meeting its obligations for security of processing, and for reporting and responding to breaches.



4

## Inquiries

On 31 December 2020, the DPC had **83 statutory inquiries on hand, including 27 cross-border inquiries**.

### Cross-Border Statutory Inquiries commenced since 25 May 2018

Company	Inquiry type	Issue being examined
Apple Distribution International	Complaint-based	<i>Lawful basis for processing.</i> Examining whether Apple has discharged its GDPR obligations in respect of the lawful basis on which it relies to process personal data in the context of behavioural analysis and targeted advertising on its platform.
Apple Distribution International	Complaint-based	<i>Transparency.</i> Examining whether Apple has discharged its GDPR transparency obligations in respect of the information contained in its privacy policy and online documents regarding the processing of personal data of users of its services.
Apple Distribution International	Complaint-based	<i>Right of Access.</i> Examining whether Apple has complied with the relevant provisions of the GDPR in relation to an access request for customer service related personal data.
Facebook Inc.	Own-volition	<i>Facebook September 2018 token breach.</i> Examining whether Facebook Inc. has discharged its GDPR obligations to implement organizational and technical measures to secure and safeguard the personal data of its users.
Facebook Ireland Limited	Complaint-based	<i>Right of Access and Data Portability.</i> Examining whether Facebook has discharged its GDPR obligations in respect of the right of access to personal data in the Facebook 'Hive' database and portability of "observed" personal data.
Facebook Ireland Limited	Complaint-based	<i>Lawful basis for processing in relation to Facebook's Terms of Service and Data Policy.</i> Examining whether Facebook has discharged its GDPR obligations in respect of the lawful basis on which it relies to process personal data of individuals using the Facebook platform.
Facebook Ireland Limited	Complaint-based	<i>Lawful basis for processing.</i> Examining whether Facebook has discharged its GDPR obligations in respect of the lawful basis on which it relies to process personal data in the context of behavioural analysis and targeted advertising on its platform.
Facebook Ireland Limited	Own-volition	<i>Facebook September 2018 token breach.</i> Examining whether Facebook Ireland has discharged its GDPR obligations to implement organisational and technical measures to secure and safeguard the personal data of its users.
Facebook Ireland Limited	Own-volition	<i>Facebook September 2018 token breach.</i> Examining Facebook's compliance with the GDPR's breach notification obligations

<b>Company</b>	<b>Inquiry type</b>	<b>Issue being examined</b>
Facebook Ireland Limited	Own-volition	<p><i>Commenced in response to large number of breaches notified to the DPC during the period since 25 May 2018 (separate to the token breach).</i></p> <p>Examining whether Facebook has discharged its GDPR obligations to implement organisational and technical measures to secure and safeguard the personal data of its users.</p>
Facebook Ireland Limited	Own-volition	<p>Facebook passwords stored in plain text format in its internal servers. Examining Facebook's compliance with its obligations under the relevant provisions of the GDPR</p>
Facebook Ireland Limited	Own-volition	<p>Inquiry examining Facebook Ireland Limited's compliance with Chapter V GDPR (in particular Article 46) in light of the judgment of the CJEU on 16.07.20</p>
Google Ireland Limited	Own-volition	<p>Commenced in response to submissions received. Examining Google's compliance with the relevant provisions of the GDPR. The GDPR principles of transparency and data minimisation, as well as Google's retention practices, will also be examined.</p>
Google Ireland Limited	Own-volition	<p>Examining whether Google has a valid legal basis for processing the location data of its users and whether it meets its obligations as a data controller with regard to transparency.</p>
Instagram (Facebook Ireland Limited)	Complaint-based	<p><i>Lawful basis for processing in relation to Instagram's Terms of Use and Data Policy.</i></p> <p>Examining whether Instagram has discharged its GDPR obligations in respect of the lawful basis on which it relies to process personal data of individuals using the Instagram platform</p>
Instagram (Facebook Ireland Limited)	Own-volition	<p>Inquiry in respect of Facebook's compliance with its GDPR obligations regarding its processing of personal data of Instagram users under the age of 18 ("Child Users") in connection with account settings</p>
Instagram (Facebook Ireland Limited)	Own-volition	<p>Inquiry in respect of Facebook's compliance with its GDPR obligations regarding its reliance on legal bases pursuant to Article 6 of the GDPR for the processing of personal data of Instagram users under the age of 18 ("Child Users").</p>
LinkedIn Ireland Unlimited Company	Complaint-based	<p><i>Lawful basis for processing.</i></p> <p>Examining whether LinkedIn has discharged its GDPR obligations in respect of the lawful basis on which it relies to process personal data in the context of behavioural analysis and targeted advertising on its platform.</p>

<b>Company</b>	<b>Inquiry type</b>	<b>Issue being examined</b>
MTCH Technology Services Limited (Tinder)	Own-volition	Examining whether the company has a legal basis for the ongoing processing of its users' personal data and whether it meets its obligations as a data controller with regard to transparency and its compliance with data subject rights requests.
Quantcast International Limited	Own-volition	Commenced in response to a submission received. Examining Quantcast's compliance with the relevant provisions of the GDPR. The GDPR principle of transparency and retention practices will also be examined.
Twitter International Company	Complaint-based	<i>Right of Access.</i> Examining whether Twitter has discharged its obligations in respect of the right of access to links accessed on Twitter.
Twitter International Company	Own-volition	Commenced in response to the large number of breaches notified to the DPC during the period since 25 May 2018. Examining whether Twitter has discharged its GDPR obligations to implement organisational and technical measures to secure and safeguard the personal data of its users.
Twitter International Company	Own-volition	Commenced in response to a breach notification. Examining an issue relating to Twitter's compliance with Article 33 of the GDPR.
Verizon Media/Oath	Own-volition	<i>Transparency.</i> Examining the company's compliance with the requirements to provide transparent information to data subjects under the provisions of Articles 12-14 GDPR.
WhatsApp Ireland Limited	Complaint-based	<i>Lawful basis for processing in relation to WhatsApp's Terms of Service and Privacy Policy.</i> Examining whether WhatsApp has discharged its GDPR obligations in respect of the lawful basis on which it relies to process personal data of individuals using the WhatsApp platform.
WhatsApp Ireland Limited	Own-volition	<i>Transparency.</i> Examining whether WhatsApp has discharged its GDPR transparency obligations with regard to the provision of information and the transparency of that information to both users and non-users of WhatsApp's services, including information provided to data subjects about the processing of information between WhatsApp and other Facebook companies.
Yelp	Own-volition	Inquiry into Yelp's compliance with Articles 5, 6, 7 and 17 of GDPR following a number of complaints received by the DPC in relation to the processing of personal data by Yelp on its website.

## Domestic Statutory Inquiries commenced since 25 May 2018

<b>Company</b>	<b>Inquiry type</b>	<b>Issue being examined</b>
31 local authorities and An Garda Síochána	Own Volition	Examining surveillance of citizens by the state sector for law enforcement purposes through the use of technologies such as CCTV, body-worn cameras, automatic number plate recognition (ANPR) enabled systems, drones and other technologies. The purpose of these inquiries is to probe whether the processing of personal data that occurs in those circumstances is compliant with data protection law.
An Garda Síochána	Own Volition	Examining governance and oversight with regard to disclosure requests within AGS and within organisations processing such requests, as well as examining the actual requests made by AGS to third parties.
An Garda Síochána	Own Volition	Examining a breach of security resulting in a potential unauthorised disclosure of personal data held for LED processing.
Bank of Ireland	Own Volition	Commenced in response to the large number of data breaches notified to the DPC during the period since 25 May 2018.
Bank of Ireland	Own Volition	Examining a potential unauthorised disclosure of personal data in how BOI provisioned certain Banking 365 customers. There were multiple incidents involving the bank misconfiguring a new customer's 365 profile such that a customer could inadvertently access the personal data and current account of a different customer.
BEO Solutions	Own Volition	Examining a personal data breach notified in connection with the loss of a USB storage device. Related to inquiry into PIAB.
Catholic Church	Own Volition	Examining multiple complaints regarding compliance with requests for the right to rectification & right to be forgotten
Department of Social Protection (Formerly DEASP)	Own Volition	Examining the position of the Data Protection Officer under Article 38 of the GDPR.
Department of Social Protection Formerly (DEASP)	Own Volition	Examining whether certain processing and/or proposed processing of personal data by the Department in the context of ongoing eligibility assessments/checks for child benefit is compliant with the GDPR and with the Data Protection Act 2018.
HSE Mid Leinster (Tullamore Labs)	Own Volition	Commenced in response to a breach notified to the DPC.

<b>Company</b>	<b>Inquiry type</b>	<b>Issue being examined</b>
HSE Our Lady of Lourdes	Own Volition	Examining the security of processing data, appropriate organisational and technical measures following the loss of sensitive personal data.
HSE South	Own Volition	Commenced in response to a breach notified to the DPC.
Irish Credit Bureau	Own Volition	Commenced in response to a breach notified to the DPC.
Irish Prison Service	Own Volition	Examining whether the IPS has discharged its GDPR obligations in respect of the lawful basis on which it relies to process personal data
Maynooth University	Own Volition	Commenced in response to a breach notified to the DPC in relation to a phishing incident.
Move Ireland Limited	Own Volition	Examining compliance with GDPR obligations in relation to the loss of recorded counselling sessions involving sensitive personal data.
Personal Injuries Assessment Board	Own Volition	Examining compliance with GDPR obligations in relation to a personal data breach notified which occurred through the loss of a USB storage device. Related to inquiry into BEO Solutions.
Slane Credit Union	Own Volition	Commenced in response to a breach notified to the DPC in relation to an unauthorised disclosure.
SUSI	Own Volition	Commenced in response to a breach notified to the DPC.
Teaching Council	Own Volition	Examining compliance with GDPR obligations in connection with the phishing of two email accounts held by staff of the Council, email redirection rules were set which caused the unauthorized processing of 332 emails containing personal data of a large number of data subjects.
TUSLA	Own Volition	Commenced in response to a number of breaches notified to the DPC.
TUSLA	Own Volition	Commenced in response to a number of breaches notified to the DPC during the period since 25 May 2018.
TUSLA	Own Volition	Commenced in response to a breach notified to the DPC.
UCD	Own Volition	Commenced in response to a number of breaches notified to the DPC during the period since 25 May 2018.
University of Limerick	Own Volition	Commenced in response to a breach notified to the DPC in relation to a phishing incident.

# 5

# Decisions

## Decisions under the Data Protection Act 2018

The DPC decides, on foot of statutory inquiries, whether infringements of data protection legislation have occurred. These statutory inquiries include own volition inquiries and inquiries on foot of complaints. Where infringements are found, the decision-maker also makes a decision as to whether a corrective power should be exercised, and, if so, the corrective power(s) that are to be exercised.

Where the DPC decides to impose an administrative fine, and if there is no appeal against that decision, the DPC must make an application in a summary manner to the Circuit Court for confirmation of the decision to impose an administrative fine pursuant to Section 143(1) of the Data Protection Act 2018. Section 143(2) provides that the Circuit Court shall confirm the decision unless it sees good reason not to. All DPC fines are remitted to the Exchequer on receipt in accordance with Section 141(7) of the Data Protection Act 2018.



<b>Organisations</b>	<b>Decision Issued</b>
Kerry County Council	25-Mar-20
Waterford City and County Council	21-Oct-20
Tusla Child and Family Agency (3 breaches)	07-Apr-20
Tusla Child and Family Agency (1 breach)	21-May-20
Tusla Child and Family Agency (71 breaches)	12-Aug-20
Health Service Executive (HSE South)	18-Aug-20
Health Service Executive (Our Lady of Lourdes Hospital)	29-Sep-20
Ryanair	11-Nov-20
Twitter International Company	9-Dec-20
Groupon	16-Dec-20
University College Dublin	17-Dec-20

### **Kerry County Council**

In March 2020, the DPC issued a decision to Kerry County Council in respect of one of a number of own-volition inquiries it has undertaken concerning Local Authorities. These inquiries consider a broad range of issues pertaining to surveillance technologies deployed by State authorities. The inquiry was conducted initially by means of an audit under Section 136 of the Data Protection Act 2018. This facilitated the DPC in compiling facts in relation to the deployment of surveillance technologies by the Council. The DPC final inquiry report was completed on 4 October 2019 and submitted to the decision-maker (the Commissioner).

This decision found that certain CCTV systems operated by Kerry County Council were unlawful in the absence of authorisation from the Garda Commissioner under Section 38 of An Garda Síochána Act 2005. Significantly, the Litter Pollution Act 1997, the Waste Management Act 1996, and the Local Government Act 2001 were comprehensively considered and the decision found that those Acts do not provide a lawful basis for the use of CCTV for law enforcement purposes.

The decision also considered signage used by the Council to notify the public of its use of CCTV, finding that some of the signage was inadequate in light of the requirements of the Data Protection Act 2018. The decision considered the field of vision of CCTV operated by the Council and found that, in the absence of privacy masking, the data collection was excessive in some locations where the CCTV also captured private residences. The decision also made findings in relation to the lack of written rules or guidelines governing staff access to the CCTV; the use of smartphones or other recording devices in the CCTV monitoring room; the practice of sharing login details for accessing CCTV footage; security measures for trans-

ferring CCTV footage to An Garda Síochána; and the requirement for Data Protection Impact Assessments.

The decision imposed a temporary ban on Kerry County Council's processing of personal data in respect of certain CCTV cameras. The decision also ordered the Council to bring its processing into compliance by taking specified action and reprimanded the Council in respect of the infringements. On 27 April 2020, the Kerry County Council lodged an appeal against the decision to the Circuit Court. On 8 September 2020, Kerry County Council withdrew the appeal, accepting the findings in the decision.

### **Waterford City and County Council**

In October 2020, the DPC issued a decision to Waterford City and County Council in respect of another inquiry concerning surveillance technologies deployed by State authorities. The inquiry was conducted initially by means of an audit under Section 136 of the Data Protection Act 2018. This facilitated the DPC in compiling facts in relation to the deployment of surveillance technologies by the Council. The final inquiry report was completed on 24 October 2019 and submitted to the decision-maker (the Commissioner).

The decision found that Waterford City and County Council's use of dash cams and covert cameras to detect littering and dumping for law enforcement purposes do not have a lawful basis in the Litter Pollution Act 1997 and the Waste Management Act 1996. The decision also found that certain CCTV cameras operated by the Council for crime prevention were unlawful in the absence of authorisation from the Garda Commissioner under Section 38 of An Garda Síochána Act 2005.

The decision found that An Garda Síochána and Waterford City and County Council are joint controllers in respect of certain CCTV cameras authorised under Section 38(3)(c) of An Garda Síochána Act 2005. In this regard, the decision found that Waterford City and County Council infringed Section 79 of the Data Protection Act 2018 by failing to implement an agreement in writing with An Garda Síochána. The decision also made findings on the adequacy of Waterford City and County Council's policy in respect of its use of drones for monitoring compliance on permitted waste sites and preventing dumping on illegal waste sites, and its obligation to maintain a data log for specific accesses to CCTV recordings.

The decision imposed a temporary ban on Waterford City and County Council's processing of personal data by means of certain overt CCTV cameras, dash cams for law enforcement purposes, and covert cameras. The decision also ordered the Council to bring its processing into compliance by taking specified action and reprimanded the Council in respect of the infringements. Waterford City and County Council did not appeal against this decision.

### **Tusla — April 2020**

In April 2020, the DPC issued a decision in respect of an own-volition inquiry regarding three personal data breaches notified to the DPC by Tusla. These breaches occurred when Tusla failed to redact documents when sharing them with third parties. The first personal data breach occurred when Tusla unintentionally provided the father of two children in care with their foster carer's address. The second breach occurred when Tusla unintentionally provided an individual who was accused of child sexual abuse with the address of the child who made the complaint and with her mother's telephone number. The third breach occurred when Tusla unintentionally provided the grandmother of a child in care with the address and contact details of the child's foster parents and the location of the child's school.

The inquiry commenced on 24 October 2019 and examined whether Tusla had discharged its obligations in connection with the breaches, in order to determine whether any provision(s) of the GDPR and/or the Data Protection Act 2018 had been contravened by Tusla. The final inquiry report was completed on 24 February 2020 and submitted to the decision-maker (the Commissioner).

The decision considered the appropriateness of the technical and organisational measures implemented by Tusla at the time of the breaches. The decision found that Tusla infringed Article 32(1) of the GDPR by failing to implement appropriate measures with regard to the redaction of documents. The decision also considered one of the notified personal data breaches with regard to the duty to notify the DPC without undue delay pursuant to Article 33(1) of the GDPR. Tusla notified the DPC of this breach 5 days after becoming aware of it. The decision found that this constituted an undue delay in the circumstances and found that Tusla had infringed Article 33(1).

The decision reprimanded Tusla, ordered it to bring its processing into compliance with Article 32(1) of the GDPR, and imposed an administrative fine of €75,000. No appeal was taken by Tusla against the DPC's decision. On 4 November 2020, the DPC made an application to the Circuit Court to confirm its decision in this inquiry to impose the administrative fine. The Circuit Court confirmed the decision pursuant to Section 143 of the Data Protection Act 2018.

### **Tusla — May 2020**

In May 2020, the DPC issued a decision regarding another own-volition inquiry concerning Tusla. This inquiry concerned one personal data breach that Tusla notified to the DPC on 4 November 2019. The inquiry commenced on 11 December 2019 and examined whether Tusla had discharged its obligations in connection with the subject matter of the breach to determine whether any provision(s) of the GDPR and/or the Data Protection Act 2018 had been contravened by Tusla.

The breach occurred when Tusla wrote a safeguarding letter to a third party that included the identity of individuals who had made allegations of abuse and the details of the allegations made. The letter disclosing the details was later shared on social media by the recipient of the letter. On 19 March 2020, the final inquiry report was completed and submitted to the decision-maker (the Commissioner).

The decision considered the appropriateness of the technical and organisational measures implemented by Tusla at the time of the breach in respect of its safeguarding letter process. It found that Tusla infringed Article 32(1) of the GDPR by failing to implement organisational measures appropriate to the risk. The decision also considered the breach with regard to the duty to notify the DPC without undue delay pursuant to Article 33(1) of the GDPR. This breach was notified to the DPC over 29 weeks after Tusla became aware of it. The decision found that Tusla infringed Article 33(1) by failing to notify the DPC of the breach without undue delay. The decision reprimanded Tusla, ordered it to bring its processing into compliance, and imposed an administrative fine of €40,000. Tusla did not appeal against this decision. At the time of writing, the DPC's application before the Circuit Court to confirm the administrative fine is pending.

### **Tusla — August 2020**

In August 2020, the DPC issued a decision in respect of an own-volition inquiry regarding 71 personal data breaches notified to the DPC by Tusla. The relevant breaches occurred between 25 May 2018 to 16 November 2018 and they all concerned the unauthorised disclosure of, or access to, personal data processed by Tusla. The inquiry commenced on 6 December 2018 and examined whether Tusla discharged its obligations in connection with the subject matter of the breaches to determine whether any provision(s) of the GDPR and/or the Data Protection Act 2018 had been contravened by Tusla. The final inquiry

report was completed on 3 April 2020 and submitted to the decision-maker (the Commissioner).

The decision made findings in relation to security of processing, personal data accuracy, and Tusla's obligation to notify personal data breaches without undue delay. Regarding security of processing, the decision found five distinct infringements of Article 32(1) of the GDPR in respect of Tusla's obligation to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk presented by its various processing operations. The processing operations under consideration concerned Tusla's transmission of personal data on its internal information system; Tusla's transmission of personal data internally by email; Tusla's transmission of personal data externally using post and email; Tusla's printing and scanning; and Tusla's record management and information handling. The decision found that Tusla infringed Article 32(4) of the GDPR by failing to take steps to ensure that persons acting under its authority do not process certain personal data except on instructions from Tusla. The decision also found that Tusla infringed Article 5(1)(d) of the GDPR on four occasions by failing to ensure that the personal data that it processed was accurate and, where necessary, kept up to date. Finally, the decision found that Tusla infringed Article 33(1) by failing to notify the DPC of personal data breaches without undue delay on 8 occasions.

The decision reprimanded Tusla in respect of its infringements of Articles 5(1)(d), 32(1), 32(4), and 33(1) of the GDPR. The decision also ordered Tusla to bring its processing into compliance with Article 32(1) of the GDPR by implementing specified appropriate technical and organisational measures to ensure a level of security appropriate to the risks identified.

In circumstances where some of the infringements concerned the same or linked processing operations, and where one of the infringements of Article 32(1) was not linked to the other processing operations under consideration in the decision, the decision found that it was appropriate to impose two separate administrative fines on Tusla. The decision imposed one administrative fine in the amount of €50,000, and one administrative fine in the amount of €35,000. Tusla did not appeal against this decision. At the time of writing, the DPC's applications before the Circuit Court to confirm the administrative fines are pending.

## HSE — August 2020 & September 2020

In August 2020, the DPC issued a decision in respect of an own volition inquiry regarding a personal data breach notified by the Health Service Executive (HSE) to the DPC on 14 June 2019. The personal data breach occurred when documentation containing the personal data of 78 data subjects, including special category personal data in respect of six of those data subjects, was disposed of in a public recycling centre. The documentation was created in Cork University Maternity Hospital, but was discovered by a member of the public in the public recycling area. The inquiry commenced on 17 October 2019 and examined whether the HSE discharged its obligations in connection

with the subject matter of that personal data breach and to determine whether any provision(s) of the Data Protection Act 2018 and/or the GDPR were contravened by the HSE in that context. The final inquiry report was completed on 27 April 2020 and submitted to the decision-maker (the Commissioner).

In September 2020, the DPC issued a decision regarding another own-volition inquiry concerning the HSE. The inquiry concerned a personal data breach that the HSE notified to the DPC on 1 May 2019. That personal data breach occurred in circumstances where a member of the public informed the HSE that they had found documents in their front garden, which is near Our Lady of Lourdes Hospital. The documents in question were handover notes, generated by the HSE to identify patients who come under staff care at each shift change. The notes are necessary for continuing patient care and treatment. The notes contained the personal data of 15 data subjects and included data relating to clinical information and treatments received. The notes were printed on 11 April 2019, but the HSE was unable to specify the date on which the breach initially occurred. The notes had not been accounted for between the date they were printed and when they were found. The inquiry commenced on 26 November 2019 and examined whether the HSE discharged its obligations in connection with the subject matter of that personal data breach to determine whether any provision(s) of the Data Protection Act 2018 and/or the GDPR had been contravened by the HSE in that context.

The August 2020 decision found that the HSE infringed Articles 5(1)(f) and 32(1) of the GDPR by failing to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk presented by its use and disposal of hardcopy documents containing patients' personal data. The decision imposed an administrative fine of €65,000 on the HSE for its infringements of Articles 5(1)(f) and 32(1) of the GDPR. It also reprimanded the HSE and ordered it to bring its processing operations regarding the use and disposal of hardcopy documents containing patients' personal data into compliance with Articles 5(1)(f) and 32(1) of the GDPR by implementing certain specified measures. The HSE did not appeal against this decision. At the time of writing, the DPC's application before the Circuit Court to confirm the administrative fine is pending.

Similarly, the September 2020 decision found that the HSE infringed Articles 5(1)(f) and 32(1) of the GDPR by failing to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk presented by its use and disposal of hardcopy documents containing patients' personal data. Having regard to the order, the reprimand, and the fine imposed in respect of the HSE decision in August 2020, the DPC found that it was not appropriate to exercise further corrective powers in this Decision. The finding of infringements in both decisions concerned the same processing operations, undertaken by the same controller, during the same time-period.

## **Twitter International Company — December 2020**

In December 2020, the DPC issued a decision regarding an own volition inquiry concerning Twitter International Company ('TIC'). The inquiry commenced on 22 January 2019 and concerned the question of TIC's compliance with its obligations under Articles 33(1) and 33(5) GDPR in respect of the notification and documentation of a personal data breach. The personal data breach arose from a bug in the Twitter mobile app for Android which meant that any user that changed the email address associated with their account automatically had all of their "protected" (only visible to their "followers") tweets made publicly accessible.

The decision found that TIC infringed Article 33(1) of the GDPR by failing to notify the DPC of the personal data breach without undue delay. In terms of the timeline of the notification, the personal data breach was discovered by a data sub-processor on 26 December 2018, and was deemed to be a potential data breach under the GDPR by the wider Twitter organisation on 3 January 2019. There was, however, a delay (until 7 January 2019) in notifying TIC (as controller) and the Global DPO of the breach, which arose out of a failure by employees of Twitter Inc. to follow internal guidance. During the inquiry, TIC submitted that, in circumstances where it had notified the breach to the DPC on 8 January 2019, it had complied with its obligations under Article 33(1).

The decision, in finding an infringement of Article 33(1), outlined that TIC (as controller) could not seek to rely on a failure by its processor to follow an internal process and / or an ineffectiveness in that process in order to avoid responsibility under Article 33(1) of the GDPR for delayed notification of the breach to the DPC. The decision also found that TIC infringed Article 33(5) of the GDPR by failing to adequately document the personal data breach.

The DPC submitted its draft decision in this inquiry to other Concerned Supervisory Authorities (CSAs) under Article 60 GDPR on 22 May 2020. This was the first draft decision to go through the Article 65 dispute resolution process and was the first draft decision in a "big tech" case on which all EU supervisory authorities were consulted as CSAs. The European Data Protection Board adopted its decision under Article 65(1)(a) on 9 November 2020. The DPC issued its final decision to TIC on 9 December 2020. That decision imposed an administrative fine of \$500,000 (estimated for this purpose at €450,000) on Twitter as an effective, proportionate and dissuasive measure.

## **UCD — December 2020**

In December 2020, the DPC issued a decision regarding an own-volition inquiry concerning University College Dublin ('UCD'). This inquiry concerned seven personal data breaches that UCD notified to the DPC between 8 August 2018 and 21 January 2019. The inquiry commenced on 19 July 2019 and examined whether UCD had discharged its obligations in connection with the subject matter of the breaches and determine whether or

not any provision(s) of the 2018 Act and/or the GDPR had been contravened by UCD in that context.

The personal data breaches concerned instances where unauthorised third parties accessed UCD email accounts, or where the login credentials for UCD email accounts were posted online. On 8 July 2020, the DPC completed the final inquiry report and submitted it to the decision-maker (the Commissioner).

The decision considered the appropriateness of the technical and organisational measures implemented by UCD at the time of the breaches in respect of its email service. It found that UCD infringed Articles 5(1)(f) and 32(1) of the GDPR by failing to process personal data on its email service in a manner that ensured appropriate security of the personal data using appropriate technical and organisational measures. The decision also found that UCD infringed Article 5(1)(e) of the GDPR by storing certain personal data in an email account in a form which permitted the identification of data subjects for longer than necessary for the purpose for which the personal data were processed. The decision also found that UCD had infringed Article 33(1) of the GDPR by failing to notify one of the personal data breaches to the DPC without undue delay. This personal data breach was notified 13 days after UCD became aware of it.

The decision ordered UCD to bring its processing operations concerning its email service into compliance with the infringed articles, reprimanded UCD in respect of its infringements, and imposed an administrative fine in the amount of €70,000 in respect of the infringements. UCD did not appeal against this decision. At the time of writing, the DPC is preparing its application to confirm the administrative fine.

## **Ryanair**

In November 2020, the DPC adopted a decision concerning Ryanair. The complaint concerned cross-border processing in which the DPC was competent to act as lead supervisory authority. The decision found that Ryanair infringed Article 15 GDPR by failing to provide the complainant with a copy of a recording of a call following a subject access request. Due to the delay on Ryanair's part in processing the request, it had deleted the recording since the request. The decision also found that Ryanair infringed Article 12(3) GDPR by failing to provide the complainant information on action taken on their request under Article 15 within the statutory timeframe of one month. The decision reprimanded Ryanair in respect of the infringements. Case Study 10 of this report details this in full.

## **Groupon**

In December 2020, the DPC adopted a decision concerning Groupon. The complaint concerned cross-border processing in which the DPC was competent to act as lead supervisory authority. The decision found that Groupon infringed Article 5(1)(c) GDPR by requiring the complainant to verify their identity by submitting a



copy of a national ID document. The requirement applied when data subjects made certain requests, but not when data subjects created a Groupon account, and a less data-driven solution to the question of identity verification was available to Groupon. The decision also found that Groupon infringed Articles 12(2), 17(1)(a) and 6(1) GDPR and reprimanded Groupon in respect of the infringements. Case Study 7 of this report details this in full.

## Decisions under the Data Protection Acts 1988 and 2003

### INM — December 2020

In addition to decisions made pursuant to the GDPR, the DPC continues to conclude a certain volume of complaints and investigations that must be decided according to the provisions of the Data Protection Acts 1988 and 2003. In December 2020, the DPC concluded an investigation into Independent News and Media (INM) and its compliance with its obligations as a data controller under the Data Protection Acts 1988 and 2003, with the Final Report having issued since to INM. The DPC's investigation was in connection with a data security incident which occurred in late 2014 and concerned the processing of personal data held in INM's internal IT and backup systems. The DPC found that INM contravened the Acts in a number of respects. The findings of infringement under the Data Protection Acts 1988 and 2003 relate to section 2(1)(a) and 2D (fairness and transparency of processing), 2A(1) (legal basis for the processing) and 2(1)(d) and 2C (security of processing of personal data).

### Public Services Card

Appendix III of the DPC's 2019 Annual Report set out details of the investigation into the processing of personal data by DEASP in relation to the Public Services Card. Enforcement action was taken in December 2019 by the DPC in relation to that matter by the serving of an Enforcement Notice on the Minister for Employment Affairs and Social Protection. That Enforcement Notice was subsequently appealed by the Minister and these appeal proceedings remain ongoing before the Dublin Circuit Court.

Separately the DPC is continuing its investigation into certain other aspects of processing carried out by DEASP in connection with the issuing of PSCs and the SAFE 2 registration system, including the security of processing, facial matching processing by DEASP in connection with the PSC and specific use cases of the PSC.

# 6

# Other Investigations and Enforcement Actions

## **Surveillance by the State Sector for Law Enforcement Purposes**

Video surveillance systems that capture images of people and in turn lead to the identification of individuals, either directly or indirectly, (i.e. when combined with other pieces of information) can trigger the applicability of the GDPR and the Data Protection Act 2018. From a data protection perspective, video surveillance impacts the rights and freedoms of individuals significantly and it is therefore important that any such systems are operating in compliance with data protection law.

It was on this basis that in June 2018 the DPC commenced a number of own-volition inquiries under the Data Protection Act 2018 into video surveillance of citizens by the state sector for law-enforcement purposes through the use of technologies such as CCTV, body-worn cameras, drones and other technologies such as automatic number-plate recognition (ANPR) enabled systems. These own-volition inquiries are being conducted under Section 110 and Section 123 of the Data Protection Act 2018 using the data protection audit power provided for in Section 136 of the Data Protection Act 2018. The first phase of these inquiries are focusing on the use of video surveillance by the 31 local authorities in Ireland and also the use of video surveillance by An Garda Síochána. The purpose of these inquiries is to probe whether the data controllers of such systems can demonstrate that their systems are operating in compliance with data protection legislation.

## **Local Authorities**

Since September 2018 the DPC has conducted inspections in the following local authorities: Kildare County Council, Limerick City and County Council, Galway County Council, Sligo County Council, Waterford City and County Council, Kerry County Council and South Dublin County Council. Between them, these seven local authorities have more than 1,500 CCTV cameras in operation for surveillance purposes. (The inquiries do not apply to security cameras such as those deployed for normal security purposes).

As part of the inquiry process, the DPC sought from the respective data controller's evidence of robust data protection policies as well as evidence of active oversight and meaningful governance. Weaknesses were identified in a number of local authorities that highlighted gaps in transparency. Concerns also emerged regarding the security of personal data collected through surveillance technologies.

Where live monitoring of CCTV systems occur, as opposed to accessing the footage on an incident basis, the DPC noted a failure by data controllers to demonstrate that the CCTV systems were being accessed or managed appropriately. Another common theme in the local authorities inspected was a lack of regular reporting on key metrics such as the number of times a system was accessed or the purpose for the access.

The type of CCTV devices used may also raise data protection concerns. Pan-Tilt -Zoom (PTZ) cameras may be used to zoom in from a considerable distance on individuals and their property and as such the processing

capabilities of these devices may pose higher risks to individuals' privacy. Furthermore, the deployment of automatic number-plate recognition cameras (ANPR) is becoming more common place in the State Sector but the absence of data protection policies governing the use of such technology is notable.

The inquiries in the local authority sector also involve auditing the deployment of community-based CCTV systems authorised under Section 38(3)(c) of the Garda Síochána Act 2005. These schemes require that the local authority be a data controller and that prior authorisation of the Garda Commissioner be obtained. The inquiries are examining, among other things, how data controller obligations are being met by the local authorities as required under that Act.

At the time of writing, the DPC has completed its inquiries in respect of six of the aforementioned local authorities and a final inquiry report for the seventh local authority is currently being finalised. While each of the local authorities inspected has its own unique approach to how it conducts surveillance on citizens, the DPC's work in this area has led to the identification of significant data protection compliance issues in relation to matters such as the use of covert CCTV cameras, the use of CCTV to detect illegal dumping, the use of body-worn cameras, dash-cams, drones and ANPR cameras, CCTV cameras at amenity walkways or cycle-tracks, and a lack of policies and data protection impact assessments. Equally, the DPC has significant concerns about how local authorities are discharging their data protection obligations as data controllers and the pressing need for them to do more to bring their operations into compliance with data protection legislation and to ensure accountability for the CCTV systems under their control.

## Decisions

Of the various inquiries conducted by the DPC into the use of surveillance technologies by local authorities, the DPC has completed two inquiries — into Kerry County Council and Waterford City and County Council in relation to their use of video surveillance equipment, issuing final decisions in both. While Kerry County Council initially lodged an appeal against the DPC decision at the Circuit Court under Section 150 of the Data Protection Act 2018, this appeal was later withdrawn by the Council.

Further detailed information regarding these decisions can be found in Chapter 5 of this report.

## An Garda Síochána

Separate to the ongoing inquiries in the local authority sector, an inquiry was conducted into An Garda Síochána in relation to Garda-operated CCTV schemes (Section 38(3)(a) of the Garda Síochána Act 2005 provides a legislative basis for such schemes).

Further detailed information regarding this inquiry and decision, which issued in August 2019, can be found in the published 'DPC Regulatory Activities Report May 2018 — May 2020' at Appendix 1: Surveillance by the State Sector for Law Enforcement Purposes.

## Cookies Investigations Sweep and Enforcement

During the year the DPC considerably expanded our cookies investigations, examining a significant number of websites to assess compliance with the relevant legislation, i.e. Regulation 5(3), 5(4) and 5(5) of the ePrivacy Regulations (S.I. 336/2011). That legislation provides that consent must be obtained for placing any information on a user's device, or accessing information already stored on their device, unless one of two limited exemptions are met. It is important to note that the law applies not only to websites, but also to mobile apps and other products that use cookies or similar tracking technologies that access a device. The DPC's investigations into cookies was initiated against a backdrop of increasing public focus on the use of such technologies to track individuals across their devices and their online activity generally.

In April, the DPC published new guidance in relation to the use of cookies and tracking technologies. This was produced following a cookies sweep carried out in relation to 40 websites between August 2019 and December 2019. A report of that exercise was published along with the guidance.

Organisations were given a six-month deadline within which to bring their websites and other services using cookies into compliance. During that period the DPC conducted an extensive public awareness campaign in relation to the new, signalling its intention to begin follow-up enforcement action during Q4 of 2020.

Arising from its cookies investigations, on 27 November 2020, the DPC wrote to 18 organisations and to a further two organisations on 14 December 2020, about non-compliance issues on their websites, warning of the DPC's intention to issue Enforcement Notices without further notice, if these issues of non-compliance were not addressed within 14 days. These letters were effective in bringing several organisations substantially into compliance or into full compliance without the need for further enforcement action by the DPC. However, the DPC will continue to monitor the current state of compliance on an ongoing basis by all organisations who have been contacted by the DPC in relation to their use of cookies.

Some organisations failed to take sufficient remedial steps to bring their websites into compliance within the 14-day period that the DPC had set out in its letters to them. As a result, on 21 December 2020, the DPC served Enforcement Notices on seven organisations for non-compliance. The notices were issued pursuant to Regulation 17(4) of the ePrivacy Regulations (S.I. 336/2011) for infringements of Regulation 5, including failure to obtain valid consent for the use of cookies and for failing to provide clear and comprehensive information about the use of cookies on the websites concerned.

It was also notable during 2020 that the DPC began seeing more complaints and concerns from members of the public about the use of cookies and tracking technologies and it is expected that this trend will continue.

Investigations and enforcement in this area will continue to be a key element of the DPC's activities in 2021 and beyond.



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## Legal Affairs

No.	Record No.	Title	Type of action and Venue	Date of Judgment/Order
1.	2018/4097	<b>The Courts Service v. DPC (Notice Party: PM)</b>	Statutory appeal Circuit Court	6 February 2020

**Outcome:**

By decision dated 13 June 2018, made under the Data Protection Acts, 1988 and 2003 ("the **DP Acts**"), the Data Protection Commissioner held that, by publishing a judgment identifying the Notice Party by name, in circumstances where the High Court had earlier directed that the Notice Party's name should not be published, the Courts Service (1) failed to discharge its obligation to take appropriate security measures against unauthorised disclosure of the Notice Party's personal data, contrary to Section 2(1)(d) of the DP Acts; (2) processed the Notice Party's personal data (and sensitive personal data) without a lawful basis under Sections 2A and 2B of the DP Acts.

By judgment pronounced on 6 February 2020, the Circuit Court refused an appeal by the Court Service, the Courts Service having sought orders setting aside the judgment and the DPC's determination that the Courts Service was a "data controller" for the purposes of the DP Acts.

The Circuit Court did, however, limit the time period referable to the Courts Service's breaches of Sections 2A and 2B of the DP Acts to the period 12 May 2014 to 15 May 2014. The Court also set aside the DPC's finding that the Courts Service had failed to discharge its (security) obligations under Section 2(1)(d) of the DP Acts.

No costs were ordered as between the Courts Service and the DPC. The Courts Service was directed to pay two-thirds of the Notice Party's costs with the balance to be paid by the DPC.

Note that reporting restrictions put in place by Order of Judge Linnane dated 26 November 2018 in relation to the identity of the Notice Party remain in force by order of the High Court.

**Current Status of Case:**

The Judgment and Order of the Circuit Court is the subject of an appeal to the High Court on certain points of law, brought by The Courts Service.

Separately, the DPC has also applied to vary the Judgment and Order of the Circuit Court insofar as the Circuit Court allowed the appeal in relation to Section 2(1)(d) of the DP Acts and imposed a temporal limitation on the Courts Services' breach of Sections 2A and 2B. The DPC is also appealing against the Circuit Court's orders for costs.

2.	2019/211 CA	<b>Doolin v. DPC (Notice Party: Our Lady's Hospice and Care Services)</b>	Statutory appeal High Court	21 February 2020
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**Outcome:**

The High Court allowed an appeal on a point of law against an earlier decision of the Circuit Court (1 May 2019) in which the Circuit Court had in turn upheld a statutory decision of the Data Protection Commissioner made under Section 10 of the Data Protection Acts, 1988 and 2003.

The High Court held that a finding made by the Circuit Court to the effect that the use of material derived from CCTV footage in the context of a disciplinary hearing amounted to processing for security purposes could not be sustained on the evidence. Accordingly, the DPC had made an error of law in holding that no further processing of the Applicant's personal data took place when material derived from the footage in question was deployed by the Applicant's employer in the course of a disciplinary hearing, such material having been obtained for a different purpose, i.e. a purpose relating to security.

**Current Status of Case:**

The Judgment and Order of the High Court is the subject of a further appeal to the Court of Appeal; that appeal is listed for hearing on 26 June 2021.

3.	2019/564 JR	<b>Department of Employment Affairs &amp; Social Protection v. DPC</b>	Judicial Review High Court	3 March 2020 (Final Order)
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**Outcome:**

On consent, the High Court quashed a decision of the DPC made on 5 June 2019 in which the DPC had upheld a complaint made by a named individual in respect of the lawfulness of the Department's processing of personal data relating to child benefit payments.

**Current Status of Case:**

Proceedings complete.

No.	Record No.	Title	Type of action and Venue	Date of Judgment/Order
4.	2019/5078	<b>Department of Employment Affairs &amp; Social Protection v. DPC</b>	Statutory appeal Dublin Circuit Court	5 March 2020 (Final Order)

**Outcome:**

On consent, an appeal brought by the Department against a decision of the DPC made on 5 June 2019 [the same decision as referred to above] was struck out, with no order for costs, in circumstances where, on foot of separate judicial review proceedings brought by the Department, the decision in question was quashed by order made by the High Court, on consent, on 3 March 2020 (see entry at **item 3** above).

**Current Status of Case:**

Proceedings discontinued.

5.	2020/305 JR	<b>Consumenbond &amp; others v. DPC</b>	Judicial Review High Court	29 June 2020 (Final Order)
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**Outcome:**

On 1 May 2020, the Applicants applied to the High Court by way of judicial review to seek certain orders in relation to the conduct on an ongoing statutory inquiry being undertaken by the DPC into the processing of location data by Google. Certain terms having been agreed between the parties, the proceedings were struck out, on consent, on 29 June 2020. No order for costs was made.

**Current Status of Case:**

Proceedings discontinued.

6.	2018/139	<b>Nowak v. DPC (Notice Party: PWC)</b>	Statutory appeal Court of Appeal	1 July 2020 (Written Judgment)
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**Outcome:**

The Court of Appeal delivered a written judgment on **1 July 2020**, refusing an appeal by Mr Nowak against an earlier judgment of the High Court in which the High Court had upheld a decision of the DPC to the effect that certain memoranda held by PWC did not contain personal data relating to Mr Nowak and so Mr Nowak was not entitled to exercise a right of access to same.

**Current Status of Case:**

Proceedings concluded.

Subsequent to its judgment, the Court of Appeal delivered a written ruling on **27 July 2020** on the issue of costs, holding that Mr Nowak must pay the DPC's costs of the appeal before the Court of Appeal and also the costs of the courts below.

Separately, Mr Nowak applied to the Supreme Court for leave to bring a further appeal to that Court. That application was refused by written determination made by the Supreme Court on **16 December 2020**.

7.	2018/140	<b>Nowak v. DPC (Notice Party: Chartered Accountancy Ireland)</b>	Statutory appeal Court of Appeal	1 July 2020 (Written Judgment)
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**Outcome:**

The Court of Appeal delivered a written judgment on 1 July 2020, refusing an appeal by Mr Nowak against an earlier judgment of the High Court in which the High Court had upheld a decision of the DPC to the effect that, in the context of a subject access request, Mr Nowak was entitled to obtain a copy only of his personal data, Mr Nowak having asserted that he was entitled to access his personal data in its original or raw form.

**Current Status of Case:**

Proceedings concluded.

Subsequent to its judgment, the Court of Appeal delivered a written ruling on **27 July 2020** on the issue of costs, holding that Mr Nowak must pay the DPC's costs of the appeal before the Court of Appeal. No order was made in respect of the costs of the courts below.

Separately, Mr Nowak applied to the Supreme Court for leave to bring a further appeal to that Court. That application was refused by written determination made by the Supreme Court on **16 December 2020**.

No.	Record No.	Title	Type of action and Venue	Date of Judgment/Order
8.	C-311/18	<b>DPC v. Facebook Ireland Limited &amp; Schrems</b>	Preliminary reference from the Irish High Court CJEU	16 July 2020 (Written judgment)

**Outcome:**

The Court of Justice of the European Union delivered judgment on 16 July 2020, in which it addressed 11 questions posed by the Irish High Court in the context of a preliminary reference made on 4 May 2018.

In summary, the CJEU upheld the validity of a decision of the EU Commission incorporating the "standard contractual clauses" mechanism by which personal data may be lawfully transferred from the EU/EEA to a third country in respect of which an adequacy decision has not been adopted by the EU Commission.

Importantly, the CJEU went on to clarify the nature and extent of the obligations to which data exporters and supervisory authorities are subject in any case where SCCs are relied on to justify data transfers to a third country, with a view to ensuring that, in terms of appropriate safeguards, enforceable rights and effective legal remedies, data subjects whose personal data are transferred to a third country are afforded a level of protection essentially equivalent to that guaranteed within the EU by the GDPR, read in the light of the Charter.

Having made certain findings of general application relating to the adequacy of the protection provided to EU citizens in the United States, the CJEU also ruled that the EU Commission's decision adopting the "Privacy Shield" arrangements for data transfers to US was invalid.

Note that the issue of costs in the underlying proceedings was the subject of a separate ruling by the High Court made on 28 October 2020, referred to at item 12 below.

See detailed description of these proceedings in the Appendix V

9.	2020/5	<b>Scott v. DPC</b>	Appeal against order made in judicial review Court of Appeal	31 July 2020 (Final Order)
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**Outcome:**

By written judgment of 5 December 2019, the High Court struck out judicial review proceedings brought by Ms Scott under High Court Record No. 2019/95 JR. The proceedings were struck out on grounds of mootness, on the application of the DPC, the DPC having earlier delivered decisions in respect of certain complaints filed by the Applicant. (In her judicial review proceedings, Ms Scott had sought orders compelling the delivery of decisions in respect of her complaints).

On 3 January 2020, Ms Scott filed an appeal against Judgment and Order of the High Court.

Ultimately, Ms Scott agreed to withdraw that appeal. It was duly struck out, on consent, on 31 July 2020.

Note that one of the two decisions delivered by the DPC referred to above is presently the subject of a (separate) statutory appeal brought by Ms Scott in Dublin Circuit Court. That appeal has not yet come on for hearing.

**Current Status of Case:**

Proceedings complete.

No.	Record No.	Title	Type of action and Venue	Date of Judgment/Order
10.	2020/00172	<b>Kerry County Council v. DPC</b>	Statutory appeal Kerry Circuit Court	10 September 2020 (Final Order)
<b>Outcome:</b>			<b>Current Status of Case:</b>	
An appeal brought by Kerry County Council against a decision of the Commission made on 3 March 2020 following an inquiry under the Data Protection Act 2018 (concerning the deployment of CCTV by the Council in particular contexts) was withdrawn, without having been heard. No order for costs was made.			Appeal discontinued.	
11.	2017/464 CA 2017/459 CA	<b>Grant Thornton Corporate Finance v. Scanlan</b>	Appeal against order made in plenary action Court of Appeal / Supreme Court	28 September 2020 (Final Order)
<b>Outcome:</b>			<b>Current Status of Case:</b>	
On 31 October 2019, the Court of Appeal dismissed an appeal by the Defendant, Ms Scanlan, against an earlier order of the High Court refusing Ms Scanlan's interlocutory application to join the DPC to these proceedings. (The proceedings are concerned with Ms Scanlan's refusal to take certain steps in respect of information received by her from Grant Thornton relating to identifiable third parties).			Proceedings complete.	
Ms Scanlan's subsequent application for leave to bring a further appeal to the Supreme Court was refused by the Supreme Court by written determination made on 31 September 2020.				
12.	2019/718JR	<b>Scott v. DPC</b>	Judicial review High Court	13 October 2020 (Final Order)
<b>Outcome:</b>			<b>Current Status of Case:</b>	
By Order of 13 October 2020, made with the consent of the parties, the High Court struck out judicial review proceedings brought by Ms Scott under High Court Record No. 2019/718JR, the DPC having earlier delivered a decision in respect of a particular complaint filed by the Applicant. (In her judicial review proceedings, Ms Scott sought an order compelling the delivery of the decision in question).			Proceedings complete.	
Costs were awarded to Ms Scott.				
The decision delivered by the DPC is presently the subject of a (separate) statutory appeal brought by Ms Scott in Dublin Circuit Court. That appeal has not yet come on for hearing.				
13.	2016/4809P	<b>DPC v. Facebook Ireland Limited &amp; Schrems</b>	Plenary action seeking a preliminary reference to the CJEU High Court	28 October 2020 (Written ruling)
<b>Outcome:</b>			<b>Current Status of Case:</b>	
Following written and oral submissions by the parties, the High Court made a ruling on 28 October 2020 directing the DPC to pay Mr Schrems' costs of the proceedings in the High Court and CJEU.			The final order has not yet been perfected and so the time-period for the bringing of an appeal (if any) has not yet expired.	
The High Court refused the DPC's application for an order directing Facebook to pay the DPC's costs and to bear responsibility for such costs as the DPC was ordered to pay to Mr Schrems.				

No.	Record No.	Title	Type of action and Venue	Date of Judgment/Order
14.	2020/02845	<b>DPC v. Tusla/Child &amp; Family Agency</b>	Statutory application Dublin Circuit Court	4 November 2020 (Final Order)

**Outcome:**

On the application of the DPC, an order was made by the Circuit Court pursuant to section 143(2) of the Data Protection Act 2018, confirming an administrative fine levied by the DPC on Tusla (in the sum of €75,000) pursuant to a decision of the DPC dated 7 April 2020 following an inquiry under the Data Protection Act 2018. Costs were also awarded to the DPC.

**Current Status of Case:**

Application completed.



# 8

# Supervision

Engagement with public and private sector organisations, policy makers and legislators enables the DPC to understand the ways in which personal data are being processed by data controllers and processors, and enables the DPC to proactively identify data protection concerns and, in the case of new products or services to ensure that organisations are aware of their compliance obligations and potential problems in advance of the commencement of the processing of personal data.

The aim of supervision engagement is to offer guidance to stakeholders and to connect proactively as a regulator with a visible presence, ensuring the data protection rights of service users are upheld. In this way, the DPC advocates for the rights of individuals by mitigating against potential infringements before they occur. The Supervision function is an important part of the regulatory framework, as ensuring best practice is applied at project planning stages results in better outcomes for data subjects and less need for resource-intensive ex-post activity for the DPC.

The DPC received 724 consultation requests during 2020. The sectoral breakdown is as follows:

Sector	#	%
Private Sector	413	57%
Public Sector	191	26%
Health Sector	89	13%
Voluntary/Charity Sector	23	3%
Law Enforcement Sector	8	1%
<b>Total</b>	<b>724</b>	

## **Health Sector**

The DPC began the year with attendance at grand rounds in several major hospitals, working with Data Protection Officers to bring practical advice and guidance to frontline healthcare staff. While this outreach work was curtailed by the Covid-19 pandemic, it is intended to resume this very successful programme when possible in 2021.

### **Covid-19**

2020 has been an extraordinary and challenging year due to the Covid-19 pandemic. The DPC was involved from an early stage in working to assist organisations in understanding the data protection implications of the many measures that they were asked to undertake to combat the spread of the virus. The DPC also engaged with Government Departments to ensure that data protection was given appropriate consideration in the development of public policy and legislation in the context of the pandemic.

The DPC published guidance and blog pieces on a range of topics affected by Covid-19, including Processing Customer Data for Covid-19 Contact Tracing, the Data Protection Implications of the Return to Work Safely Protocol, and Protecting Personal Data When Working Remotely.

In the areas of public health policy and legislation, the DPC engaged with Government in relation to such areas as the national Return to Work Safely Protocol and the Covid-19 Passenger Locator Form. The DPC has also engaged with the HSE on the data protection implications of contact tracing.

Given the global nature of the Covid-19 pandemic, the DPC also engaged with international partners to assist in addressing the data protection implications in a consistent manner. This included participation in the work of the European Data Protection Board, joining the Global Privacy Assembly's Covid taskforce, and working directly with colleagues at the UK Information Commissioner's Office. The DPC will continue to work with global partners in 2021 to ensure that we can give accurate best practice advice to organisations in Ireland, in particular looking at the processing of personal data relating to vaccinations and vaccine programmes.

### **Covid19 Contact Tracing App**

At an early stage in the global spread of the Covid-19 virus, it was recognised internationally that mobile phone apps might be used to assist in contact tracing efforts. In March 2020, the DPC commenced a consultative engagement with Government stakeholders on the possibility of the development of a national contact-tracing app. The DPC emphasised the significant data protection challenges arising from any use of location data, in particular, and the need for the Government to incorporate data protection concerns at the earliest stage in the project.

In parallel to discussions with the national app project stakeholders, the DPC also engaged in research and in

discussions with international colleagues to gain a fuller understanding of the data protection implications of this emerging and rapidly developing technological solution. This included reaching out to Google and Apple, the joint developers of the Bluetooth-based Exposure Notification System on which the Irish app would be based.

The first phase of the consultative process on the app ended with the provision by the DPC of an in-depth report on the Data Protection Impact Assessment (DPIA) for the Covid Tracker Ireland app. In examining this DPIA, the DPC wanted to ensure that before an app was launched for use by the Irish public, all data protection risks had been adequately assessed and accounted for. The DPIA was also assessed in light of the published guidance of the EDPB on the use of location data and contact tracing tools. In the interests of transparency, the DPC recommended the publication of the DPIA and all ancillary documentation to allow full public scrutiny.

Following the launch of the Covid Tracker Ireland app, the DPC has continued to engage with the Department of Health and other stakeholders on the implementation of cross-border app interoperability and on the monitoring of the application of safeguards to protect the personal data undergoing processing.

## **Genomics**

In 2020, as part of its ongoing work with the health research sector, the DPC engaged in a supervision exercise with Genuity Science (Ireland) Ltd, to review the company's data protection compliance measures and where necessary to seek the implementation of remedial action. This included looking at systems for consent management and the withdrawal of consent by research participants, as well as clarifying the conditions for third party access to research data. In 2021, the DPC will continue this engagement, seeking the implementation of recommendations put forward in its initial phase.

In the developing area of genomics, and in the wider life sciences, the DPC takes a proactive role in working with industry and researchers to ensure that important healthcare outcomes are delivered in a manner that respects the data protection rights of individuals. As part of this strategy, the DPC has also engaged with industry groups in the medical device, and cell and gene therapy areas, as well as working with our European colleagues on questions regarding the application of GDPR to scientific research.

## **Public Sector**

In addition to engagement with Government and public bodies on matters relating to Covid-19, the DPC provided guidance on a range of legislative and public policy measures in 2020. Since the introduction of GDPR and the Data Protection Act 2018, the DPC has worked to develop relationships with key decision-makers in public bodies to facilitate early engagement on legislative proposals and policy initiatives and this continued in 2020. This foregrounding of data protection concerns ensures respect for the principle of data protection by

design and is in the best interests of upholding the data protection rights of Irish citizens.

Sample of legislative consultations:

- Health Act 1947 (Section 31A — Temporary Requirements) (Covid-19 Passenger Locator Form) Regulations 2020.
- Health Act 1947 (Section 31A — Temporary Restrictions) (Covid-19) (No. 4) Regulations 2020.
- Road Traffic (Licensing of Drivers) (Amendment) (No. 8) Regulations 2020
- Forestry (Miscellaneous Provisions) Act 2020
- Transposition of Directive (EU) 2019/770 on contracts for the supply of digital content and digital services
- Garda Síochána (Digital Recording) Bill — General Scheme
- Preservation and Transfer of Specified Records of the Commission of Investigation (Mother and Baby Homes and certain related Matters) Bill
- Higher Education Commission Bill 2020
- Transposition on 5th AML Directive and creation of beneficial ownership registers for (a) Trusts (b) Bank A/c's (c) Investment Vehicles & credit unions
- Finance Bill — Revenue Commissioners collection of aggregated credit card transactions from Financial institutions regarding VAT collection from online retailers
- Irish transposition of Directive 2018/1972 establishing the European Electronic Communications Code
- Certain Institutional Burials (Authorised Interventions) Bill

Sample of Non-Legislative Consultations

- Carrying out of Leaving Certificate 2020 and Calculated Grades System in the context of Covid-19
- Various public service data initiatives led by OGCIO, including Public Service Data Catalogue and Public Service Data Governance Board
- Online provision of national driver theory test
- Data sharing between the National Vehicle and Driver File (NVDF) and An Garda Síochána
- Conduct of Census 2021 by the CSO
- Voter.ie project, administered by Dublin City Council on behalf of Dublin City Council and Fingal, Dun Laoghaire Rathdown, South Dublin County Council
- Development of a national Motor Third Party Liability database
- Processing of equality data by public sector bodies for statistical purposes
- The Residential Tenancies Board tenancy Management system
- Processing of personal data by Owners Management Companies of Multi-Unit Developments, with the Housing Agency
- Multi-stakeholder consultation on electricity smart-metering
- Use of drones in waste enforcement by Local Authorities

## Leaving Certificate 2020

The DPC proactively contacted the Department of Education and Skills over its plans for a revised Leaving Certificate 2020 due to the Covid-19 pandemic. The focus of our consultation with the Department was to ensure that the revised Leaving Cert was appropriately assessed from a data protection point of view and that processing of personal data was fair, lawful and conducted in a transparent manner during all stages of the process. The DPC was particularly concerned to ensure that there would be full transparency to students and external parties on the calculation of grades and the standardisation process, and that issues relating to students' access to their class rank were satisfactorily addressed by the Department. Whilst the DPC recognises that difficulties arose in respect of an error with the algorithm used to assess calculated grades, it was satisfied that the Department had met its obligations from the data protection viewpoint. The Department, by providing detailed information in relation to the processing and how grades were calculated allowed students, parents and teachers to assess and question the accuracy of the final calculated grades. Adequate information and subsequent scrutiny by the processor ultimately led to the identification of the much-publicised error in the algorithm which in turn saw over 6,000 students receive upgraded results. This highlights the significance of the role transparency can play in terms of meeting principles of fairness and in terms of being able to assess the accuracy of processing.

## Financial & Private Sector

### Anti-Money Laundering & Terrorist Financing Requirements

The requirements under the anti-money laundering and terrorist financing (AML) laws for controllers to process personal data of their customers, through a reasonable risk based approach, to detect or prevent AML, continues to be a challenging issue. During 2020 the DPC engaged with DPOs in the financial sector on concerns in the following areas:

- Excessive collection of customer data where it is not a relevant and necessary requirement under the AML laws;
- Excessive processing of customer financial data where there is no suspicion of illegal activity and enhanced due diligence measures are not necessarily required to be done; and
- Excessive automated profiling of customer databases with enforcement agencies watch lists.

Companies that process substantive amounts of customer data for AML compliance that they should have completed a DPIA which has assessed the risks to individuals related to the policies and procedures in place for AML processing.

## New databases for AML Beneficial ownerships under the 4th & 5th AML Directives.

During 2020 the DPC engaged in extensive consultation on the establishment of the following databases:

- Registrar of Beneficial Ownership of Companies and Industrial & Provident Societies. Statutory Instrument No 110/2019 requires all corporate and legal entities to file adequate, accurate and current information on their beneficial owner(s);
- Central Bank's Beneficial Ownership Register is to deter Money Laundering and Terrorist Financing and to identify those that seek to hide their ownership and control of corporate or legal entities by ensuring that the ultimate owners/controllers of ICAVs, Credit Unions, Unit Trusts, are identified; and
- Register of the Beneficial Ownership of Trusts. The draft legislation is being prepared by the Department of Finance.

## Smart Metering

In 2020 the DPC continued to engage with the stakeholders involved in the design and roll-out of Ireland's Smart Metering programme. In particular, the DPC advocated the need for greater transparency to the public and interested parties on how the protection of personal data is being addressed and the efforts made to eliminate or reduce any risk to data protection of individuals. The DPC welcomes the steps taken to enhance transparency which has included the publication of DPIAs by ESB Networks and updated guidance materials by the Commission for Regulation of Utilities (CRU).

## Fintech Survey

During the first quarter of 2020, the DPC invited companies in the growing Fintech sector in Ireland to engage in a data protection survey. Questions were issued to controllers and processors covering topics such as Lawful Basis, Accountability, International Transfers and the Data Protection Rights of Individuals. Whilst the survey gave the DPC an opportunity to understand the level of data protection understanding within the industry, it also made the organisations aware of the availability of the DPC to assist in a consultative capacity on any of the questions posed.

Some findings from the survey include:

- 95% of respondent claimed to have trained employees on data protection requirements;
- 66% have engaged in the services of a Data Protection Officer and only 33% have registered a Data Protection Officer with the DPC;
- 33% of all respondents claimed to have carried out a Data Protection Impact Assessment relating to their processing of personal data and all respondents claim to have considered any data protection by design or default in its processing or technology systems;
- 40% transfer personal data outside of the EEA; and

- 66% of controllers collect personal data from publicly available sources such as the Companies Registration Office or Tax Defaulters Lists whilst less than in one in four use social media or newspaper publications to collect personal non-analytical data.

## TikTok Ireland and Main Establishment

During 2020, TikTok Ireland's declaration of main establishment in Ireland for the purpose of availing of the GDPR one-stop-shop was examined. In assessing whether TikTok Ireland had met the objective criteria of main establishment, the DPC reviewed detailed documentation and responses provided by TikTok setting out the legal, administrative, governance and other measures implemented. The question of main establishment was considered under the lens of Article 4(16) of the GDPR, Recital 36 of GDPR and the EDPB Guidelines for identifying a controller or processor's lead supervisory authority.

Some of the key issues considered were:

- Where are decisions about the purposes and means of the processing given final 'sign off'?
- Where are decisions about business activities that involve data processing made?
- Where does the power to have decisions implemented effectively lie?
- Where is the Director (or Directors) with overall management responsibility for the cross border processing located?
- Where is the controller or processor registered as a company, if in a single territory?

Based on its assessment of the measures implemented to satisfy the main establishment criteria, the DPC was ultimately satisfied that TikTok Ireland was in a position to demonstrate effective and real exercise of management activities determining the main decisions as to the purposes and means of processing through stable arrangements.

# Case Studies

## Case Study 17:

### Vodafone seeks employment details from customers

The DPC received a number of queries regarding new or existing customers being requested by Vodafone to produce their employment details and work phone number as a requirement for the provision of service by that company.

The concerns arising were that the requests were excessive and contrary to the Article 5 principle of lawful, fair and transparent collection as the processing of data relating to their employment status was entirely unrelated to the product or service that they were receiving from the telecommunications company, which was for their personal or domestic use only.

Second, there were concerns that the mandatory request for a customer's occupation/place of work/work phone number was not adequate,

relevant or necessary under the "data minimisation" requirement and did not meet the purpose limitation principle as set out in Article 5 of GDPR.

Third, there were also concerns amongst customers that the company's data protection/privacy notice did not comply with the transparency requirement of GDPR Article 13(1).

Following engagement with the DPC, Vodafone admitted that it had made an error in the collection of this information. The company stated that the problems were caused by a legacy IT system that had not been updated to remove this requirement and that any access to the data was exceptionally limited and was not used for any additional processing purposes by them. Vodafone immediately commenced a plan to remediate the problems caused and, on the insistence of the DPC, published on its website the details of what had occurred, so that customers would be aware of the issue.

## Case Study 18:

### Facebook Dating

In February 2020, the DPC was informed of Facebook's impending launch of 'Facebook Dating' in the EU. A cause for significant concern was the short notice given about its launch, together with very limited information on how Facebook had ensured the Dating feature would comply with data protection requirements. As a result, the DPC undertook an on-site inspection of

Facebook's offices in Dublin to obtain more extensive documentation and information. A number of queries and concerns identified by the DPC were put to Facebook on the new product and its features. As a result Facebook provided detailed clarifications on the processing of personal data and made a number of changes to the product prior to ultimately being launched in the EU in October 2020.

These changes included:

- clarification on the uses of special category data which was very unclear in the original proposal. Facebook agreed that there would be no advertising using special category data and special category data collected in the dating feature will not be used by the core Facebook service;
- changes to the user interface around a user's selection of religious belief so that the "prefer not to say" option was moved to the top of the list of options;
- greater transparency to users by making it clear in sign-up flow that Dating is a Facebook product and that it is covered by Facebook's terms of service and data policy and the Supplemental Facebook Dating Terms; and
- revisions to the consent header for the processing of special category data to specifically flag that special category data (in this instance sexual preference and religious belief) will not be processed for the purposes of advertising (targeted or otherwise).

### Case study 19:

## Facebook Suicide and Self-Injury feature

In early 2019 the DPC was initially approached by Facebook and informed of their plans to implement an expansion of its Suicide and Self Injury Prevention Tool (SSI), which involved using advanced algorithms to monitor Facebook and Instagram users' online interactions and posts. Facebook intended that the tool would help identify users at risk of suicide or self-harm. Details of these users would then be notified to external parties (police and voluntary organisations) to action an intervention with the users concerned. The DPC raised a number of concerns during the engagement (2019–2020) including lawful basis and adequate safeguards relating to the processing of special category data. Facebook took the position that the processing of this data would rely on the public interest exemption under Article 9 GDPR.

As part of the DPC assessment it was suggested that Facebook should consult public health authorities in Europe before proceeding. Facebook acknowledged that they had further work to do and would undertake the consultation and further research with public health authorities across Europe on the SSI tool. Facebook has indicated that this engagement will continue to be a long-term initiative given the challenges experienced by Member State Governments and national public health authorities due to the Covid-19 pandemic. The DPC understands this engagement is ongoing.

In late 2020, Facebook approached the DPC proposing a more limited use of this tool for the sole purpose of removing content contravening Facebook Community Standards and Instagram Community Guidelines, pending resolution of the concerns raised by the DPC. No significant concerns were identified by the DPC so long as the processing was for the sole purpose of content moderation.

## Case study 20: **Facebook Election Day Reminder**

In advance of the Irish General Election in February 2020 the DPC notified Facebook that the Facebook Election Day Reminder (EDR) feature raised a number of data protection concerns particularly around transparency to users about how personal data is collected when interacting with the feature and subsequently used by Facebook.

The DPC requested that Facebook implement a mechanism at the point at which users engage (or will engage) with the EDR function to ensure that the information referenced in Article 13 of the GDPR, including information addressing the specific

circumstances and context in which the processing operations are undertaken, be made available to users in an easily accessible form before a user decides whether or not to interact/engage with the EDR function. Of particular concern to the DPC was the lack of clarity from Facebook on whether any data generated by a user interacting with the feature would be used for targeted advertising and newsfeed personalisation.

As it was not possible to implement changes in advance of the Irish election, Facebook responded to the DPC advising that it intended to withdraw the roll-out of the EDR function for the election and that the feature would not be activated during any EU elections pending a response to the DPC which addressed the concerns raised.

## Case study 21: **Google Voice Assistant Technology**

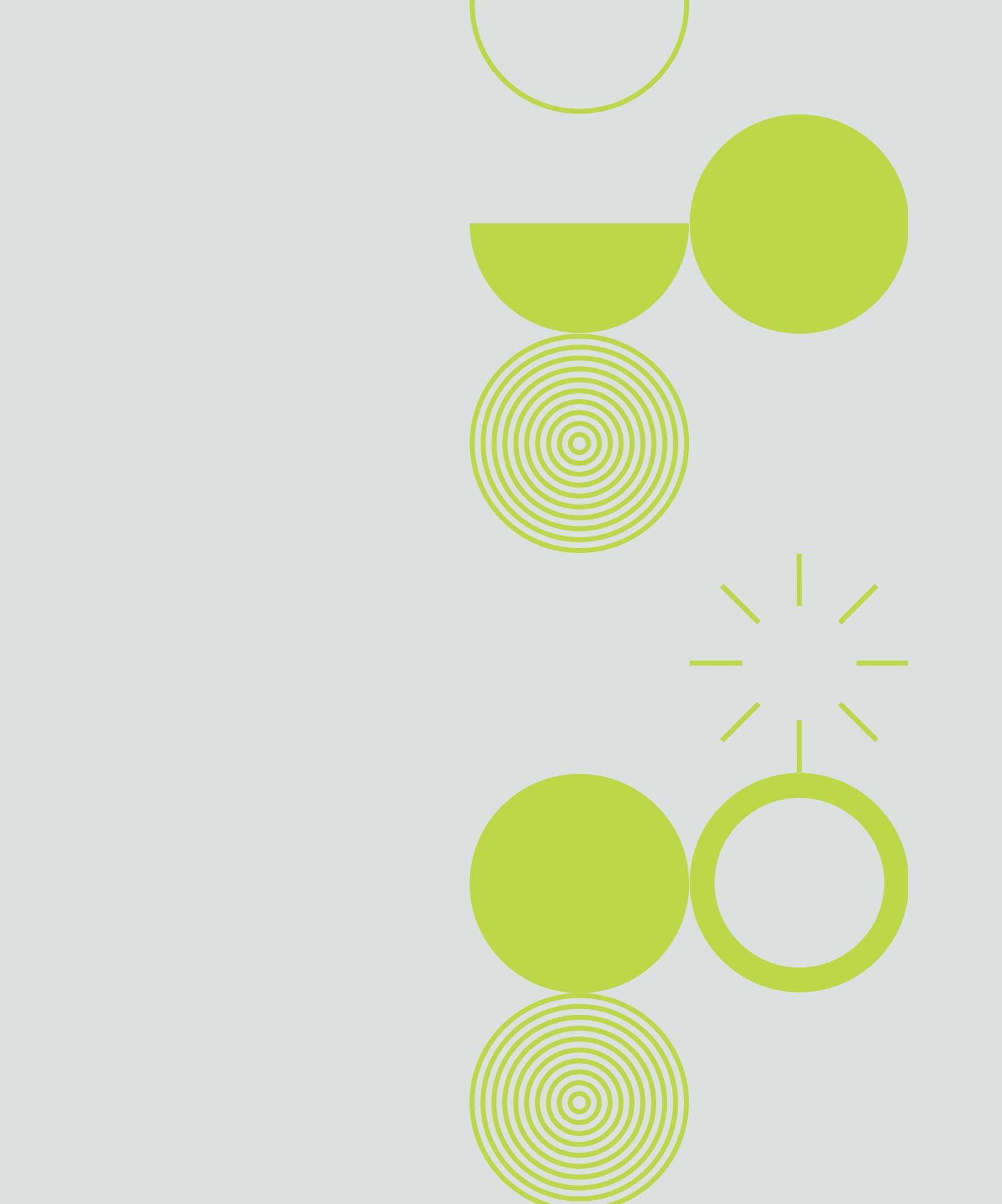
The DPC engagement with Google on the company's voice assistant product continued in 2020. This engagement commenced following media coverage in the summer of 2019. The DPC sought a response from Google on the further actions that could be taken by Google to mitigate against risks to the personal data of users, particularly arising from misactivations of Google assistant. Google has implemented a number of changes to address the concerns raised.

These include:

- A new transparent user engagement and consent flow to include information about the suite of safeguards in place to minimise the risks

to data subjects and make user controls more accessible;

- Measures to decrease misactivations. Users can now adjust how sensitive Google Assistant devices are to prompts like "Hey Google," giving users more control to reduce unintentional activations, or to make it easier for users to get help in noisy environments. Google is also continuing to improve device and server side measures to detect false activations of Google assistant;
- Deletion by voice command on Assistant. Users are now able to delete their Assistant interactions from their account by saying things like "Hey Google, delete the last thing I said" or "Hey Google, delete everything I said to you last week." If users ask to delete more than a week's worth of interactions from their account, the Assistant will direct them to the page in their account settings to complete the deletion.





9

# Data Protection Officers

## DPO Notifications to the DPC

One of the tasks of the DPC is to maintain and update a Data Protection Officer (DPO) Register within the DPC, as notified to it by its relevant regulated entities, meaning those organisations who meet the threshold for DPO requirement.<sup>5</sup>

**Article 37.7** of the GDPR states that “the controller or the processor shall publish the contact details of the data protection officer and communicate them to the supervisory authority.”

In 2020, the DPC received 517 DPO notifications through the online web-form on the DPC website. In total, the DPC’s DPO notifications database contains 2,166 records of DPOs. The table below shows the industry sectors from which notifications were made in 2020.

### DPO notifications for 2020

Private	417
Public	109
Non-for-Profit	44
<b>Total in 2020</b>	<b>570 (2,166 overall)</b>

## Public Sector DPO Compliance

**Article 37.1** of the GDPR stipulates, that all organisations that process personal data, either as a data controller or data processor, must designate a DPO where the ‘processing is carried out by a public authority or body’.

**Article 37.7** of the GDPR states that “the controller or the processor shall publish the contact details of the data protection officer and communicate them to the supervisory authority.”

In 2020, the DPC commenced a project to assess compliance by public bodies with the Article 37 obligations. From a total of almost 250 public bodies, comprising Government Departments and agencies, as well as Local Authorities, 77 public bodies were identified as being potentially not compliant with the requirements. Engagement with each of these public bodies resulted in 66 bringing themselves in to compliance with Article 37.7 of the GDPR by the end of 2020, raising the sector’s compliance rate from 69% to 96%.

The DPC will continue to engage with the public sector bodies as required in 2021 to achieve compliance with GDPR Article 37(3).

The DPC has observed that some agencies of Departments have relied on Article 37(3) of the GDPR

which states that “Where the controller or the processor is a public authority or body, a single data protection officer may be designated for several such authorities or bodies, taking account of their organisational structure and size”.

A single DPO may be designated for several such authorities or bodies; however, this should not remove the obligation of that agency or business unit under a parent department to separately publish the contact details of their DPO and to separately communicate those details to the supervisory authority even if the parent department has also done so.

If a public body wishes to communicate details of a DPO, whether updating or registering a new DPO, this should be done through official channels using the DPC’s web-form or email.

The DPC will expand its compliance and monitoring activities in this area to include organisations other than public bodies that are also required to designate a DPO and comply with Article 37.7 of the GDPR during 2021. This will be conducted on a sector by sector approach. Organisations without a DPO are encouraged to consider whether they are required to have a DPO — further information is available on the DPC’s website.

## Engagement with DPOs

The DPC remains committed to supporting DPOs and their teams, in recognition of the key role played by DPOs in ensuring that GDPR programmes translate into lasting organisational culture and compliance. DPC staff spoke at many virtual events for DPOs during the year. As part of the DPC’s efforts to empower DPOs in the conduct of their duties, the DPC established a DPO Network in late 2019. The purpose of the Network is to foster peer-to-peer engagement and knowledge-sharing between DPOs and data protection professionals.

Due to Covid-19, the planned DPC DPO Network Conference that was due to take place in March was necessarily postponed. The DPC has instead taken these supports online, with a dedicated section for DPOs on its website where the resources, including podcasts and guidance, are centralised for ease of access. The DPC continues to engage with DPOs on an ongoing basis, including a quarterly newsletter, to ensure that the resources it produces are informed by the needs of the cohort.

## Codes of Conduct

During 2020 the DPC drafted accreditation requirements that potential Monitoring Bodies for Codes of Conduct were required to meet. ‘The Accreditation Requirements for Code Monitoring Bodies’ was approved by the EDPB and adopted by the DPC. This marked the final step in enabling the DPC to progress the establishment and approval of Codes of Conduct in Ireland in line with Articles 40 and 41 of the GDPR. The DPC is already engaged with several potential Code owners and anticipates receiving the first official draft Code early in 2021.

<sup>5</sup> A DPO is mandatory for: Public authorities; Organisations whose core activities consist of processing operations that require regular and systematic monitoring of data subjects on a large scale; or Organisations whose core activities consist of processing on a large scale of special categories of data or personal data relating to criminal convictions and offences.



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## International Activities

## **International Transfers — Binding Corporate Rules**

A key focus in the area of international transfers for the DPC is the assessment and approval of Binding Corporate Rules applications from multi-national companies.

Binding Corporate Rules (BCR) were introduced in response to the needs of organisations to have a global approach to data protection where many organisations consisted of several subsidiaries located around the globe, transferring data on a large scale. During 2020, the DPC continued to act or commenced acting as lead reviewer in relation to 42 BCR applications from 28 different companies. The DPC also assisted other European Data Protection Agencies (DPAs) by acting as co-reviewer or on drafting teams for Article 64 Opinions on 5 BCRs in this period.

The EDPB issued Article 64 opinions on nine BCR applications in 2020, including Opinions on the BCR-controller and BCR-processor of Reinsurance Group of America, for which DPC was lead authority.

Due to the departure of the UK from the EU in 2020, the DPC has had contact from a number of companies enquiring about transferring their lead authority for BCR purposes to the DPC. This process has been completed for a number of applicants, greatly increasing the DPC's workload in 2020.

## **Brexit**

In the latter part of 2020 in the run up to the end of the Transition Period on 31 December, there was a very real possibility that the UK would finally depart without a deal with the EU and therefore fall outside EU data free-flows. This created implications for large sectors of Irish business and the public sector, who needed to put in place transfer mechanisms to allow for the continuance of legitimate transfers to the UK in the event of a no-deal Brexit.

The DPC maintained ongoing engagement with impacted stakeholders, to facilitate the prompt sharing of information throughout the evolution of the negotiation process.

On 24 December 2020, the Trade and Cooperation Agreement was signed and this agreement provided for data transfers, allowing for up to a six month period (the so called bridging period) whereby transfers to the UK could continue as if the UK was still part of the EEA, while negotiations on an adequacy agreement continue.

## **Other International Transfer Issues**

In July 2020 the CJEU invalidated the Privacy Shield mechanism that had facilitated certain transfers from the EEA to the US and, while it upheld the use of Standard Contractual Clauses, it did make clear that if the laws and practices in a third country mean that the level of protection for data transferred there is not assured in a

given case, transfers would have to stop unless supplementary measures could plug any gaps in protection.

Draft recommendations on Supplementary Measures were published by the EDPB and submissions received on the draft are now being assessed by EDPB. A full note on the Litigation concerning Standard Contractual Clauses is available in Appendix 5 of this report.

## **European Data Protection Supervisory Authorities**

During 2020, the DPC continued to participate in the work programmes of the European Supervisory Bodies for large-scale EU IT systems such as Europol, Eurodac, Eurojust, the Customs Information System (CIS) and the Internal Market Information (IMI) system. The DPC conducted a number of desk audits with the Europol National Unit in An Garda Síochána in relation to data subject rights and the processing of data in Europol systems. In addition, the DPC continued in its role as observer to the coordinated supervision of the Schengen and Visa Information Systems (SIS II and VIS). With regard to SIS II, the work programme to progress Ireland's participation will continue in 2021.

## **Consistency Mechanism and EDPB Tasks**

Like all other EEA data protection supervisory authorities, the DPC must ensure that it interprets, supervises and enforces the GDPR in a way that achieves consistency. In 2020, the DPC participated in over 180 EDPB meetings (most of which were conducted virtually), including those of the 12 EDPB expert subgroups.

EDPB staff members have contributed extensively to the development of guidelines and opinions across all of the EDPB expert subgroups during 2020. The DPC also acts as co-coordinator of the Social Media expert subgroup.

## **BIIDPA 2020**

On 18 June 2020 the DPC hosted a virtual meeting of the British, Irish and Islands' Data Protection Authorities (BIIDPA) welcoming representatives from the supervisory authorities of Bermuda, the Cayman Islands, Gibraltar, Guernsey, the Isle of Man, Jersey, Malta and the UK. BIIDPA attendees share a common law background and meet each year to discuss a variety of data protection related topics. Issues discussed included Covid-19 and the DPC's Communications Strategy.

## **13-15 October Global Privacy Assembly**

In October 2020 the DPC participated in the Global Privacy Assembly (GPA); the annual gathering of more than 130 data protection and privacy authorities from around the world.

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## Key DPC Projects

## Children's Policy

### Activities during 2020

Following the conclusion of the DPC's public consultation and the subsequent publication of two statistical reports on feedback from both the adult and child focused streams of the consultation in 2019, the DPC commenced the extensive process of drafting guidance for organisations that process children's data.

In tandem with this work, the DPC engaged with a number of child's rights experts and advocates from the public, private and non-profit sectors in order to seek further views in relation to various technical issues to be addressed in the guidance.

Throughout 2020, the DPC continued its participation as a member of the National Advisory Council for Online Safety, where it contributed to the Council's scrutiny of the General Scheme of the Online Safety and Media Regulation Bill — finalised by the Department of Tourism, Arts, Culture, Gaeltacht, Sport and Media in December 2020 — in order to ensure a clear framework for cooperation between the DPC and other regulators whose remits touch upon online safety concerns.

### The "Fundamentals"

In December 2020, the DPC published its much-anticipated guidance document entitled "Children Front and Centre: Fundamentals for a Child-Oriented Approach to Data Processing" (the "Fundamentals" for short).

The Fundamentals address core data protection issues such as the age at which children can exercise their own data protection rights for themselves, the role of parents/guardians in acting on behalf of their children, age verification and verification of parental consent, as well as the rules governing the processing of children's personal data for direct marketing, profiling or advertising purposes.

The DPC also sets out in the Fundamentals a variety of recommended measures that will enhance the level of protection afforded to children against the data processing risks posed to them by their use of or access to services in both an online and offline world. The DPC is conducting a public consultation on the draft version of the Fundamentals and is inviting submissions from all interested parties until 31 March 2021.

Taking into account the feedback received, the DPC will publish the finalised version of the Fundamentals which will inform the DPC's enforcement, supervision and regulatory activities.

### Codes of Conduct

During 2021, the DPC will also work with industry, government and voluntary sector stakeholders and their representative bodies to encourage the drawing up of Codes of Conduct in relation to the processing of children's personal data, in accordance with Section 32 of the Irish Data Protection Act 2018. This Codes of Conduct project will be a core initiative for the DPC in 2021.

### Regulatory Strategy

Work on the DPC's Regulatory Strategy continued in 2020 — with both internal and external stakeholder engagement — and the development of the strategy is now nearing its conclusion. The development of the DPC's Regulatory Strategy has been an iterative process, evolving in response to the needs of stakeholders and their feedback. In drafting the strategy, the DPC has given careful consideration as to how it can best deliver improved results for the maximum amount of people, in a regulatory landscape that is constantly evolving in response to legal and societal needs.

An integral part of the strategy development process in 2020 was the production and publication of the DPC's Two-Year Activity Report under the GDPR, which was an opportunity to take stock of the reality of regulating since May 2018 and identify the thematic issues and statistics which must be factored into the DPC's strategic plan for the future. The DPC's regulatory analysis in 2020 also involved two workshop cycles, the first focusing on a horizon scan for 2020 and the second concentrating on complaint-handling methodologies going forward.

### The Arc Project

The DPC continued its partnership with the Croatian Data Protection Authority, AZOP, and Vrije University in Brussels on an EU-Funded project (The ARC Project) — specifically targeting SMEs — to increase compliance across the SME sector. Work on the project began in Q1 of 2020 and will run for a further two years. Through this engagement — which includes surveys, roadshows and conferences — the project intends to develop a more detailed understanding of the climate in which SMEs are operating and provide practical resources to support them in their compliance efforts.

The background of the page features a world map with a network of satellite dishes and signal waves. Several large, stylized yellow circles of different sizes are overlaid on the map, particularly in North America, Europe, and Asia, suggesting areas of focus or signal strength.

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## Communications

## Media engagement

The profile of, and the media interest in, the DPC continued to grow both nationally and internationally during 2020. Much of the media engagement stemmed from the DPC's inquiry and litigation work, including significant international media attention surrounding the DPC's draft decision in the Twitter International Company inquiry.

## Direct Engagement

The DPC continued to directly engage with a variety of stakeholders during 2020, adapting to the constraints imposed by Covid-19. From March onwards, all conferences and events in which the DPC partook were virtual. The DPC contributed to almost 100 events in 2020.

## Guidance, blogs and podcasts

The DPC continued to produce, update and disseminate comprehensive guidance on a wide variety of topics for both individuals and organisations. Almost 40 items of guidance were produced in 2020, covering a wide range of issues ranging from video conferencing to contact tracing.

## Activity report

In June, the DPC published 'DPC Ireland 2018-2020: Regulatory Activity Under GDPR' — a two-year regulatory activities report providing a wider-angled lens through which to assess the work of the DPC since the implementation of the GDPR. The trends and patterns identified will have bearing on the DPC's regulatory considerations going forward.

## Social media

In 2020, the DPC continued to grow its social media presence across Twitter, Instagram and LinkedIn, in support of its awareness-raising and communications activities. The combined followers across the three platforms has increased by over 8,000 during 2020, to almost 29,000. There was an organic reach of almost 2.8 million, with strong engagement across the board.

## DPC Website

The DPC website ([www.dataprotection.ie](http://www.dataprotection.ie)) was a particularly important resource for individuals and organisations throughout 2020. In November, the DPC launched a redesign of the website, making it easier for users to find and navigate information. The redesigned site also includes a dedicated section for Data Protection Officers.

**Recommendations for the Use of Portable Storage Devices**

**Direct Marketing Blog**

**Data protection and community-based CCTV schemes**

**A Data Protection Commission Podcast**  
**A Deep Dive into the DPC's Cookie Sweep**

DPC Ireland's Elaine Edwards in conversation with Mícheál Donnelly about the DPC's recent Cookies Sweep Report

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# Corporate Governance

## DPC Funding and Staffing

The funding of the DPC by government has increased year-on-year from €1.7 million in 2013 to €16.9 million in 2020 (comprising €10.5 million in pay and €6.4 million in non-pay allocation).

The DPC continued to engage with the Public Appointments Service to recruit staff during 2020. The process of recruitment was impacted by Covid-19. The DPC had a staff complement of 145 at year end, with two recruitment competitions still ongoing on 31 December 2020. Further recruitment of staff, in addition to those successful in these two competitions, is a priority for the DPC in 2021.

## Corporate Services and Facilities

While DPC offices remained largely closed — physically — due to Covid-19 restrictions, the DPC continued to maintain a skeleton staff to process incoming and outgoing postal correspondence and provide the logistical support necessary to facilitate effective remote working for DPC staff.

## Corporate Governance

The DPC became its own Accounting Officer on 1 January 2020. Accordingly, the DPC's internal controls were monitored in accordance with the Code of Practice for the Governance of State Bodies. The DPC's required annual Statement on Internal Control for 2020 will be published on the DPC's website with its Financial Statement later in the year.

## DPC Audit and Risk

In 2020 the DPC established an Audit and Risk Committee, in keeping with the Corporate Governance Standard for the Civil Service (2015), and the Code of Practice for the Governance of State Bodies (2016).

The members of the committee are:

- Conan McKenna (chairperson);
- Bride Rosney;
- Karen Kehily;
- Michael Horgan; and
- Graham Doyle (DPC).

Seven meetings of the Audit and Risk Committee were held in 2020.

## **Official Languages Act 2003**

During 2020 the DPC prepared its fifth Language Scheme under the Official Languages Act 2003. The finalised scheme was subsequently confirmed by the Minister for Tourism, Culture, Heritage, Arts, Gaeltacht, Sport and Media, submitted to the office of An Coimisinéir Teanga, and published on the DPC website. The fifth Scheme commenced on 21 December 2020 and remains in effect for a period of three years.

## **Freedom of Information (FOI)**

In 2020, the DPC received a total of 65 FOI requests. Eight were granted, three were partially granted and 38 were deemed out of scope. The DPC's regulatory activity is exempted from FOI requests in order to preserve the confidentiality of our supervisory, investigatory and enforcement activities. Nevertheless, the DPC is committed to providing transparent information to the public around the administration of its office and use of public resources.

Granted	8
Part Granted	3
Refused (OOS)	38
Withdrawn/Handled Outside FOI	8
Live	8
<b>Total requests</b>	<b>65</b>

## **Ethics in Public Office Act 1995 and Standards in Public Office Act 2001**

The DPC was established under the Data Protection Act 2018 and operates in accordance with the provisions of that Act. Procedures are in place to ensure that the staff of the DPC, holding designated positions, comply with the provisions of the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001.

## **Regulation of Lobbying Act 2015**

The Regulation Lobbying Act 2015 aims to ensure that lobbying activities are conducted in accordance with public expectations of transparency. The Commissioner for Data Protection is a Designated Public Official (DPO) under this Act, as noted on the DPC website. Interactions between lobbying bodies and DPOs must be reported by the lobbyists. The Standards in Public Office Commission (SIPo) has established an online register of lobbying at [www.lobbying.ie](http://www.lobbying.ie) to facilitate this requirement.

## **Section 42 of the Irish Human Rights and Equality Commission Act 2014 — Public Sector Equality and Human Rights Duty (the Duty)**

The DPC has put in place measures to ensure that consideration is given to human rights and equality in the development of policies, procedures and engagement with stakeholders when fulfilling its mandate to protect the EU fundamental right to data protection. The Duty is also embedded into the Corporate Governance Framework and Customer Charter and Action plan. The DPC website content along with other published information is designed with regard to the principles of plain English, and the DPC has also published audio resources.

To support its customers requiring assistance when engaging with the services provided by the DPC, the DPC's Accessibility Officer may be contacted via the channels listed on its website.

## **Customer Charter**

In 2020, the DPC revised its Customer Charter. The revised Charter and Quality Customer Service Action Plan and Unreasonable Complainants Policy will be in place for the period 2021–2023.

In 2020, 37 customer service complaints were received and resolved by the DPC.

# Appendices

# Appendix 1: Report on Protected Disclosures received by the Data Protection Commission in 2020

The policy operated by the Data Protection Commission (DPC) under the terms of the Protected Disclosures Act 2014 is designed to facilitate and encourage all workers to raise internally genuine concerns about possible wrongdoing in the workplace so that these concerns can be investigated following the principles of natural justice and addressed in a manner appropriate to the circumstances of the case.

Section 22 of the Protected Disclosures Act 2014 requires public bodies to prepare and publish, by 30 June in each year, a report in relation to the previous year in an anonymised form.

Pursuant to this requirement, the DPC confirms that in 2020

- No internal protected disclosures (from staff of the DPC) were received.

- Nine protected disclosures (set out in the table below) were received from individuals external to the DPC in relation to issues pertaining to data protection within other entities. These cases were raised with the DPC in its role as a 'prescribed person' as provided for under Section 7 of the Protected Disclosures Act (listed in SI 339/2014 as amended by SI 448/2015, replaced in September 2020 by SI 364/2020).

Reference Number	Type	Date Received	Status	Outcome
09/2020	Section 7 (external, to 'prescribed person')	09 December 2020	Under Consideration	
08/2020	Section 7 (external, to 'prescribed person')	16 September 2020	Under Consideration	
07/2020	Section 7 (external, to 'prescribed person')	09 July 2020	Under Consideration	
06/2020	Section 7 (external, to 'prescribed person')	26 May 2020	Closed	Made anonymously and not a protected disclosure — referred to consultation function to follow up.
05/2020	Section 7 (external, to 'prescribed person')	12 May 2020	Closed	Not a protected disclosure – referred to standard complaint handling.
04/2020	Section 7 (external, to 'prescribed person')	28 April 2020	Closed	Not a protected disclosure — referred to standard complaint handling
03/2020	Section 7 (external, to 'prescribed person')	22 February 2020	Closed	Not a protected disclosure- referred to standard complaint handling
02/2020	Section 7 (external, to 'prescribed person')	03 February 2020	Closed	Complainant did not pursue matters.
01/2020	Section 7 (external, to 'prescribed person')	06 January 2020	Closed	Complainant did not pursue matters.

# Appendix 2: Report on Energy Usage at the DPC

## Overview of Energy Usage

### DUBLIN

#### 21 Fitzwilliam Square

The head office of the DPC is located at 21 Fitzwilliam Square, Dublin 2. Energy consumption for the office is solely electricity, which is used for heating, lighting and equipment usage.

21 Fitzwilliam Square is a protected building and is therefore exempt from the energy rating system.

### Satellite office

DPC currently maintains additional office space in Dublin to accommodate the increase in staff numbers. This office was sourced by OPW and DPC took occupancy in October 2018. The Office is 828 sq mts in size.

Energy consumption for the building is solely electricity, which is used for heating, lighting and equipment usage.

The energy rating for the building is C2.

### PORTARLINGTON

The Portarlington office of the DPC has an area of 444 sq mts and is located on the upper floor of a two-storey building, built in 2006.

Energy consumption for the office is electricity for lighting and equipment usage and natural gas for heating.

The energy rating for the building is C1.

## Actions undertaken

The DPC participates in the SEAI online system for the purpose of reporting its energy usage in compliance with the European Communities (Energy End-use Efficiency and Energy Services) Regulations 2009 (S.I. No 542 of 2009)

The energy usage for the office for 2019 (last validated SEAI figures available) is as follows:

	Electrical	Natural Gas
<b>Dublin</b>		
Fitzwilliam Sq.	93,878KwH	
Satellite Office	89,279KwH	
<b>Portarlington</b>	40,651KwH	49,379

## Overview of Environmental policy / statement for the organisation

The DPC is committed to operate in line with Government of Ireland environmental and sustainability policies.

## Outline of environmental sustainability initiatives

- Purchase of single use plastics ceased since January 2019
- Replacement of fluorescent lighting with LED lighting in Portarlington office as units fail or require replacement bulbs
- Sensor lighting in use in one office (Satellite)
- Review of heating system in one office underway (Fitzwilliam Square)
- New tender competition completed for bin collection services to include compost bin service for Portarlington & Fitzwilliam Square.

## Reduction of Waste Generated

- DPC use a default printer setting to print documents double-sided.
- DPC has also introduced dual monitors for staff to reduce the need to print documents to review / compare against other documentation during case work.
- DPC provide general waste and recycling bins at stations throughout the offices.

## Maximisation of Recycling

DPC policy is to securely shred all waste paper. Consoles are provided at multiple locations throughout the offices. Shredded paper is recycled.

## Sustainable Procurement

DPC procurements and processes are fully compliant with Sustainable Procurement.

Catering contracts stipulate the exclusion of single use plastics.

# Appendix 3: Prosecutions in relation to electronic direct marketing complaints

The DPC prosecuted six companies during 2020 for sending unsolicited text messages or electronic mail to customers or former customers or prospective customers without their consent and in one case without a valid address to which the recipient might send a request for such communications to cease. The companies in question were Three Ireland Services (Hutchison) Limited, Mizzoni's Pizza & Pasta Company Limited, AA Ireland Limited, Ryanair DAC, Three Ireland (Hutchison) Limited and Windsor Motors Unlimited Company.

## **Prosecution of Three Ireland Services (Hutchison) Limited**

In June and August 2019, the DPC received two complaints from individuals concerning unsolicited marketing text messages they had received from the telecommunications company Three Ireland Services (Hutchison) Limited. In response to the DPC's investigation of the first complaint, Three explained that although the customer had requested to opt-out of electronic direct marketing, due to a technical error his preference had not been updated on the company's systems. In respect of the second complaint, Three indicated that the actioning of the customer's request to opt-out had been delayed due to a fault which had developed in its case management system as a result of internal IT changes.

The DPC had issued a letter of formal warning to Three in January 2016 in relation to a previous complaint. Accordingly, the DPC decided to proceed to a prosecution arising from these two complaint cases.

At Dublin Metropolitan District Court on 2 March 2020, Three pleaded guilty to two charges under Regulation 13(1) and 13(13)(a)(i) of the ePrivacy Regulations. The District Court applied the Probation of Offenders Act 1907, ordering a dismissal of the matter on the basis of a charitable donation of €200 to Little Flower Penny Dinners. Three agreed to discharge the DPC's legal costs.

## **Prosecution of Mizzoni's Pizza & Pasta Company Limited**

In March and April 2019, the DPC received four complaints from individuals regarding unsolicited marketing text messages they had received from Mizzoni's Pizza & Pasta Company Limited. In particular, the complaints highlighted the concern that customers' phone numbers may have been retained for a significant

period after the date of their last order. Following an investigation of the complaints, the DPC was satisfied that Mizzoni's had failed to comply with the rules on valid consent for electronic direct marketing under the ePrivacy Regulations.

The DPC had issued a letter of formal warning to Mizzoni's in November 2013 in respect of a previous complaint. Accordingly, the DPC decided to initiate prosecution action on foot of these new complaints.

At Dublin Metropolitan District Court on 2 March 2020, Mizzoni's pleaded guilty to one offence under Regulation 13(1) and 13(13)(a)(i) of the ePrivacy Regulations. The District Court applied the Probation of Offenders Act 1907, ordering a dismissal of the matter on the basis of a charitable donation of €200 to Little Flower Penny Dinners. Mizzoni's agreed to discharge the DPC's legal costs.

## **Prosecution of Three Ireland (Hutchison) Limited**

In March, April and June 2020, the DPC received three complaints from individuals concerning unsolicited marketing text messages they had received from the telecommunications company Three Ireland (Hutchison) Limited. In response to the DPC's investigation of the first complaint, Three explained that although the customer had requested to opt-out of electronic direct marketing, due to an intermittent bug in their system, messages such as opt-outs were received but did not trigger the required action. As a result his preference was not updated on the company's system. In respect of the second complaint, Three indicated that the customer's requests to opt-out had not 'fed back' to the system due to a configuration issue arising from internal IT changes. In regards to the third complaint, Three stated that the customer opted out of electronic direct marketing and received confirmation of same. However, due to a human error where

an incorrect set of permissions was used, she received further electronic direct marketing.

The DPC had previously prosecuted Three in 2012 for breaching Regulation 13 of the ePrivacy Regulations in relation to three previous complaints. Accordingly, the DPC decided to proceed to another prosecution arising from these three complaint cases.

At Dublin Metropolitan District Court on 17 December 2020, Three pleaded guilty to four charges under Regulation 13(1) and 13(13)(a)(i) of the ePrivacy Regulations. The District Court applied the Probation of Offenders Act 1907, ordering a dismissal of the matter on the basis of a charitable donation of €2,000 to Little Flower Penny Dinners. Three agreed to discharge the DPC's legal costs.

## Prosecution of AA Ireland Limited

In July and October 2019, the DPC received three complaints from individuals concerning unsolicited marketing text messages and electronic mail they had received from AA Ireland Limited. In response to the DPC's investigation of the first complaint, AA explained that the customer had opted-out of electronic direct marketing in 2017 and this opt-out was applied at that time. However, due to a 'system issue' a couple of years later it was recorded that he had opted-in and he received further electronic direct marketing by email. In respect of the second complaint, AA indicated that it had received the customer's requests to opt-out but due to the customer having completed five different quotes and the opt-out had to be applied to each, this resulted in a delay and the sending of nineteen further marketing text messages over an eight-day period after she had first opted out. In regards to the third complaint, AA stated that the customer had never opted in to receiving electronic direct marketing. It also claimed that the text messages sent were reminders to the customer that their insurance renewal date was approaching and it deemed them transactional messages rather than marketing messages. However, due to the content of the text messages, the DPC deemed them to be unsolicited marketing text messages.

The DPC had previously prosecuted AA in 2018 for breaching Regulation 13 of the ePrivacy Regulations in relation to one previous complaint. Accordingly, the DPC decided to proceed to another prosecution arising from these three complaint cases.

At Dublin Metropolitan District Court on 17 December 2020, AA pleaded guilty to three charges under Regulation 13(1), and 13(13)(a)(i) of the ePrivacy Regulations. The District Court applied the Probation of Offenders Act 1907, ordering a dismissal of the matter on the basis of a charitable donation of €2,500 to Little Flower Penny Dinners. AA agreed to discharge the DPC's legal costs.

## Prosecution of Ryanair DAC

In May 2019, the DPC received a complaint from an individual concerning a marketing email they had received from Ryanair DAC that they were unable to unsubscribe

from. The complainant indicated that having used the unsubscribe button on the email they received from Ryanair they received an error message. They continued to receive further marketing emails subsequently. In response to the DPC's investigation of the complaint, Ryanair explained that due to a technical issue within Adobe Campaign (which Ryanair uses to run its email campaigns) that affected unsubscribe / opt-out requests, customers received the 'error message' referred to in the complaint.

The DPC had issued a letter of formal warning to Ryanair in April 2013 in respect of two previous complaints. Accordingly, the DPC decided to initiate prosecution action on foot of this new complaint.

At Dublin Metropolitan District Court on 17 December 2020, Ryanair pleaded guilty to two charges under Regulation 13(1), 13(12)(c) and 13(13)(a)(i) of the ePrivacy Regulations. The District Court applied the Probation of Offenders Act 1907, ordering a dismissal of the matter on the basis of a charitable donation of €5,000 to Little Flower Penny Dinners. Ryanair agreed to discharge the DPC's legal costs.

## Prosecution of Windsor Motors Unlimited Company

In September 2019, the DPC received three complaints from individuals regarding unsolicited marketing text messages they had received from Windsor Motors Unlimited Company. In response to the DPC's investigation of the first and second complaint, Windsor Motors explained that the former customers had provided their contact details to the company in 2008 when service work was carried out on their vehicles. It admitted that the first time that the mobile phone numbers of those former customers were targeted with marketing messages was in September 2019 – 11 years later. It accepted the DPC's view that it had not kept any marketing consent that it may have obtained in 2008 up-to-date in accordance with the twelve-month rule set out in Regulation 13(11)(d) of the ePrivacy Regulations. In respect of the third complaint, Windsor Motors indicated that it had received the former prospective customer's request to opt-out in 2017 and this opted-out request was actioned. However, almost a year later due to an error when introducing a new IT system the individual's details were inadvertently opted back in to marketing.

The DPC had issued a letter of formal warning to Windsor Motors in July 2017 in respect of a previous complaint received from the prospective customer referred to above. Accordingly, the DPC decided to initiate prosecution action on foot of these new complaints.

At Dublin Metropolitan District Court on 17 December 2020, Windsor Motors pleaded guilty to one offence under Regulation 13(1) and 13(13)(a)(i) of the ePrivacy Regulations. The District Court applied the Probation of Offenders Act 1907, ordering a dismissal of the matter on the basis of a charitable donation of €1,000 to Little Flower Penny Dinners. Windsor Motors agreed to discharge the DPC's legal costs.

# Appendix 4: Twitter International Company — Inquiry (IN-19-1-1) under Section 110 of the Data Protection Act 2018

## Twitter International Company – Inquiry (IN-19-1-1) under Section 110 of the Data Protection Act 2018

This inquiry, which was commenced by the DPC on 22 January 2019, examined whether Twitter International Company ('TIC') had complied with its obligations under the GDPR in respect of its notification, on 8 January 2019, of a personal data breach ('the Breach') to the DPC. The Breach, which occurred at TIC's processor, Twitter Inc., related to a bug whereby if a Twitter user with a protected account, using Twitter for Android, changed their email address, their account would become unprotected.

The purpose of the inquiry was to examine certain issues surrounding TIC's notification of the Breach, as distinct from examining the substantive issues relating to the Breach itself. In this regard, the inquiry examined whether TIC had complied with Article 33(1) of the GDPR, in terms of the timing of its notification of the Breach to the DPC, and whether it had complied with Article 33(5) of the GDPR, in respect of its documenting of the Breach.

### Facts leading to Inquiry

TIC's notification of the Breach to the DPC, which led to the inquiry, took place on 8 January 2019 by way of a completed Cross-Border Breach Notification Form. In the Form, TIC outlined that it had received a bug report through its 'Bug Bounty Program' to the effect that "... *if a Twitter user with a protected account, using Twitter for Android, changed their email address the bug would result in their account being unprotected.*" The Breach Notification Form further outlined, in respect of the reasons for not notifying the DPC within the 72 hour period required by Article 33(1), that

*"The severity of the issue — and that it was reportable — was not appreciated until 3 January 2018 [sic] at which point Twitter's incident response process was put into action."*

The Breach Notification Form identified the potential impact for affected individuals, as assessed by TIC, as being "significant". In a further follow up notification form submitted by TIC to the DPC on 16 January 2019, TIC confirmed the number of affected EU and EEA users was 88,726. It also confirmed that the bug which had led to the Breach "*was introduced on 4 November 2014 and fully*

*remediated by 14 January 2019*" and that, as it was not possible to identify all impacted persons (due to retention limitations on available logs), it believed that additional people were impacted during that period.

### Inquiry under Section 110, Data Protection Act 2018

As it appeared from the Breach Notification Form submitted by TIC that a period of in excess of 72 hours had elapsed from when TIC (as controller) became aware of the Breach, and having regard to the number of affected data subjects, the DPC commenced the inquiry, under Section 110(1) of the Data Protection Act 2018 ('the 2018 Act') for the purpose of examining whether TIC had complied with its obligations under Article 33, and more particularly, with its obligations under Article 33(1) and Article 33(5).

### Compliance with Article 33(1)

In assessing TIC's compliance with Article 33(1), the DPC examined the timeline relating to TIC's notification of the Breach to the DPC. In this regard, TIC confirmed to the DPC during the inquiry that notice of the bug was first received on 26 December 2018 by an external contractor engaged by Twitter to search for and assess bugs via the Bug Bounty Program, a program whereby anyone may submit a bug report. TIC further confirmed that, on 29 December 2018, the external contractor, having assessed the bug report, communicated the outcome of its assessment to Twitter Inc. TIC further confirmed that Twitter Inc. then commenced its internal Information Security review of the issue on 2 January 2019, and that, following this, on 3 January 2019, Twitter Inc. assessed the incident as being a potential personal data breach under the GDPR and determined that the incident response plan should be initiated. TIC also confirmed that, following this (on 4 January 2019), an Incident Management (IM) ticket was opened but that, due to a failure (by Twitter Inc. staff) to follow a particular step in the incident management process as it was prescribed, the Data Protection Officer (DPO) for TIC was not added to the IM ticket, which resulted in a delay in the DPO (and, therefore TIC as controller) being notified of the issue.

TIC confirmed to the DPC that it was first made aware of the Breach by its processor, Twitter Inc., on 7 January 2019. It submitted that, in circumstances where it had notified the Breach to the DPC on 8 January 2019, it had complied with the requirement to notify under Article 33(1).

Having considered the timeline in relation to TIC's notification of the Breach, the DPC formed the view that, notwithstanding TIC's actual awareness of the Breach on 7 January 2019, TIC ought to have been aware of the Breach at an earlier point in time and, in this particular case, at the latest by 3 January 2019. In forming this view, the DPC took account of the fact that 3 January 2019 was the date on which Twitter Inc. first assessed the incident as being a potential personal data breach but that, for reasons of the ineffectiveness of the process in the particular circumstances that transpired and/or a failure by Twitter Inc. staff to follow its own incident management process, a delay occurred in the DPO being informed of the potential data breach, which, in turn, resulted in TIC (as controller) not being notified of the Breach until 7 January 2019.

In making this finding, the DPC also took account of an earlier delay that had arisen in the period from when the incident was first notified to Twitter Inc. by its external contractor on 29 December 2018 to when Twitter Inc. commenced its Information Security review of the issue on 2 January 2019. During the course of the inquiry, TIC confirmed to the DPC that this delay had arisen "*due to the winter holiday schedule*" (in circumstances where three of the four days in question were holidays – a weekend and New Years Day) which had led to the issue not being identified and escalated as it should have been. However, the DPC did not accept this delay as being reasonable, in particular in circumstances where potential risks to the data protection and privacy rights of data subjects cannot be neglected, even for a limited period of days, simply because it is an official holiday day/period or a weekend and given that Twitter's services do not cease to operate during such times.

As outlined in the Decision, the alternative application of Article 33(1), and that which was suggested by TIC during the inquiry, whereby the performance by a controller of its obligation to notify is, essentially, contingent upon the compliance by its processor with its obligations under Article 33(2), would undermine the effectiveness of the Article 33 obligations on a controller. Such an approach would be at odds with the overall purpose of the GDPR and the intention of the EU legislator.

## Compliance with Article 33(5)

In assessing TIC's compliance with Article 33(5), the DPC carried out a review of the documentation provided by TIC during the course of the inquiry, and in which it claimed that it had documented the Breach.

In doing so, the DPC found that TIC had not complied with Article 33(5). This was in circumstances where the documentation maintained by TIC – either individually or collectively – did not comprise a record, or document,

of, specifically, a 'personal data breach' within the terms of Article 33(5), but rather was documentation of a more generalised nature, including reports and internal communications, that were generated in the course of TIC's management of the incident.

In addition, the DPC found that the documentation maintained by TIC in relation to the Breach did not contain sufficient information so as to enable the question of TIC's compliance with the requirements of Article 33 to be verified, as is required by Article 33(5). In particular, the DPC found that the documentation, which TIC had identified as being the primary record in which it had documented the facts, effects and remedial action taken in respect of the Breach, was deficient in circumstances where it did not contain all material facts relating to the notification of the Breach to the DPC. In particular, the documentation did not contain any reference to the issues that had led to the delay in TIC being notified of the Breach by its processor, nor did it address how TIC had assessed the risk to affected users arising from the Breach. The DPC also found that the deficiencies in the documentation furnished by TIC as a record of the Breach were further demonstrated by the fact that, during the inquiry, the DPC had to raise multiple queries in order to gain clarity concerning the facts surrounding the notification of the Breach.

## Process under Article 60 and Article 65 GDPR

On 22 May 2020, the DPC issued a draft of its Decision ('the Draft Decision') to the other concerned supervisory authorities ('CSAs') for their opinion in accordance with the process under Article 60 GDPR. The Draft Decision set out the DPC's proposed finding of infringements under Articles 33(1) and 33(5) and its proposal to impose an administrative fine. Under Article 60(4), CSAs have a period of four weeks within which to express a relevant and reasoned objection to a draft decision.

A number of CSAs expressed objections in relation to aspects of the Draft Decision, including objections on the basis that the DPC should, as part of its inquiry, have considered other provisions of the GDPR; objections relating to non-substantive matters, such as the designation of the role of the respondent under investigation (TIC) and the competence of the DPC, as Lead Supervisory Authority, to deal with the matter; and objections in relation to the administrative fine which the DPC proposed.

Having considered the objections raised, and having endeavoured to reach consensus with the CSAs, the DPC was unable to follow the objections in an amended Draft Decision. On this basis, the DPC referred the matter to the European Data Protection Board (EDPB) for determination pursuant to the Article 65 dispute resolution mechanism. The EDPB commenced the Article 65 procedure on 8 September 2020. Having adopted its binding decision under Article 65(1)(a) ('the EDPB Decision') on 9 November 2020, the EDPB notified same to the DPC on 17 November 2020. Thereafter, pursuant to Article 65(6), the DPC was required to adopt its final

decision on the basis of the EDPB Decision “*without undue delay and at the latest by one month after the Board has notified its decision.*”

Article 65(1)(a) provides that the EDPB’s binding decision under Article 65 “...shall concern all the matters which are the subject of the relevant and reasoned objection, in particular whether there is an infringement of [the GDPR]”. In this regard, in terms of the EDPB’s assessment of the objections raised by the CSAs in this case, the EDPB Decision found that certain of the objections raised were not ‘relevant and reasoned’ within the meaning of Article 4(24) on the basis that they did not provide a clear demonstration as to the significance of the risks posed by the Draft Decision as regards the fundamental rights and freedoms of data subjects and, where applicable, the free flow of personal data within the European Union (as is required by Article 4(24)).

With regard to a number of other objections raised, and which had been made on the basis that the DPC should have considered further infringements under other provisions of the GDPR (specifically, Articles 5(1)(f), 5(2), 24 and 32), whilst the EDPB found that these objections were relevant and reasoned under Article 4(24), it determined that it could not, on the basis of the factual elements in the Draft Decision or in the objections themselves, establish the existence of such further (or alternative) infringements.

Finally, and with regard to the objections raised by CSAs in respect of the administrative fine imposed, the EDPB found that certain of these objections were relevant and reasoned under Article 4(24). As such, the EDPB issued a binding direction to the DPC to re-assess the elements that it had relied upon to calculate the amount of the fine (under Article 83(2) GDPR) and to amend its Draft Decision by increasing the level of the fine. (*For further detail on the EDPB Decision, please refer to the EDPB website where the EDPB Decision is published.*)

## Decision under Section 111 of 2018 Act

The DPC adopted its final Decision (‘the Decision’) on the basis of the EDPB Decision, pursuant to Article 60(7) in conjunction with Article 65(6), on 9 December 2020. In finding that TIC had infringed both Article 33(1) and Article 33(5), the DPC imposed an administrative fine of \$500,000 (estimated for this purpose at €450,000) which reflected an increase in the level of the proposed administrative fine set out in the Draft Decision, in accordance with the direction of the EDPB. In determining this fine, the DPC ensured, as it is required to do under Article 83(1) GDPR, that the fine imposed was effective, proportionate and dissuasive. In this regard, in deciding to impose a fine and in determining the amount of same, the DPC considered the full range of factors under Article 83(2) GDPR in the context of the circumstances of this particular case. In doing so, the DPC had particular regard to the nature, gravity and duration of the infringements concerned, taking account of the nature, scope and purpose of the processing and the number of data subjects affected. The DPC also had regard to the negligent character of the infringements. In setting the fine, the DPC also took account of certain other factors, including the steps that had been taken by Twitter Inc. to rectify the bug.

In reaching its decision in this case, the DPC also highlighted that controller compliance with the obligations under Article 33(1) and Article 33(5) is of central importance to the overall functioning of the supervision and enforcement regime performed by data protection authorities.

## Confirmation by Circuit Court of decision to impose administrative fine

Under Section 143 of the Data Protection Act 2018 (2018 Act), the DPC is required to make an application to the Circuit Court for confirmation of its decision to impose an administrative fine. Such application can only be made when the timeframe (of 28 days), as prescribed by Section 142(1) of the 2018 Act, for an appeal of the decision by the controller or processor concerned has expired. At the time of publication, the timeframe for appeal having expired, the DPC is preparing to make an application to the Circuit Court, under Section 143 of the 2018 Act, for confirmation of its decision in respect of the administrative fine.

# Appendix 5:

## Litigation concerning Standard Contractual Clauses

### ***Data Protection Commissioner v. Facebook Ireland Limited and Maximilian Schrems [Record No. 2016/ 4809 P]***

On 31 May 2016, the DPC (then the Data Protection Commissioner) commenced proceedings in the Irish High Court seeking a reference to the Court of Justice of the European Union (**CJEU**) in relation to the validity of "standard contractual clauses" (**SCCs**). SCCs are a mechanism, established by a number of EU Commission decisions, under which, at present, personal data can be transferred from the EU to the US. The DPC took these proceedings in accordance with the procedure set out by the CJEU in its 6 October 2015 judgment (which also struck down the Safe Harbour EU to US personal data transfer regime). The CJEU ruled that this procedure (involving seeking a reference to the CJEU) must be followed by an EU data protection authority (DPA) where a complaint which is made by a data subject concerning an EU instrument, such as an EU Commission decision, is considered by the EU DPA to be well founded.

#### **(1) Background**

The proceedings taken by the DPC have their roots in the original complaint made in June 2013 to the DPC about Facebook by Mr Maximillian Schrems concerning the transfer of personal data by Facebook Ireland to its parent company, Facebook Inc., in the US. Mr Schrems was concerned that, because his personal data was being transferred from Facebook Ireland to Facebook Inc., his personal data was then being accessed (or was at risk of being accessed) unlawfully by US state security agencies. Mr Schrems' concerns arose in light of the disclosures by Edward Snowden regarding certain programmes said to be operated by the US National Security Agency, most notably a programme called "PRISM". The DPC had declined to investigate that complaint on the grounds that it concerned an EU Commission decision (which established the Safe Harbour regime for transferring data from the EU to the US) and on that basis he was bound under existing national and EU law to apply that EU Commission decision. Mr Schrems brought a judicial review action against the decision not to investigate his complaint and that action resulted in the Irish High Court making a reference to the CJEU, which in turn delivered its decision on 6 October 2015.

#### **(2) CJEU procedure on complaints concerning EU Commission decisions**

The CJEU ruling of 6 October 2015 made it clear that where a complaint is made to an EU DPA which involves a claim that an EU Commission decision is incompatible with protection of privacy and fundamental rights and freedoms, the relevant DPA must examine that complaint even though the DPA cannot itself set aside or disapply that decision. The CJEU ruled that if the DPA considers the complaint to be well founded, then it must engage in legal proceedings before the national Court and, if the national Court shares those doubts as to the validity of the EU Commission decision, the national Court must then make a reference to the CJEU for a preliminary ruling on the validity of the EU Commission decision in question. As noted above, the CJEU in its judgment of 6 October 2015 also struck down the EU Commission decision which underpinned the Safe Harbour EU to US data transfer regime.

#### **(3) DPC's draft decision**

Following the striking down of the Safe Harbour personal data transfer regime, Mr Schrems reformulated and resubmitted his complaint to take account of this event and the DPC agreed to proceed on the basis of that reformulated complaint. The DPC then examined Mr Schrems' complaint in light of certain articles of the EU Charter of Fundamental Rights (the Charter), including Article 47 (the right to an effective remedy where rights and freedoms guaranteed by EU law are violated). In the course of investigating Mr Schrems' reformulated complaint, the DPC established that Facebook Ireland continued to transfer personal data to Facebook Inc. in the US in reliance in large part on the use of SCCs. Arising from her investigation of Mr Schrems' reformulated complaint the DPC formed the preliminary view (as expressed in a draft decision of 24 May 2016 and subject to receipt of further submissions from the parties) that Mr Schrems' complaint was well founded. This was based on the DPC's draft finding that a legal remedy compatible with Article 47 of the Charter is not available in the US to EU citizens whose data is transferred to the US where it may be at risk of being accessed and processed by US State agencies for national security purposes in a manner incompatible with Articles 7 and 8 of the Charter. The DPC also formed the preliminary view that SCCs do not address this lack of an effective Article 47-compatible remedy and that SCCs themselves are therefore likely to offend against Article

47 insofar as they purport to legitimise the transfer of the personal data of EU citizens to the US.

#### (4) The Proceedings and the Hearing

The DPC therefore commenced legal proceedings in the Irish High Court seeking a declaration as to the validity of the EU Commission decisions concerning SCCs and a preliminary reference to the CJEU on this issue. The DPC did not seek any specific relief in the proceedings against either Facebook Ireland or Mr Schrems. However, both were named as parties to the proceedings in order to afford them an opportunity (but not an obligation) to fully participate because the outcome of the proceedings would impact on the DPC's consideration of Mr Schrems' complaint against Facebook Ireland. Both parties chose to participate fully in the proceedings. Ten interested third parties also applied to be joined as *amicus curiae* ("friends of the court") to the proceedings and the Court ruled four of those ten parties (the US Government, BSA The Software Alliance, Digital Europe and EPIC (Electronic Privacy Information Centre)) should be joined as *amici*.

The hearing of the proceedings before Ms Justice Costello in the Irish High Court (Commercial Division) took place over 21 days in February and March 2017 with judgment being reserved at the conclusion of the hearing. In summary, legal submissions were made on behalf of: (i) each of the parties, being the DPC, Facebook Ireland and Mr Schrems; and (ii) each of the "friends of the Court", as noted above. The Court also heard oral evidence from a total of five expert witnesses on US law, as follows:

- Ms Ashley Gorski, expert witness on behalf of Mr Schrems;
- Professor Neil Richards, expert witness on behalf of the DPC;
- Mr Andrew Serwin, expert witness on behalf of the DPC;
- Professor Peter Swire, expert witness on behalf of Facebook; and
- Professor Stephen Vladeck, expert witness on behalf of Facebook.

In the interim period between the conclusion of the trial and the delivery of the judgment on 3 October 2017 (see below), a number of updates on case law and other developments were provided by the parties to the Court.

#### (5) Judgment of the High Court

Judgment was delivered by Ms Justice Costello on 3 October 2017 by way of a 152 page written judgment. An executive summary of the judgment was also provided by the Court.

In the judgment, Ms Justice Costello decided that the concerns expressed by the DPC in her draft decision of 24 May 2016 were well-founded, and that certain of the issues raised in these proceedings should be referred to the CJEU so that the CJEU could make a ruling as to the validity of the EU Commission decisions which established SCCs as a method of carrying out personal

data transfers. In particular the Court held that the DPC's draft findings as set out in her draft decision of 24 May 2016 that the laws and practices of the US did not respect the right of an EU citizen under Article 47 of the Charter to an effective remedy before an independent tribunal (which, the Court noted, applies to the data of all EU data subjects whose data has been transferred to the US) were well-founded.

In her judgment of 3 October 2017, Ms. Justice Costello also decided that, as the parties had indicated that they would like the opportunity to be heard in relation to the questions to be referred to the CJEU, she would list the matter for submissions from the parties and then determine the questions to be referred to the CJEU. The parties to the case, along with the *amicus curiae* made submissions to the Court, amongst other things, on the questions to be referred, on 1 December 2017 and on 16, 17 and 18 January 2018. During these hearings, submissions were also made on behalf of Facebook and the US Government as to "errors" which they alleged had been made in the judgment of 3 October 2017. The Court reserved its judgment on these matters.

#### (6) Questions to be referred to the CJEU

On 12 April 2018, Ms. Justice Costello notified the parties of her Request for a Preliminary Ruling from the CJEU pursuant to Article 267 of the TFEU. This document sets out the 11 specific questions to be referred to the CJEU, along with a background to the proceedings.

On the same date, Ms Justice Costello also indicated that she had made some alterations to her judgment of 3 October 2017, specifically to paragraphs 175, 176, 191, 192, 207, 213, 215, 216, 220, 221 and 239. During that hearing, Facebook indicated that it wished to consider whether it would appeal the decision of the High Court to make the reference to the CJEU and if so, seek a stay on the reference made by the High Court to the CJEU. On that basis, the High Court listed the matter for 30 April 2018.

When the proceedings came before the High Court on 30 April 2018, Facebook applied for a stay on the High Court's reference to the CJEU pending an appeal by it against the making of the reference. Submissions were made by the parties in relation to Facebook's application for a stay.

On 2 May 2018, Ms. Justice Costello delivered her judgment on the application by Facebook for a stay on the High Court's reference to the CJEU. In her judgment, Ms Justice Costello refused the application by Facebook for a stay, holding that the least injustice would be caused by the High Court refusing any stay and delivering the reference immediately to the CJEU.

#### (7) Appeal to the Supreme Court

On 11 May 2018, Facebook lodged an appeal, and applied for leave to appeal to the Supreme Court, against the judgments of 3 October 2017, the revised judgment of 12 April 2018 and the judgment of 2 May 2018 refusing

a stay. Facebook's application for leave to appeal to the Supreme Court was heard on 17 July 2018. In a judgment delivered on 31 July 2018, the Supreme Court granted leave to Facebook allowing it to bring its appeal in the Supreme Court but leaving open the question as to what was the nature of the appeal which was allowed to be brought to the Supreme Court. During late 2018, there were several procedural hearings in the Supreme Court in preparation for the substantive hearing. The substantive hearing of the appeal took place over 21, 22 and 23 January 2018 before a five judge Supreme Court panel composed of the Chief Justice – Mr Justice Clarke, Mr Justice Charleton, Ms Justice Dunne, Ms Justice Finlay Geoghegan and Mr Justice O'Donnell. Oral arguments were made on behalf of Facebook, the DPC, the US Government and Mr Schrems. The central questions arising from the appeal related to whether, as a matter of law, the Supreme Court could revisit the facts found by the High Court relating to US law. This arose from allegations by Facebook and the US Government that the High Court judgment, which underpinned the reference made to the CJEU, contained various factual errors concerning US law.

On 31 May 2019 the Supreme Court delivered its main judgment, which ran to 77 pages. In summary, the Supreme Court dismissed Facebook's appeal in full. In doing so, the Supreme Court decided that:

- It was not open to it as a matter of Irish and EU law to entertain any appeal against a decision of the High Court to make a reference to the CJEU. Neither was it open to the Supreme Court to entertain any appeal in relation to the terms of such a reference (i.e. the specific questions which the High Court had referred to the CJEU). The Supreme Court decided that the issue of whether to make a reference to the CJEU is a matter solely for the Irish High Court. Therefore it was not appropriate for the Supreme Court to consider, in the context of Facebook's appeal, the High Court's analysis which led to the decision that it shared the concerns of the DPC in relation to the validity of the SCC decision. This was because this issue was inextricably linked to the High Court's decision to make a reference to the CJEU and it was not open to Facebook to pursue this as a point of appeal.
- However it was open to the Supreme Court to consider whether the facts found by the High Court (i.e. those facts which underpinned the reference made to the CJEU) were sustainable by reference to the evidence which had been placed before the High Court, or whether those facts should be overturned.
- Insofar as Facebook disputed certain key issues of fact which had been found by the High Court concerning US law, on the basis of the expert evidence before the High Court, the Supreme Court had not identified any findings of fact which were unsustainable. Accordingly, the Supreme Court did not overturn any of the facts found by the High Court. Instead the Supreme Court was of the view that the criticisms which Facebook had made of the High Court judgment concerned the proper characterisation of the underlying facts rather than the actual facts.

## **(8) Hearing before the CJEU**

The CJEU (Grand Chamber) held an oral hearing in respect of the reference made to it by the Irish High Court on 9 July 2019. The CJEU sat with a composition of 15 judges, including the President of the CJEU, Judge Koen Lenaerts. The appointed Judge Rapporteur was Judge Thomas von Danwitz. The Advocate General assigned to the case was Henrik Saugmandsgaard Øe.

At the hearing, the DPC, Mr Schrems and Facebook made oral submissions before the CJEU. The four parties who were joined as *amicus curiae* ("friends of the court") to the case before the Irish Court (the USA, EPIC, BSA Business Software Alliance Inc. and Digital Europe) were also permitted to make oral submissions. In addition, the European Parliament, the EU Commission and a number of Member States (Austria, France, Germany, Ireland, Netherlands, and the UK) who each intervened in the proceedings also made oral submissions at the hearing before the CJEU. Additionally, at the invitation of the CJEU, the European Data Protection Board (EDPB) addressed the CJEU on specific issues.

## **(9) Opinion of the Advocate General**

The Opinion of Advocate General Saugmandsgaard Øe (the AG) was delivered on 19 December 2019.

In this Opinion, as preliminary matters, the AG noted that the DPC had brought proceedings in relation to Mr Schrems' complaint before the national referring Court in accordance with paragraph 65 of the CJEU's judgment of 6 October 2015 (as described further above). The AG also found that the request for a preliminary ruling was admissible.

In relation to the questions referred to the CJEU by the Irish High Court, the AG expressly limited his consideration to the validity of the EU Commission Decision underlying the SCCs (SCCs Decision). At the outset, the AG noted that his analysis in the Opinion was guided by the desire to strike a balance between the need to show a reasonable degree of pragmatism in order to allow interaction with other parts of the world and the need to assert the fundamental values recognised in the legal orders of the EU, its Member States and the Charter of Fundamental Rights. He was also of the view that the SCCs Decision must be examined with reference to the provisions of the GDPR (as opposed to the Data Protection Directive (Directive 95/46)) in line with Article 94(2) GDPR and the AG also noted that the relevant provisions of the GDPR essentially reproduce the corresponding provisions of the Data Protection Directive.

The AG considered that EU law applies to a transfer of personal data from a Member State to a third country where that transfer forms part of a commercial activity. In this regard, the AG's view was that EU law applies to a transfer of this nature regardless of whether the personal data transferred may be processed by public authorities of that third country for the purpose of protecting national security of that country. As regards the nature of the SCCs, the AG opined that the SCCs represent a general mechanism applicable to transfers irrespec-

tive of the third country of destination and the level of protection guaranteed there.

As regards the test for the level of protection which is required in relation to the safeguards (which may be provided by SCCs) contemplated by Article 46 of the GDPR where personal data is being transferred out of the EU to a third country which does not have an adequacy finding, the AG's opinion was that the level of protection as offered by such safeguards must be essentially equivalent to that offered to data subjects in the EU by the GDPR and the Charter of Fundamental Rights. As such, the requirements of protection of fundamental rights guaranteed by the Charter do not vary according to the legal basis for the data transfer.

Following a detailed examination of the nature and content of the SCCs, the AG concluded that the SCCs Decision was not invalid with reference to the Charter. In his view, because the purpose of the SCCs was to compensate for any deficiencies in the protection of personal data offered by the third country, the validity of the SCCs Decision could not be dependent on the level of protection in the third country. Rather the question of validity must be evaluated by reference to the soundness of the safeguards offered by the SCCs to remedy the deficiencies in protection in the third country. This evaluation must also take account of the safeguards consisting of the powers of supervisory authorities under the GDPR. As the SCCs place responsibility on the controller (the exporter), and in the alternative supervisory authorities, this meant that transfers must be assessed on a case by case basis by the controller, and in the alternative by the supervisory authority, to assess whether the laws in the third country were an obstacle to having an adequate level of protection for the transferred data, such that data transfers must be prohibited or suspended.

The AG then went on to consider the nature of the obligations on the controller carrying out the export of the personal data, which included, according to the AG, a mandatory obligation to suspend a data transfer or terminate a contract with the importer if the importer could not comply with the provisions of the SCCs. The AG also considered the obligations on the importer in this regard and made certain observations about the nature of the examination of the laws of the third country which should be carried out by the exporter and the importer.

The AG also referred to the rights of data subjects who believe there has been a breach of the SCC clauses to complain to supervisory authorities, and went on to consider what he considered the role of the supervisory authority was in this context. In essence, the AG considered that where, following an examination, a supervisory authority considers that data transferred to a third country does not benefit from appropriate protection because the SCCs are not complied with, adequate measures should be taken by the authority to remedy this illegality, if necessary by ordering suspension of the transfer. The AG noted the DPC's submissions that the power to suspend transfers could only be exercised on a case by case basis and would not address systemic issues arising from an adequate lack of protection in a third country. On this point, the AG pointed to the

practical difficulties linked to a legislative choice to make supervisory authorities responsible for ensuring data subjects' rights are observed in the context of transfers or data flows to a specific recipient but said that those difficulties did not appear to him to render the SCC Decision invalid.

Although noting that the question as to the validity of the Privacy Shield was not explicitly referred to the CJEU by the Irish High Court, the AG considered that some of the questions raised by the Irish High Court indirectly raised the validity of the finding of adequacy which the EU Commission made in respect of the Privacy Shield. The AG considered that it would be premature for the Court to rule on the validity of the Privacy Shield in the context of this reference although he noted that answers to the questions raised by the Irish High Court in relation to the Privacy Shield could ultimately be helpful to the DPC later in determining whether the transfers in question should actually be suspended because of an alleged absence of appropriate safeguards. However the AG also referred to the possibility that the DPC could in the subsequent examination of Mr Schrems' complaint, following the delivery of the Court's judgment, decide that it could not determine the complaint unless the CJEU first ruled on whether the existence of the Privacy Shield itself was an obstacle to the DPC exercising the power to suspend the transfers in question. The AG noted that in such circumstances, if the DPC had doubts about the validity of the Privacy Shield, it would be open to the DPC to bring the matter before the Irish Court again in order to seek that another reference on this point be made to the CJEU.

However, despite the AG taking the position that the Court should, in the context of this reference, refrain from ruling on the validity of the Privacy Shield in its judgment, he went on to express, in the alternative, some "non-exhaustive observations" on the effects and validity of the Privacy Shield decision. These observations were set out over approximately 40 pages of detailed analysis, including an analysis of the scope of what the "essential equivalence" of protection in a third party state involved, the possible interferences with data subject rights in relation to data transferred to the US as posed by national intelligence agencies, the necessity and proportionality of such interferences and the laws and practices of the US, including those relating to the question of whether there is an effective judicial remedy in the US for persons whose data has been transferred to the US and whose data protection rights have been subject to interferences by the US intelligence agencies. Having carried out this analysis, the AG ultimately concluded by expressing doubts as to the conformity of the Privacy Shield with provisions of EU law.

## (10) Judgment of the CJEU

The CJEU delivered its judgment on 16 July 2020.

In summary:

- The judgment addressed a number of points applicable to transfers generally; amongst other things, the court affirmed, as a core principle of EU law, the

proposition that, when an EU citizen's personal data is transferred to a third country, he or she must be afforded a level of protection in respect of their personal data that is essentially equivalent to that guaranteed within the EU; importantly, the Court also clarified that that proposition holds true irrespective of the legal mechanism deployed to justify a given transfer.

- The CJEU upheld the validity of Commission Decision 2010/87/EU, being a decision by which the EU Commission adopted the SCCs. It follows that the SCCs remain available for use by controllers and processors in connection with transfers to third countries, subject to compliance with certain key points of principle articulated by the Court in the course of its judgment.
- In that regard, the CJEU clarified the nature and extent of the obligations to which data exporters — and national DPAs — are subject in any case where SCCs are relied on to justify data transfers to a third country.
- In particular, the Court outlined the steps to be taken by controllers, prior to engaging in data transfers under the SCCs, to verify, on a case-by-case basis and, where appropriate, in collaboration with the data importer, whether the law of the third country to which the data is to be transferred ensures adequate protection under EU law.
- Equally, the Court confirmed that, if, upon investigation, a national DPA concludes that a data subject whose personal data have been transferred to a third country is not in fact afforded an adequate level of protection in that country, the national supervisory authority must, as a matter of EU law, take appropriate action to remedy any findings of inadequacy and, to that end, exercise one or more of the corrective measures identified in 58(2) of the GDPR.
- A good deal of the Court's analysis was directed to an assessment of the protections afforded to EU citizens in the context of EU-US data transfers. In that regard, the Court found that, while the domestic law of the US imposes certain limitations on US public authorities' right of access to, and use of, transferred data in particular contexts, those limitations do not provide a level of protection essentially equivalent to that required by EU law.
- Against that backdrop, the Court held that the decision by which the EU Commission adopted the "Privacy Shield" arrangements for EU-US data transfers, was invalid. More generally, the judgment may also be read as sounding, at the very least, a strong note of caution in relation to the use of SCCs for data transfers to the US,

## Points applicable to transfers generally

*Public authority access to transferred data for public security, defence and State security purposes*

The first substantive issue addressed by the Court saw it rejecting the suggestion that public authority access to transferred data for the purposes of public security, defence and State security falls outside the scope of the

GDPR. On that score, the Court was emphatic in terms of the confirmation given (at paragraph 89 of the judgment) that the GDPR "*applies to the transfer of personal data for commercial purposes by an economic operator established in a Member State to another economic operator established in a third country, irrespective of whether, at the time of that transfer or thereafter, that data is liable to be processed by the authorities of the third country in question for the purposes of public security, defence and State security.*"

## The level of protection required

At paragraph 95 of the judgment, the Court noted that Recital 107 of the GDPR states that, where "*a third country, a territory or a specified sector within a third country ... no longer ensures an adequate level of data protection. ... the transfer of personal data to that third country ... should be prohibited unless the requirements [of the GDPR] relating to transfers subject to appropriate safeguards ... are fulfilled*".

As regards the level of protection required by the GDPR in the context of transfers to third countries, the Court found, at paragraph 91 of the judgment, and by reference to Articles 46(1) and 46(2)(c) of the GDPR, that, in the absence of an adequacy decision, a controller or processor may transfer personal data to a third country if, and only if:

- (i) the controller or processor has provided 'appropriate safeguards' (which may include the SCCs); and,
- (ii) on condition that *enforceable data subject rights* and *effective legal remedies* are available to data subjects.

Noting that Article 46 does not identify, with specificity, what is meant by the terms "appropriate safeguards", "enforceable rights" and "effective legal remedies", the Court held that, in circumstances where Article 44 provides that 'all provisions [in that chapter] shall be applied in order to ensure that the level of protection of natural persons guaranteed by [that regulation] is not undermined', it follows that the same level of protection must be maintained when personal data is transferred to a third country, irrespective of the legal mechanism under which that transfer takes place (paragraph 92 of the judgment).

Referencing Recital 108, the Court also noted (at paragraph 95 of the judgment), that, in the absence of an adequacy decision, the 'appropriate safeguards' to be put in place by the controller or processor in accordance with Article 46(1) must 'compensate for the lack of data protection in [the] third country' in order to "ensure compliance with data protection requirements and the rights of the data subjects appropriate to processing within the Union".

Accordingly, using the language it had previously deployed in its judgment in the earlier case of *Schrems v. Data Protection Commissioner*, (Case C-362/14, EU:C:2015:650, 6 October 2015), the Court noted, at paragraph 96, that, in circumstances where Chapter V of the GDPR is intended to ensure that the same high level of protection afforded to data subjects within the EU is maintained if and when their data is transferred to a

third country, it follows that, in any case where personal data is being transferred to a third country, the level of protection required is one that is "essentially equivalent" to that which is guaranteed within the European Union".

## The Court's treatment of the SCCs

### Application of the SCCs in practice

At paragraph 126 of its judgment, the Court observed that, while the protections built into the SCCs may facilitate the achievement of a level of protection that meets the "essential equivalence" test in the case of transfers to some third countries, the laws and practices of other third countries may be such as to render the SCCs incapable of achieving that level of protection. The Court expressed this point in the following terms:

*"Therefore, although there are situations in which, depending on the law and practices in force in the third country concerned, the recipient of such a transfer is in a position to guarantee the necessary protection of the data solely on the basis of standard data protection clauses, there are others in which the content of those standard clauses might not constitute a sufficient means of ensuring, in practice, the effective protection of personal data transferred to the third country concerned. That is the case, in particular, where the law of that third country allows its public authorities to interfere with the rights of the data subjects to which that data relates."*

Having pointed out at paragraph 128 of the judgment that the safeguards to be adduced by the controller are not required to have their origin in a particular decision adopted by the EU Commission, the Court went on to note, at paragraph 132, that, in any case where the SCCs cannot, in and of themselves, achieve the level of protection required as a matter of EU law, the controller may add other clauses or adduce additional safeguards to supplement the SCCs.

Taking this a step further, the Court noted, at paragraph 133, that the SCCs are, in essence, a baseline provision, comprising a set of contractual guarantees intended to apply uniformly in all third countries. If and to the extent the SCCs cannot achieve the level of protection required under EU law in the context of transfers to a particular third country, it follows that transfers to that third country may only proceed if supplementary measures are adopted by the controller.

The practical application of these points of principle was addressed in paragraphs 134, 135, 141 and 142 of the judgment. In summary terms, the Court pointed out that, in circumstances where the SCCs cannot be deployed as a "one size fits all" solution, capable of achieving the required standard of protection in the case of all transfers to all third countries, it necessarily follows that an assessment is required to determine (and verify) whether the laws of the third country of destination in fact ensure adequate protection to the standard required by EU law where personal data is transferred under the SCCs, and, if not, whether additional safeguards can be provided by the controller to compensate for any shortfall.

The Court clarified that, in the first instance, such an assessment must be carried out by the controller or processor, with the input of the data's intended recipient, where appropriate. Importantly, the assessment referenced by the Court is one that must be carried out on a case-by-case basis, prior to the commencement of transfers by the controller/processor in question to that third country.

Given their centrality to the Court's analysis, paragraphs 134 and 135 in particular bear setting out in full:

*"134. In that regard, as the Advocate General stated in point 126 of his Opinion, the contractual mechanism provided for in Article 46(2)(c) of the GDPR is based on the responsibility of the controller or his or her subcontractor established in the European Union and, in the alternative, of the competent supervisory authority. It is therefore, above all, for that controller or processor to verify, on a case-by-case basis and, where appropriate, in collaboration with the recipient of the data, whether the law of the third country of destination ensures adequate protection, under EU law, of personal data transferred pursuant to standard data protection clauses, by providing, where necessary, additional safeguards to those offered by those clauses.*

*135. Where the controller or a processor established in the European Union is not able to take adequate additional measures to guarantee such protection, the controller or processor or, failing that, the competent supervisory authority, are required to suspend or end the transfer of personal data to the third country concerned. That is the case, in particular, where the law of that third country imposes on the recipient of personal data from the European Union obligations which are contrary to those clauses and are, therefore, capable of impinging on the contractual guarantee of an adequate level of protection against access by the public authorities of that third country to that data."*

It will be noted that, at paragraph 135, the Court expressly cautioned that, in the case of some third countries, it may well be the case that no amount of supplemental or additional safeguards will be capable of addressing shortfalls in the level of protection available. In such a scenario, the Court's position was very clear: such transfers are not permissible; if the controller/processor nonetheless proceeds, it will be a matter for the relevant DPA to intervene to suspend or otherwise end the transfer of personal data to such third country.

### The role of data protection supervisory authorities

At paragraphs 111 to 113 of the judgment (and again at paragraph 146), the Court emphasised the central role to be played by national DPAs in connection with the regulation of data transfers to third countries conducted under the SCCs. In that regard, the Court noted that, whilst, in the first instance, it is a matter for the relevant controller/processor to perform the assessment described above, the national DPAs must intervene in any case where (i) the SCCs cannot be complied with in the

third country in question, so that the level of protection required by EU law cannot be ensured; and (ii) the controller or processor has not itself suspended or put an end to the transfer.

The Court put the matter in the following terms:

*"111. If a supervisory authority takes the view, following an investigation, that a data subject whose personal data have been transferred to a third country is not afforded an adequate level of protection in that country, it is required, under EU law, to take appropriate action in order to remedy any findings of inadequacy, irrespective of the reason for, or nature of, that inadequacy. To that effect, Article 58(2) of that regulation lists the various corrective powers which the supervisory authority may adopt."*

*"112. Although the supervisory authority must determine which action is appropriate and necessary and take into consideration all the circumstances of the transfer of personal data in question in that determination, the supervisory authority is nevertheless required to execute its responsibility for ensuring that the GDPR is fully enforced with all due diligence."*

*"113. In that regard, as the Advocate General also stated in point 148 of his Opinion, the supervisory authority is required, under Article 58(2)(f) and (j) of that regulation, to suspend or prohibit a transfer of personal data to a third country if, in its view, in the light of all the circumstances of that transfer, the standard data protection clauses are not or cannot be complied with in that third country and the protection of the data transferred that is required by EU law cannot be ensured by other means, where the controller or a processor has not itself suspended or put an end to the transfer."*

### Conclusion re: validity of the SCCs

Having completed its analysis of the SCCs and their application in practice, and having noted that, in principle, they may be utilised (with additional safeguards, where necessary), to achieve the level of protection required by EU law (with appropriate mechanisms available for the suspension of transfers in any case where such protections are compromised), the Court concluded as follows:

*"It follows that the SCC Decision provides for effective mechanisms which, in practice, ensure that the transfer to a third country of personal data pursuant to the standard data protection clauses in the annex to that decision is suspended or prohibited where the recipient of the transfer does not comply with those clauses or is unable to comply with them" (paragraph 148).*

Accordingly, on the basis of the analysis set out in its judgment, the Court was satisfied to confirm that the SCC Decision was valid.

## Privacy Shield and the position in relation to the US

The Court commenced its analysis by recalling that, in principle, public authority access to an individual's personal data with a view to its retention or use constitutes an interference with the fundamental rights enshrined at Articles 7 and 8 of the Charter (see paragraphs 170 and 171 of the judgment).

Whilst noting that such rights are not absolute, the CJEU went on to revisit (at paragraph 174 and subsequent paragraphs) existing principles pursuant to which any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. Reference was also made in this context to the following matters:

- the fact that, subject to the principle of proportionality, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others;
- the fact that the legal basis which permits the interference with those rights must itself define the scope of the limitation on the exercise of the right concerned (paragraph 175); and,
- the fact that, in order to satisfy the requirement of proportionality, the legislation making provision for such interference must lay down clear and precise rules governing the scope and application of the measure in question and imposing minimum safeguards, so that (in the context of data transfers) the persons whose data has been transferred have sufficient guarantees to protect effectively their personal data against the risk of abuse (paragraph 176).

From there, the Court went on to identify certain specific failings associated with a number of identified US law measures, including Section 702 FISA, EO 12333 and PPD-28, before concluding (at paragraph 185) that,

*"... the limitations on the protection of personal data arising from the domestic law of the United States on the access and use by US public authorities of such data transferred from the European Union to the United States, which the Commission assessed in the Privacy Shield Decision, are not circumscribed in a way that satisfies requirements that are essentially equivalent to those required, under EU law, by the second sentence of Article 52(1) of the Charter."*

Separately, the Court noted that the EU Commission's finding in the Privacy Shield Decision — that the US ensures a level of protection essentially equivalent to that guaranteed in Article 47 of the Charter — had been called into question on the grounds, inter alia, that the Privacy Shield Ombudsperson cannot remedy the deficiencies which the EU Commission itself had found in connection with the judicial protection of persons whose personal data is transferred to the US. Having analysed relevant elements of the Ombudsperson arrangements by reference to applicable EU law principles, the Court



ultimately concluded (at paragraph 197) that “*the ombudsperson mechanism ... does not provide any cause of action before a body which offers the persons whose data is transferred to the United States guarantees essentially equivalent to those required by Article 47 of the Charter.*”

Relatedly, the Court noted (at paragraph 191 of its judgment) that in recital 115 of the Privacy Shield Decision, the EU Commission had itself found that “*while individuals, including EU data subjects, ... have a number of avenues of redress when they have been the subject of unlawful (electronic) surveillance for national security purposes, it is equally clear that at least some legal bases that U.S. intelligence authorities may use (e.g. E.O. 12333) are not covered*”. The Court considered that the existence of such a “lacuna” in judicial protection in respect of interferences with intelligence programmes based on [PPD-28] “*makes it impossible to conclude, as the Commission did in the Privacy Shield Decision, that United States law ensures a level of protection essentially equivalent to that guaranteed by Article 47 of the Charter.*”

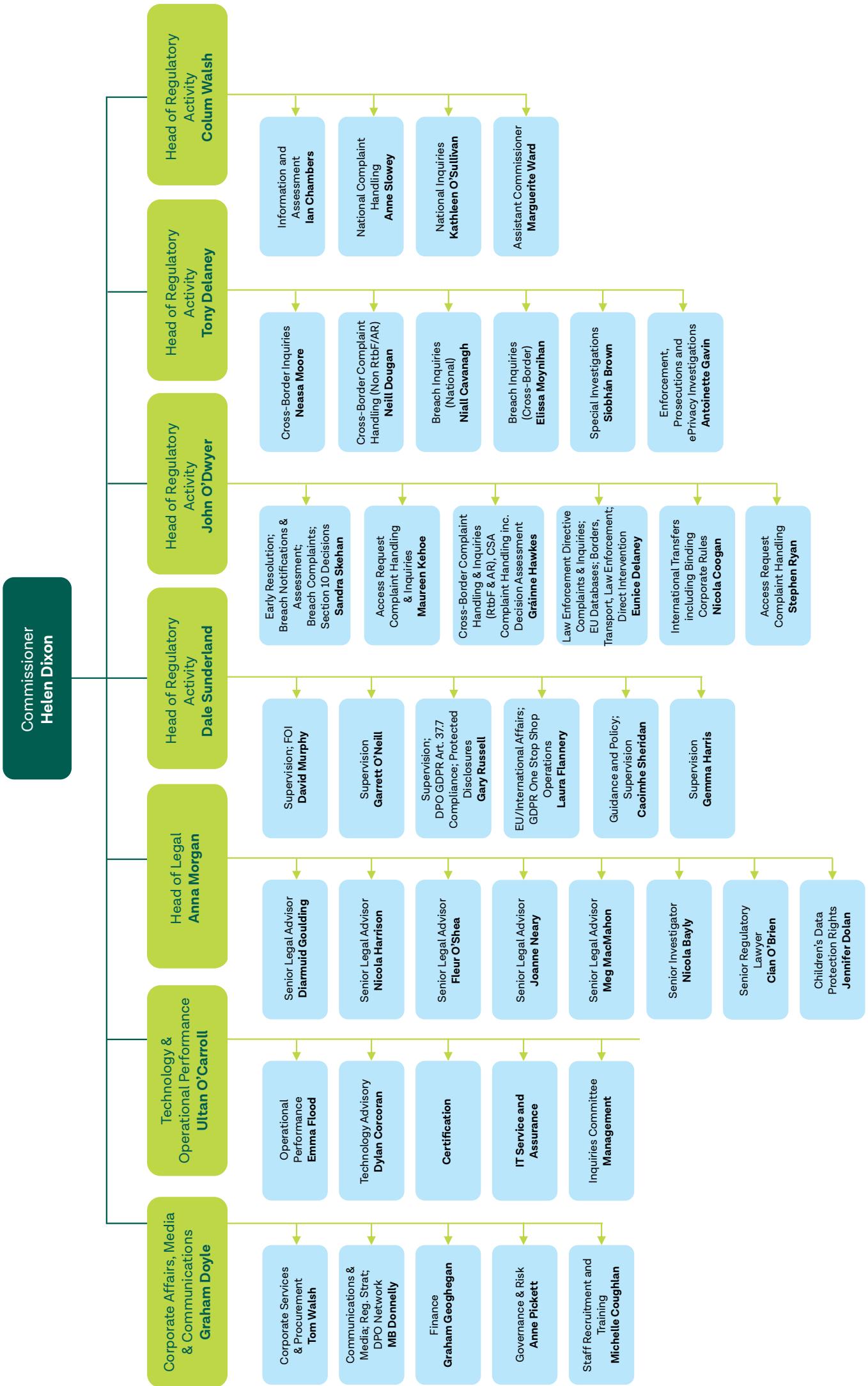
The Court also noted (at paragraph 192) that “*neither PPD-28 nor E.O. 12333 grants data subjects rights actionable in the courts against the US authorities from which it follows that data subjects have no right to an effective remedy.*”

Against that backdrop, the Court held (at paragraph 198) that, in reaching its finding in Article 1(1) of the Privacy Shield Decision, that the US ensures an adequate level of protection for personal data transferred from the Union to organisations in that third country under the EU-US Privacy Shield, the EU Commission had “*disregarded the requirements of Article 45(1) of the GDPR, read in the light of Articles 7, 8 and 47 of the Charter.*” From there, the Court concluded (at paragraph 199) that “[i]t follows that Article 1 of the Privacy Shield Decision is incompatible with Article 45(1) of the GDPR, read in the light of Articles 7, 8 and 47 of the Charter, and is therefore invalid.”

On the basis that Article 1 of the Privacy Shield Decision was “*inseparable from Articles 2 and 6 of, and the annexes to, that decision*”, the Court took the view that the invalidity of Article 1 “*affects the validity of the decision in its entirety.*” Accordingly, the Court concluded (at paragraph 201) that the Privacy Shield Decision as a whole was invalid.

## **Appendix 6: Financial Statement for the Year 1 January to 31 December 2020 and the DPC's Statement of Internal Controls**

The Financial Statement of the Data Protection Commission for the year 1 January to 31 December 2020 and its Statement of Internal Controls for the same period are in preparation by the DPC and will be appended to this report following completion of an audit in respect of 2020 by the Comptroller and Auditor General.



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**An Coimisiún um  
Chosaint Sonraí**  
Data Protection  
Commission

TUARASCÁIL BHLIANTÚIL

2020



An Coimisiún um  
Chosaint Sonrai  
Data Protection  
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# Gluais

AG — Abhcóide Ginearálta

BIIDPA — Údaráis Chosanta Sonraí na Breataine, na hÉireann agus na nOileán

CJEU — Cúirt Bhreithiúnais an Aontais Eorpaigh

CSA — Údarás Maoirseachta Ábhartha

DPA — Údaráis Chosanta Sonraí

DPC — An Coimisiún um Chosaint Sonraí

DPIA — Measúnacht Tionchair Chosanta Sonraí

DPO — Oifigeach Cosanta Sonraí

EDPB — An Bord Eorpach um Chosaint Sonraí

GDPR — An Rialachán Ginearálta maidir le Cosaint Sonraí

IMI — Córas Faisnéise an Mhargaidh Inmheánaigh

LED — An Treoir maidir le Forfheidhmiú an Dlí

LSA — An Príomhúdarás Maoirseachta

OSS — Ionad Ilfhreastail

SCC — Clásail Chonarthacha Chaighdeánacha

SMC — Coiste Bainistíochta Sinsearaí

# Brollach

## Réamhrá

Ba é 2020 an dara bliain iomlán de chur i bhfeidhm an RGCS agus na Treorach maidir le Forfheidhmiú an Dlí (LED).

Sa tuarascáil bhliantúil seo tugtar eolas faoi réimse fairsing na hoibre rialála a rinne an Coimisiún Cosanta Sonraí in 2020 i gcomhlíonadh a róil leathain maidir le cur i bhfeidhm dhlíthe AE maidir le cosaint sonraí agus riomhphríobháideachas a mhaoirsiú agus a rialáil. Le linn na tréimhse sin, lean an Coimisiún Cosanta Sonraí le comhlíonadh agus cuntasacht eagraíochtaí a spreagadh maidir lena n-oibleagáid faoi chreat dlí AE maidir le próiseáil sonraí pearsanta. Go sonrach, chuir an Coimisiún Cosanta Sonraí léirmhínithe chun cinn le bliain anuas maidir le príomhphrionsabail agus ceanglais dhlí an Aontais Eorpaithe maidir le cosaint sonraí trí raon gníomhaíochtaí forfheidhmiúchán agus trí chur i gcrích imeachtaí an Choimisiún Cosanta Sonraí a tosaíodh in 2016 san Ard-Chúirt ag lorg tagairt do Chúirt Bhreithíunaí an Aontais Eorpaithe i ndáil le haistrithe sonraí pearsanta ó AE go SAM. Cé go ndéantar aistrithe sonraí pearsanta ó gach ballstát AE go dtí SAM, chuir an Coimisiún Cosanta Sonraí cion uathúil mar údarás cosanta sonraí maidir le soillíreachta a dhéanamh maidir leis an ghné seo de dhlí AE um chosaint sonraí agus maidir lena cur i bhfeidhm.

## Fiosruithe mórscaíla

Gné cheannláine den RGCS a chur in aonad Threoir AE roimhe sin ná na huirlísi forfheidhmiúchán athchomhairleacha a thairgeann sé le déileáil le cásanna lena mbaineann riosca suntasach d'ábhair shonraí AE, lena n-áirítear cinn a thagann as iompar d'aon ghnó nó iompar neamartach ar thaobh na n-eagraíochtaí de. Dá réir sin, thug an Coimisiún Cosanta Sonraí faoi réimse cásanna lena fháil amach an raibh sáruithe a ndéanamh ar an RGCS agus cad iad na gníomhaíochtaí agus na smachtbhannaí a mbeadh gá leo chun sáruithe ar bith dá leithéid a gheofaí a leighis. Tugadh roinnt d'fhiösürcháin mhórscaíla an Choimisiún Cosanta Sonraí i gcrích in 2020. Tugadh gach fiosrúchán i gcrích le cinneadh mionsonraithe, sainaithint sáruithe ina lán cásanna agus forchur réimse bearta ceartaitheacha lena n-áirítear fineálacha ó mheasúnú ar na sáruithe sin.

B'fhiösürcháin trasteorann iad líon de na fiosrúcháin a cuireadh ar aghaidh in 2020 agus mar sin, faoi mar a cheanglaítear le nós imeachta Airteagal 60 arna leagan síos sa RGCS, tharchuir an Coimisiún Cosanta Sonraí dréachtchinneadh lena bhreithniú ag a chomhúdaráis mhaoirseachta AE sula bhféadfaidh an cinneadh a thabhairt i gcrích. I gcás Cuideachta Idirnáisiúnta Twitter, eisíodh cinneadh deiridh trí nós imeachta Airteagal 60. Leis an gcinneadh sin soláthraíodh anailís thábhachtach

maidir leis an bhfógra um shárú sonraí agus ceanglais doiciméad arna bhforchur ag eagraíocht le hAireagal 33 den RGCS. (Is féidir achoimre mhionsonraithe den chás sin a fháil san Aguisín). Ar leithlígh, chuir an Coimisiún Cosanta Sonraí dréachtchinneadh faoi bhráid nós imeachta Airteagal 60 i gcás chomhlíonadh WhatsApp maidir lena oibleagáidí tréadhearcachta faoin RGCS. Tá an dréachtchinneadh á chur ar aghaidh faoi láthair tríd an nós imeachta um chomhair ar leibhéal AE. Chuir an Coimisiún Cosanta Sonraí cásanna trastearann i ndáil le Ryanair agus Groupon i gcrích trí Airteagal 60 in 2020 chomh maith.

Ós rud é go bhfuiltear ag leanúint le cinntí mionsonraithe deiridh a fháil ó na fiosrúcháin atá á gcur i gcrích ag an gCoimisiún Cosanta Sonraí, cuidíonn sé le gach eagraíochta ina dtuiscint ar an dóigh a gcuirtear an dlí i bhfeidhm. Tá na cásanna fiosrúcháin sin agus cuid den chastacht nós imeachta iontu mionsonraithe ag leathanach ar Caibidil a ceathair den tuarascáil.

## Treoir maidir le Forfheidhmiú an Dlí (LED)

Cuireadh lón dóthanach fiosrúchán i gcrích anois chomh maith faoin LED chun tacú le dearcadh go raibh gann-ran-npháirtíocht shuntasach le ceanglais na Treoracha maidir le Forfheidhmiú an Dlí in Éirinn agus lena gcur chun feidhme. D'fhéadfadh sé go léiríonn sé sin cineál ceannasach na n-ullmhúchán a bhí á ndéanamh ag na heagraíctaí ábhartha don chreat dlí níos ginearálta (an RGCS). Mar sin féin, is é sin réimse tábhachtach maidir le cosaint ceart lena n-éilítear go ndéanfar próiseáil sonraí pearsanta chun críocha forfheidhmiú dlí a shonrú i dtéarmaí a chuspóirí agus a aidhmeanna sa dlí. Léirítear an pointe sin in achoimre chinntí an Choiimisiún Cosanta Sonraí a tháinig as fiosrúcháin i ndáil le próiseáil sonraí pearsanta ag údarásí áitiúla agus ag an nGarda Síochána ar leathanach ar Caibidil a sé den tuarascáil seo.

## Gearán

Seachas fiosrúcháin ar mhórscála, leanadh leis an ngnáthobair laethúil maidir le láimhseáil na mílte fiosrúchán chuig an ofig ó eagraíochtaí agus ó dhaoine aonair le linn 2020 ar a d'fhreastail foireann mhéadaithe thiomnaithe ag an gCoimisiún Cosanta Sonraí. Rinneadh os cionn 10,000 gearán i gcoinne eagraíochtaí ó dhaoine aonair a réiteach anuraidh. Bhain na gearáin a d'ardaigh daoine aonair idir cheisteanna maidir le rochtain a fháil ar a sonraí pearsanta ó gach cineál eagraíochta, agus gearáin faoi bhailíu iomarcach sonraí pearsanta, agus noctadhbh neamhúdaraithe agus neamhriachtanach sonraí pearsanta do thríú páirtithe. Leantar le lón suntasach cásanna a bhaineann le díospóidí maidir leis an dlí fostáiochta a fháil i réimse na ngearán a fhaighimid.

I gcomhthéacs treocheataí inaithéanta, is gné í atá ag méadú maidir leis na gearáin a fhaigheann an ofig, go bhfuil ceisteanna á n-ardú leis an gCoimisiún Cosanta Sonraí nach bhfuil mórán bainte nó nach bhfuil baint ar bith acu, déanta na firinne, le cosaint sonraí. Cé go soláthraíonn an Coimisiún Cosanta Sonraí torthaí

fiúntacha agus éifeachtúla sna cásanna sin ina bhfuil ceist inaithéanta um chosaint sonraí inbhraite ón ngearán a fhaightear, tá inní ar an gCoimisiún Cosanta Sonraí go léiríonn an méid foriomlán gearán a fhaigheann sé — agus líon méadaithe díobh sin nach léiríonn ceist inaithéanta um chosaint sonraí ar bith — mian ar thaobh a lán daoine aonair de rochtain a bheith acu ar sheirbhís réitigh díospóidí atá neamhspleách, a bhfuil fáil éasca uirthi, agus atá saor in aice le haghaidh casaoidí ginearálta a thagann as réimse éagsúil de theagmhais a mbaineann dúshlán pearsanta leo. D'fhéadfadh teagmhais a bheith i gceist leo sin amhail a dtimpeallacht oibre, cóir leighis, díospóid um pósadh/caidreamh, fadhbanna le tógálaithe atá ag obair ina dteach, fadhbanna leis an háit agus an dóigh a bpáircéalann a gcomharsana a gcarr ar an tsráid, an dóigh ar déileáladh lena bpáiste ar scoil i ndiaidh teagmhais le páiste eile, agus mar sin de. Mar sin féin, ní féidir leis an gCoimisiún Cosanta Sonraí, beag beann ar chomh tuisceanach atá sé i leith na gceisteanna a ardaíodh, oibriú lasmuigh dá shainchúram reachtúil. Agus is é an riosca a thagann chun cinn má sháraíonn na gearánaithe agus an Coimisiún Cosanta Sonraí cúrsaí go mbeidh an rialachán maidir le cosaint sonraí mar tá sé beartaithe gan bhí toisc go mbainfidh sé leis an dlí maidir le gach rud ar fad.

## Treocht eile nach bhfuiltear a iarraidh

Bá é feiniméan eile a bhí le feiceáil againn go leanúnach in 2020 go raibh eagraíochtaí agus daoine aonair ag iarraidh mí-úsáid a bhaint as an RGCS chun cuspóirí eile a mhaolú nó tabhairt faoi chuspóirí eile. Sin ráite, d'fhéadfadh sé go bhfuil fiormhearball ann i gcás go leor daoine maidir leis an dóigh a n-oibríonn an RGCS agus nuair nach bhfuil feidhm aige, agus corrúair ní bhíonn ceisteanna chomh simplí sin. I gcás go scaptear dearbhuithe míchruiinne — pé cúis nó spreagadh — ní réiteofar iad sin ach le himeacht ama de réir mar a fhogróimid iad. Mar shampla, tagann ceist leanúnach chun cinn le heagraíochtaí ag scriosadh a bpósa scannánaíochta CCTV i ndiaidh dóbh bheith ar fhógra iarratas ar rochtain don phíosa scannánaíochta sin ag maíomh go gceanglaítear orthu leis an RGCS é scriosadh gach 7 lá.

## Fógra um shárú

Bhí an lón fógraí um shárú chuig an gCoimisiún Cosanta Sonraí fós ard in 2020 ach tá an luach a bhaineann leis an gceanglas éigeantach fógra a thabhairt faoin RGCS curtha ina luí ar an gCoimisiún Cosanta Sonraí níos mó ná riabh. Cuidíonn sé leis an gCoimisiún Cosanta Sonraí léargas a fháil ar na rioscaí i ndáil le slándáil agus próiseáil sonraí pearsanta a thagann chun cinn in eagraíochtaí de réir cáis agus idirghabháil a dhéanamh agus treoir a thabhairt maidir le bearta um maolú i ndáil leis na rioscaí sin, de réir mar is cuí. Go ginearálta, spreagann na freagairt a fhaighimid ó eagraíochtaí an Coimisiún Cosanta Sonraí sa dearcadh gur mian le formhór na n-eagraíochtaí bheith comhlíontach agus go bhfuil meas acu ar ionchur an Choiimisiún Cosanta Sonraí. Tá sonraí maidir leis na sáruthe a cuireadh in iúl don Choiimisiún Cosanta Sonraí leagtha amach ar leathanach ar Caibidil a trí.

## Tionscadail speisialta maidir le Leanaí, Fianáin

Áiríodh le tionscadail speisialta a rinne an Coimisiún Cosanta Sonraí in 2020 foisiú dréacht-treorach cuimsithí ar na cosaint sonracha a theastaíonn chun sonraí leanaí a próiseáil faoin RGCS ina cuirtear béal ar nach mór túis áite a thabhairt do leas an linbh i gcónaí. Tá an dréacht-treoir atá ar fáil anois i gcomhair comhairliúchán poiblí ina toradh ar chomhairliúchán fócasaithe a rinne an Coimisiún Cosanta Sonraí maidir le ceisteanna faoi shonraí leanaí lenar bhain comhairliúchán sonrach go díreach le leanaí trína múinteoirí agus trí ghrúpaí óige. Rachaidh an treoir chun tairbhe leanaí ar fud an Aontais Eorpáigh go háirithe nuair a bheidh sé curtha chun feidhme ag an gcuid mhór ardán atá ag oibriú as Éirinn a phróiseáil annaí leanaí AE. Tá achoimre den treoir sin leagtha amach ar leathanach xxx den tuarascáil.

Lena chois sin, rinne an Coimisiún Cosanta Sonraí "scuabchuntas rialála" ag túis 2020 ar chuid de na suíomhanna gréasáin ar a dtugtar cuairt go minic in Éirinn chun na leibhléil um chomhlíonadh maidir le rialachán r-phríobháideachais (an rialachán maidir le "fianáin") in Éirinn a fháil amach. Ba mhór an t-údar díomá tortháil an scuabchuntas a foilsíodh i mí Aibreáin 2020. I ndiaidh an cleachtadh a chur i gcrích, sholáthair an Coimisiún Cosanta Sonraí treoir shonrach agus mhionsonraithe maidir le cad atá riachtanach chun cloí leis na rialacháin. Faoi dheireadh na bliana an Coimisiún Cosanta Sonraí imscrúdú ar líon oibreoirí suímh ghréasáin agus thosaigh sé beart forfheidhmiúchán ina gcoinne. Leanfar leis an bpróiseas sin um imscrúdúithe ar fhianáin agus beart forfheidhmiúchán ina dhiaidh sin i rith 2021. Is fiú mar an gcéanna a lua gur mhol Coimisiún AE réimse bearta reachtacha úra chun seirbhísí digiteacha le rialáil i bhfoirm an Acharta um Sheirbhísí Digiteacha agus an Acharta um Margaí Digiteacha. Cibé cineál dlíthe a bheith sna dlíthe sin ar deireadh, measann an Coimisiún Cosanta Sonraí gur rud dearfach é go bhfuiltear ag breathnú ar an rialachán sa réimse seo ar bhealach níos ginearálta.

## Treoir

Lean an Coimisiún Cosanta Sonraí dá fhócas ar threoir úsáideach a eisíunt do dhaointe aonair agus do rialaitheoirí. Go sonrach, lorg an Coimisiún Cosanta Sonraí in 2020 chomh maith chun na tacaíochtaí a sholáthraíonn sé do os cionn 2000 Oifigeach Cosanta Sonraí (OCS) atá ceaptha in eagráiochtaí ar fud na hÉireann anois a mhéadú. Tá ról an OCS ina ról dúshláinach lena n-éilitear réimse scileanna crua agus boga. Tá cosaint sonraí ina réimse dlí atá ag forbairt agus ag teacht chun cinn go gasta agus teastaíonn acmhainní agus cumais shonracha ina leith. Leanfaidh an Coimisiún Cosanta Sonraí chomh maith le sonraí a chur isteach sa réimse thiomnaithe ar a shuíomh gréasáin le haghaidh OCSanna agus is mian leis méadú a fheiceáil ar a leibhléil scileanna agus cur ar fáil acmhainní sa réimse sin toisc gur gá go mbeidh an fhreagracht agus an chuntasacht faoin RGCS ag an rialaitheoir sonraí ar an gcéad dul síos. Cé go mbeidh ról lárnach ag forfheidhmiú ex-post ag an gCoimisiún Cosanta Sonraí i gcónaí i gcomhlíonadh a fheidhmeanna

rialála, tuigean an Coimisiún Cosanta Sonraí an tábhacht a bhaineann le comhlíonadh a spreagadh ag an bhfoinse chomh maith.

Cuireadh béal ar an tábhacht sin maidir le comhlíonadh a spreagadh ón dtús trí idirghabháil an Choimisiún Cosanta Sonraí, rud a soláthraíodh i bpáirt trí bhíthin cigireacht ar an láithreán ag áitreabh Facebook i mBaile Átha Cliath, i mí Feabhra 2020. Fuair an Coimisiún Cosanta Sonraí gearrfhógra ó Facebook go raibh sé beartaíthe acu seirbhísí gheandála a chur i bhfeidhm d'úsáideoirí AE ó lár mhí Feabhra. Lorg an Coimisiún Cosanta Sonraí doiciméid lena n-áirítear an DPIA lenar cuireadh taca faoin gcinneadh an tseirbhís a chur i bhfeidhm (agus le fógra chomh gearr sin) san Aontas Eorpach le linn a chigireachta ar an láithreán. Mar thoradh ar an gcleachtadh sin, chuir Facebook an cur chun feidhme siar, ag feitheamh le réiteach ar roinnt ceisteanna maidir le próiseáil sonraí pearsanta a bhain leis an tseirbhís. Cé go rabhthas á rá sna ceannlínte nuachta go bunúsach gur chuir an Coimisiún Cosanta Sonraí "Lá San Vailintín ar ceal", bhí an toradh dearfach i gcomhthéacs a chinntíú go raibh feabhas ar a cuireadh i bhfeidhm go leor míonna ina dhiaidh sin i ndáil le hábhair shonraí.

Lena chois sin, lean an Coimisiún Cosanta Sonraí dá thiomantas for-rochtain a dhéanamh agus labhair sé arís ag réimse ollmhór imeachteáil ar bhonn náisiúnta agus idirnáisiúnta chun faisnéis a roinnt, tuiscint a chur chun cinn, agus a léirmhíniú ar an dlí a phlé agus a shoiléiriú. Is é an t-aiseolas atá á fháil againn go bhfuil an-mheas ar an méid a dhéanann an Coimisiún Cosanta Sonraí agus go spreagann sé na grúpaí earnála ar a ndírímid maidir lena n-iarrachtaí um chomhlíonadh.

## An Phaindéim Dhomhanda

Is cosúil nach bhfuil brollach ar bith le tuarascáil bhliantúil 2020 ar bith nach féidir a scriobh gan an phaindéim domhanda a tharla in 2020 a lua. Ar thaobh an Choimisiún Cosanta Sonraí de, sholáthair an phaindéim roinnt samplaí treoracha agus soiléire maidir le fíorluach an chreata cosanta a thugtar leis an RGCS. Sa mhórán comhairliúchán éigeantacha a rinne an Rialtas agus an Coimisiún Cosanta Sonraí ar thionscnaimh úra sláinte phoiblí lenar bhain impleachtaí maidir le próiseáil sonraí pearsanta, sholáthair an RGCS na ráillí treorach lena chinntíú go mbeadh na tionscnaimh sin comhréireach agus slán i gcomhthéacs conas a rinneadh cearta daoine aonair a chosaint agus a chothromú. Ba shampla follasach de sin an comhairliúchán agus an rann-pháirtíocht shuntasach idir an Coimisiún Cosanta Sonraí agus údarás sláinte poiblí ar an aip rianaithe teagmhálaíte Covid-19. Bhí an Coimisiún Cosanta Sonraí tar a bheith sásta go raibh ceannaireacht á taispeáint ag na húdarás sláinte in Éirinn — agus go raibh dea-chleachtas á thaispeáint acu — tríd an Measúnú Tionchair ar Chosaint Sonraí agus tríd an bhFoinse Cód don aip rianaithe teagmhálaíte a fhoilsíú, rud a chuidí lena chinntíú go raibh ardleibhéal muiníne i measc an phobail. Tháinig ceisteanna dúshláinacha chun cinn chomh maith i ndáil leis an dóigh a raibh tortháil tástála PCR Covid-19 á gcur in iúl i láithreacha oibre áirithe i gcás gur cuireadh

oll-tástáil chun feidhme agus arís chuir an RGCS taca faoi aitheantas an chur chuige chirt, agus faoi chothromú na leasanna a theastaigh.

## Aistrithe Sonraí, Dlíthíocht

I mí lúil 2020, sheachaid Cúirt Bhreithiúnais an Aontais Eorpach breithiúnas in imeachtaí a thionscain an Coimisiún Cosanta Sonraí in Ard-Chúirt na hÉireann in 2016, i gcás gur lorg an Coimisiún Cosanta Sonraí tagairt maidir le ceisteanna a bhain le húsáid na gClásal Conarthaigh Caighdeánach chun taca a chur faoi aistrithe sonraí pearsanta ó AE go SAM. Leagadh amach i mbreithiúnas an CBAE rialú mionsonraite i ndáil le dlíthe agus cleachtais SAM toisc go bhfuil tionchar acu ar chosaint sonraí pearsanta AE agus soiléirigh leis, beag beann ar an sásra aistrithe dlíthiúil a úsáidtear chun sonraí pearsanta a aistriú, nach mór na cosaintí céanna a bheith ag sonraí pearsanta úsáideoirí AE agus atá acu in AE. Thionscain an Coimisiún Cosanta Sonraí fiosrúchán maidir le haistrithe Facebook go SAM de thoradh an bhreithiúnais. Bhí an fiosrúchán sin ina ábhair in athbhreithniú breithiúnach a rinne Facebook, a éisteadh os comhair na hArd-Chúirte i mí na Nollag 2020. Táthar ag feitheamh le breithiúnas.

Bhí 2020 ina bhliain ghnóthach ar an iomlán maidir le dlíthíocht don Choimisiún Cosanta Sonraí agus tá breac-chuntas iomlán ar na cásanna ina raibh an Coimisiún Cosanta Sonraí ina pháirtí agus a socraíodh nó inar seachadadh breithiúnas leagtha amach ar le haghaidh ar ich 54. Is féidir sonraí ar ionchúisimh a rinne an Coimisiún Cosanta Sonraí maidir le margáiocht dhíreach ag eagraíochtaí a socraíodh le linn 2020 a fháil ar leathanach ar Agusín a trí.

## Comhar AE

Bhí rannpháirtíocht an Choimisiún Cosanta Sonraí ag an mBord Eorpach um Chosaint Sonraí fós dian in 2020 ach níos fusa ó thaobh lóistíoferta de. Mar gheall ar shrianta taistil, tionóladh gach cruinniú ó mhí Aibreáin ar aghaidh ar bhonn fíorúil agus ar an iomlán chuir an Coimisiún Cosanta Sonraí le beagnach 200 cruinniú de chuid an Bhoird Eorpach um Chosaint Sonraí (idir cruinnithe iomlánacha agus grúpaí saineolaithe) anuraidh, lena n-áirítear gníomhú mar rapoirtéir ar roinnt comhad. Tá spriocanna an chomhchuibhithe agus an ionchuir dhaonlathaigh sa chinnteoireacht ina gcuid thábhachtach den chóras rialála a tugadh isteach leis an RGCS ach i ngníomh tá a gcur chun feidhme ina obair atá idir lámha fós.

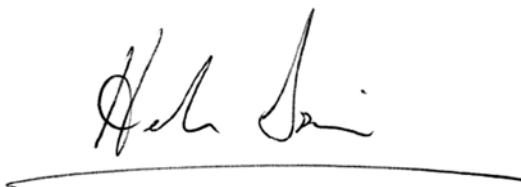
## Brexit

Leanadh le hullmhú le haghaidh imeacht deiridh na Ríochta Aontaithe as an Aontas Eorpach mar fhócas don Choimisiún Cosanta Sonraí i gcomhthéacs a chintíú go dtuigfidh eagraíochtaí atá bunaithe in Éirinn na himpleachtaí um chosaint sonraí maidir leis an Ríocht Aontaithe a bheith ina "tríú tir". Le tionscnamh gearrthéarmach (agus sealadach) Choimisiún AE maidir le soláthar a dhéanamh do shaorshreafaí sonraí idir AE agus an Ríocht

Aontaithe ag tosú 2021, maolaíodh an brú ar eagraíochtaí Éireannacha ag an bpóinte seo. D'fhogair Coimisiún AE go ndéanfaidh sé cinneadh leordhóthanachta a bheartú maidir leis an Ríocht Aontaithe sa chéad chúpla mí eile lena dteastóidh faomhadh trí phróiseas coisteolaíochta AE.

## Ar Deireadh....

Leis an dul chun cinn atá déanta ag an gCoimisiún Cosanta Sonraí in 2020 soláthraítear ardán láidir ar a bhforbrófar in 2021 sna feidhmeanna um fhorfheidh-miú agus láimhseáil gearán go háirithe. Tá a lán réimsí eile den RGCS atá fós le hiniúchadh chun tairbhe eagraíochtaí agus ábhair shonraí araon lena n-áirítear coid iompair agus deimhniúchán. Ní mór an RGCS a thuisctint mar thionscadal don am i láthair ach don fhadtéarmach chomh maith céanna. Tá sé beartaithe ag an gCoimisiún Cosanta Sonraí leanúint mar cheannaire ina chur chun feidhme iomlán.



**Helen Dixon**  
Commissioner for Data Protection





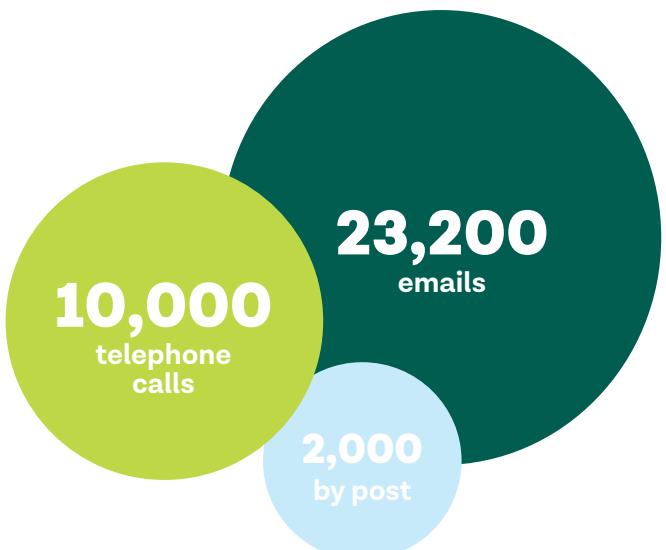
# Achoimre Fheidhmeach

## Ag tacú le daoine aonair

Ó 1 Eanáir 2020 go 31 Nollaig 2020:

- Fuair an DPC breis is **23,200** teagmháil leictreonach,<sup>1</sup> beagnach **10,000** glao guthán agus **2,000** teagmháil phoist;
- Láimhseáil an DPC **10,151** cás san iomlán in 2020, suas 9% ar fhigiúír 2019 (9,337).
- Fuair an DPC breis is **4,660** gearán ó dhaoine aonair faoin GDPR;
- Ar an iomlán, thug an DPC **4,476** ghearán chun críche, lena n-áirítear **1,660** gearán a fuarthas roimh 2020;
- Tugadh breis is **60%** (2,186) a taisceadh leis an DPC i 2020 chun críche laistigh den bhliain fhéilire chéanna; agus
- Lean an DPC air de bheith ag laghdú tréimhsí tabhairt chun críche do chásanna (chuaign meánlíon na laethanta a theastaigh chun cás a thabhairt chun críche faoi **53%** ó tháinig feidhm leis an GDPR).

I 2020, ba iad na hábhair GDPR ba mhinice a ceistíodh nó a ndearnadh gearán fúthu fós ná: larratais ar Shonraí; Próiseáil Chothrom; Nochtadh; Margaíocht Dhíreach agus An Ceart go Ligfi i nDearmad (iarratais díliostaithe agus/nó bainte).



<sup>1</sup> Cuimsíonn cumarsáidí leictreonacha idir r-phoist do chuntas info@ an DPC agus foirmeacha idirlín a cuireadh faoinár mbráid trí shuíomh gréasáin an DPC.

## Ag Tacú le Comhlíonadh

- Ba é líon iomlán na bhfógraí bailí sáraithe a fuarthas i 2020 ná **6,628**.
- Tá ardú **10%** ar na fógraí sáraithe i gcomparáid le figiúir 2019.
- As an líon iomlán cásanna sáraithe a taifeadadh, **tugadh 90% chun críche** i 2020 (5,932 chás).

Ba í an chúis sáraithe ba mhinice a tuairiscíodh leis an DPC ná noctadtadh neamhúdaraithe (**86%**)

Sheol an DPC **suíomh gréasáin athdhearthá** i Mí na Samhna 2020, suíomh a bhfuil a chuid acmhainní níos áisiúla d'úsáideoirí agus a thugann isteach rannóg nua go sonrach do DPO.

Le bliain anuas, tá beagnach **40 mír treorach** foilsithe ag an DPC, blaganna agus podchraoltaí san áireamh, chun eolas a dhéanamh chomh hinrochtana agus is féidir do dhaointe.

I 2020, lean an DPC air de bheith ag forbairt a **Líonra DPO**, ag aistriú go tacaí ar líne de dheasca na paindéime. Chomh maith le hacmhainní méadaithe ar an suíomh gréasáin, chuir foireann DPC i láthair ag a lán seimineár gréasáin agus imeachtaí a bhí dírithe ar DPO.

Lean an DPC air de bheith i mbun comhpháirtíochta le hÚdarás Cosanta Sonrai na Cróite, AZOP, agus leis an Vrije Universiteit sa Bhruiséil maidir le tionscadal a mhaoinítear ag an AE (**Tionscadal ARC**) chun tacaí praiticiúla a sholáthar do FBM.

## Rialú

AAg 31 Nollaig 2020, bhí **83 Fhiorsúchán Reachtúil** idir lámha ag an DPC, lena n-áirítear 27 bhFiosrúchán Trasteorann.

I Mí na Bealtaine 2020, d'éisigh an DPC na chéad **fhíneálacha** faoin GDPR, ag gearradh dhá fhíneáil ar leith in aghaidh gníomhaireachta stáit de chuid na hÉireann.

Sa mhí chéanna, chuir an DPC chéad **Dréachtchinneadh mórscaíle Airteagal 60** na hEorpa chuig na hÚdarás Mhaoirseachta Ábhartha.

Spreag an DPC Meicníocht Réitigh Ghearáin Airteagal 65 an EDPB i 2020; ba é an DPC an chéad údarás maoirseachta a rinne a leithéid.

I Mí na Nollag 2020, d'éisigh an DPC a **chéad fhíneáil i gcás trastearann**, ag gearradh fineála €450,000 ar Twitter International Company.

I Mí na Nollag 2020 freisin, chuir an DPC a chéad Dréachtchinneadh mórscaíle Airteagal 60 ar aghaidh chuig na hÚdarás Mhaoirseachta Ábhartha. Bhain an Dréachtchinneadh seo le WhatsApp agus bhí sé fós ag dul ar aghaidh ag deireadh na bliana.

I 2020 seachadadh **14 bhreith** agus/nó ordú deiridh in imeachtaí ar pháirtí iontu an DPC.

Trí bheart **Maoirseachta**, chuir an DPC siar nó rinne sé athbhreithniú ar 3 thionscadal teicneolaíochta móire sceidealaithe a raibh impleacthaí ag baint leo do chearta agus do shaorsí dhaoine aonair.

**6,628**  
valid data security  
breaches  
recorded

**83**  
Statutory  
Inquiries

**Europe's  
First  
major-scale Article  
60 Draft Decision  
(sent by DPC  
May 2020)**

## Cinntí

Chuir cuid acu béisim ar Chinntí ó 2020:

Eagraíochtaí	Cinneadh eisithe
Comhairle Contae Chiarráí	25-Már-20
Comhairle Cathrach agus Contae Phort Láirge	21-D.Fó-20
Tusla An Ghníomhaireacht um Leanaí agus an Teaghlaigh (3 shárú)	07-Aibr.-20
Tusla An Ghníomhaireacht um Leanaí agus an Teaghlaigh (1 shárú)	21-Beal-20
Tusla An Ghníomhaireacht um Leanaí agus an Teaghlaigh (71 shárú)	12-Lún-20
Feidhmeannacht na Seirbhísé Sláinte (FSS An Deisceart)	18-Lún-20
Feidhmeannacht na Seirbhísé Sláinte (Ospidéal Mhuire Lourdes)	29-M.Fó-20
Ryanair	11-Sam-20
Twitter International Company	9-Noll-20
Groupon	16-Noll-20
Coláiste na hOllscoile, Baile Átha Cliath	17-Noll-20

## Ag dul i dteagmháil leis an tSochaí Shibhialta

I 2020, chuir an DPC túis le comhairliúchán leitheadach maidir lena dhréacht-threoir faoi chearta na leanaí mar ábhair shonraí — *Na Leanaí chun Tosaigh agus i Lár Báire: Bunphrionsabail do Chur Chuige don Phróiseáil Sonraí atá Dírithe ar Leanaí*. Bhí an comhairliúchán seo fós ag dul ar aghaidh ag deireadh na bliana.

## Ag dul i dteagmháil le Piaraí

Ó 1 Eanáir 2020, fuair an DPC:

- **354** ghearán ó Údarás Chosanta Sonraí (DPA) ar piaraí iad inar aithníodh an DPC mar an Príomhúdarás Maoirseachta;
- D'fhreastail sé ar bhreis is **180** chruinníú EDPB, ar cuireadh mórchuid acu i gcrích ar líne mar gheall ar shrianta taistil a bhaineann leis an bpaindéim;
- Lean sé air ionadaithe a bheith ag gach foghrúpa de chuid an EDPB agus de bheith ag gníomhú mar chomhordaitheoir an Fhoghrúpa um na Meáin Shóisialta; agus
- Thionól sé cruinníú fiorúil de BIIDPA, ag cur fáilte roimh ionadaithe ó Bheirmiúda, Oileán Cayman, Gio-bráltar, Geansaí, Oileán Mhanann, Geirsí, Málta agus an Ríocht Aontaithe.

## Ag tarraingt aird an phobail ar an gCosaint Sonraí

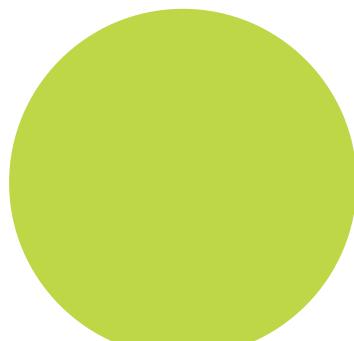
Chuir baill fhoirne an DPC i láthair ag beagnach 100 caint phoiblí i 2020. Ó tháinig feidhm le srianta Covid, cuireadh ranpháirtíocht go léir na foirne ar líne.

Tá an DPC tiomanta i gcónaí do bheith ag spreagadh feasacht na ndaoine maidir le cearta agus freagrachtaí na cosanta sonraí, ag táirgeadh beagnach 40 mír treorach, comhairle theicneolaíoch, comhlíontacht Fhianán agus ceisteanna a bhaineann le cúrsaí Covid san áireamh.

## Gníomhaíocht Eile

I 2020:

- Thug an DPC **147 imscrúdú a bhain le margáíocht dhíreach leictreonach** chun críche.
- **D'ionchúisigh sé 6 chomhlacht** as teachtaireachtaí téacs nó ríomhphoist gan iarraigdh a chur chuig daoine aonair.
- Láimhseáil sé **37 ghearán a bhain leis an Treoir um Fhorfheidhmiú an Dlí**.
- Mhéadaigh sé comhlíontacht clárú DPO go **96%** do na comhlacthaí Earnála Poiblí.
- I mí Aibreáin, d'fhoilsigh an DPC treoir nua maidir le fianáin agus teicneolaíochtaí rianaithe a úsáid.



# 1

# Róil agus Freagrachtaí

## Feidhmeanna an DPC

Is é an Coimisiún um Chosaint Sonraí (DPC) an t-údarás náisiúnta neamhspleáach in Éirinn atá freagrach as seasamh le buncheart na ndaoine san AE go ndéanfaí a gcuid sonraí pearsanta a chosaint. Dá réir sin, is é an DPC an t-údarás maoirseachta Éireannach a bhfuil sé de chúram air monatóireacht a dhéanamh ar an Rialachán Ginearálta maidir le Cosaínt Sonraí (GDPR) (Rialachán (AE) 2016/679).

Airítear i measc croífheidhmeanna an DPC, faoin GDPR agus faoin Acht um Chosaint Sonraí 2018 — a thugann tuilleadh eifeachta don GDPR in Éirinn:

- spreagadh comhlíonta fheabhsaithe le reachtaíocht chosanta sonraí ag rialaitheoirí agus ag próiseálaithe;
- láimhseáil gheárán ó dhaoine aonair maidir le hábhar sáruithe a gcuid ceart cosanta sonraí;
- cur i gcrích fiosrúchán agus imscrúduithe maidir le hábhar sáruithe na reachtaíochta cosanta sonraí;
- cothú feasacha i measc eagraíochtaí agus an phobail maidir leis na rioscaí, na rialacha, na cosaintí agus na cearta ar dá gcúram iad agus sonraí pearsanta á bpróiseáil; agus
- comhoibriú le húdaráis chosanta sonraí i mballstát eile de chuid an AE faoi cheisteanna ina bhfuil próiseáil trasteorann i gceist.

Gníomhaíonn an DPC mar an t-údarás maoirseachta freisin don phróiseáil sonraí pearsanta faoi roinnt creat dlí breise. Airítear orthu seo **an Treoir maidir le Forfheidhmiú Dlí** (Treoir 2016/680, faoi mar a trasuíodh í faoin Acht um Chosaint Sonraí 2018) a bhaineann le próiseáil sonraí pearsanta ag comhlachais a bhfuil feidhmeanna forfheidhmithe dhlí acu i gcomhthéacs chosc, imscrúdú, aimsiú nó ionchúiseamh cionta coiriúla nó cur i ggníomh pionós coiriúil. Cuireann an DPC feidhmeanna áirithe maoirseachta agus forfheidhmithe i bhfeidhm freisin maidir le próiseáil sonraí pearsanta i gcomhthéacs na gcumarsáidí leictreonacha faoi **na Rialachán e-Phríobháideachais** (I.R. Uimh. 336 ó 2011).

Chomh maith lena chuid feidhmeanna faoin GDPR, leanann an DPC air de bheith ag cur i gcrích a chuid feidhmeanna rialála faoi **na hAchtanna um Chosaint Sonraí 1988 agus 2003**, maidir le gearáin agus imscrúduithe a bhaineann leis an tréimhse roimh 25 Bealtaine 2018, chomh maith le catagóirí áirithe srianta eile próiseála, is cuma má tharla an phróiseáil sin roimh nó tar éis 25 Bealtaine 2018.

Chomh maith le reachtaíocht shonrach chosanta sonraí, is ann do thart ar 20 píosa breise reachtaíocha, a chlúdaíonn réimsí éagsúla earnála, a bhaineann le próiseáil sonraí pearsanta, ina mbíonn ar an DPC feidhm áirithe mhaoirseachta a chur i gcrích a leagtar air faoin reachtaíocht sin.

## Foireann Shinsearach an DPC

Cuimsíonn Coiste Bainistíochta Sinsearaí an DPC (SMC) an Coimisinéir um Chosaint Sonraí agus an seachtar Leaschoimisínéirí. Déanann an Coimisinéir agus baill an SMC maoirseacht ar bhainistiú agus ar rialú cuí na heagraíochta, de réir na bprionsabal sin a leagtar amach sa Chód Cleachtais chun Comhlachtaí Stáit a Rialú (2016) Tá sceideal foirmiúil ceisteanna le cur san áireamh agus a bhfuil cinneadh le déanamh fúthu, de réir mar is cuí, ag an SMC, chun maoirseacht agus smacht éifeachtacha na heagraíochta a chinntiú.

Cuimsíonn SMC an DPC:



**Helen Dixon**  
An Coimisinéir um Chosaint Sonraí



**Anna Morgan**  
Leaschoimisínéir —  
Ceannasaí Gnóthaí Dlí



**Colum Walsh**  
Leaschoimisínéir —  
Ceannasaí Gníomhaíochta  
Rialála



**Dale Sunderland**  
Leaschoimisínéir —  
Ceannasaí Gníomhaíochta  
Rialála



**Graham Doyle**  
Leaschoimisínéir —  
Ceannasaí Gnóthaí  
Corparáideacha, Meáin  
Chumarsáide & Cumarsáidí



**John O'Dwyer**  
Leaschoimisínéir —  
Ceannasaí Gníomhaíochta  
Rialála



**Tony Delaney**  
Leaschoimisínéir — Ceannasaí  
Gníomhaíochta Rialála



**Ultan O'Carroll**  
Leaschoimisínéir  
(Gníomhach) — Ceannasaí  
Teicneolaíochta, Oibriúcháin  
& Feidhmíochta

## Maoiniú agus Riarachán — Vóta 44

Maoinitear an DPC go huile is go hiomlán ag an Státhciste. Ó 1 Eanáir 2020, maoiníodh an DPC tri Vóta nua de chuid an Oireachtais — Vóta 44. Is é an Coimisinéir um Chosaint Sonraí an tOifigeach Cuntasáiochta do Vóta an Choimisiúin. Mar chomhlachas Vóta, ní mór don Oifigeach Cuntasáiochta an Cuntas Leithghabhála a ullmhú do Vóta an DPC lena chur faoi bhráid an Ard-Reachtaire Cuntas agus Ciste. De réir mar is gá, tá mar chuid de sin ráiteas an Oifigigh Chuntasáiochta maidir le córais rialithe inmhéanaigh an DPC. Ba é an soláthar ollmheastacháin 2020 do Vóta 44 — an Coimisiún um Chosaint Sonraí ná **€16.916M** ar leithdháileadh **€10.552m** de ar chaiteachas pá-choibhneasa, agus ar leithdháileadh **€6.364m** de ar chaiteachas neamhphá. Méadú de €1.6M a bhí i gceist leis an maoiniú do 2020 i gcomparáid le leithdháileadh 2019.

Tá an DPC ag ullmhú a ráitis airgeadais do 2020 agus foilseofar an ráiteas seo ar shuíomh gréasáin an DPC tar éis chur i gcrích iniúchta ag an Ard-Reachtaire Cuntas & Ciste.

## 2

# Teagmhálacha, Fiosrúchán agus Gearán

### Teagmhálacha

Déanann páirtithe leasmhara teagmháil leis an DPC ar bhealaí éagsúla, lena n-áirítear Deasc Chabhrach an DPC, foirmeacha gréasáin ar líne, ríomhphost agus post. I 2020, fuair an DPC 23,226 theagmháil leictreonach,<sup>2</sup> 9,410 ngao gutháin<sup>3</sup> agus 1,881 theagmháil phoist.

Tháinig dúshlán shuaithinseacha chun cinn i 2020 i dtéarmaí soláthair sheirbhíse líne thosaigh, lena n-áirítear dúshlán teicniúla agus lóistíochtúla a tharla mar gheall ar riachtanais chianoibre. In ainneoin na ndúshlán seo, coinníodh an soláthar seirbhíse ar fud na bliana. Níor tharla aon éifeacht dhiúltach maidir le hamanna freagra nó leibhéal seirbhíse mar gheall ar chianobair, agus bhí

leibhéal na teagmhála a rinneadh ar cóimhéid le rátaí réamh-Covid.

Rud nua a tháinig chun cinn i 2020 ná an líon suntasach fiosrúchán a bhaineann le Covid-19 a fuair an DPC ó dhaioine aonair agus ó eagraíochtaí a bhí ag iarraidh an t-idirghníomhú a thuiscint idir an dlí um chosaint sonraí agus riachtanais Covid-19. Ina lán cásanna bhí na fiosrúcháin seo am-íogair, agus b' éigean freagra a thabhairt orthu go tapa.

### Gearán

Déanann an DPC próiseáil ar ghearán faoi dhá phríomhchreat dlí:

- Pléitear le gearán a fuarthas ó 25 Bealtaine 2018 ar aghaidh (agus a bhaineann le ceisteanna a tharla ar nó tar éis 25 Bealtaine 2018) faoin GDPR, faoin Treoir maidir le Forfheidhmiú Dlí, agus faoin Acht um Chosaint Sonraí 2018; agus
- Pléitear le gearán agus sáruithe a tharla roimh 25 Bealtaine 2018 faoi na hAchtanna um Chosaint Sonraí 1988 agus 2003, fiú nuair a fhógraítear don DPC iad ar nó tar éis 25 Bealtaine 2018.

<sup>2</sup> Cuimsíonn cumarsáidí leictreonacha idir r-phoist do chuntas info@ an DPC agus foirmeacha idirlín a cuireadh faoinár mbráid trí shuíomh gréasáin an DPC.

<sup>3</sup> Chuaigh líon na dteagmhálacha teileafón chuig an DPC i laghad i 2020, i gcomparáid le blianta roimhe sin. An míniú air sin ná an t-aistriú go cianobair (Covid-19) agus an cumas laghdaithe dá bharr sin chun glaonna a phróiseáil (ag obair ar an bhfón póca). Tugadh an lántumas teileafón ar ais ina dhiaidh sin, tar éis don DPC seirbhísí agus trealamh cuí glao lasmuigh den láthair a fháil.

Chun gur gearán a bheadh ann — rud a spreagfad, mar sin de, dualgais reachtúla láimhseála gearáin an DPC — ní mór go mbainfeadh an cheist le ceann amháin de na ceannteidil seo a leanas:

- Gearán ó dhuine aonair a bhaineann le próiseáil a gcuid sonrái pearsanta féin;
- Duine nó eintiteas atá údaraithe go dlíthiúil atá ag gearán *ar son duine aonair* (m.sh. dlíodóir ar son claint nó tuismitheoir/caomhnóir ar son a linbh); nó
- Grúpaí abhcóideachta a chomhlíonn na riachtanais chun gníomhú *ar son duine aonair amháin nó níos mó* faoin GDPR, LED agus faoin Acht um Chosaint Sonraí 2018.

#### **Idir 1 Eanáir 2020 agus 31 Nollaig 2020:**

- Fuair an DPC 4,660 gearán ó dhaoine aonair faoin GDPR agus 59 ngearán faoi na hAchtanna um Chosaint Sonraí 1988 agus 2003.
- Ar an iomlán, thug an DPC chun críche 4,476 ghearán, lena n-áirítear 1,660 gearán a fuarthas roimh 2020.
- Tugadh breis is 60% (2,186) de na gearán a taisceadh leis an DPC i 2020 chun críche laistigh den bhliain fhéilire chéanna.

#### **Gearán a Fuarthas faoin GDPR — Na 5 Cheist is Mó i 2020**

<b>Gearán a Fuarthas</b>	<b>Líon</b>	<b>% an iomlán</b>
Iarratas Rochtana	1683	27%
Próiseáil Choithrom	1623	26%
Nochtadh	793	12%
Margaíocht Dhíreach	429	7%
Ceart ar scriosadh	423	7%

#### **Gearán a Fuarthas faoi na hAchtanna um Chosaint Sonraí 1998 agus 2003 — Na 5 Cheist is Mó i 2020**

<b>Gearán a Fuarthas</b>	<b>Líon</b>	<b>% an iomlán</b>
Nochtadh	24	41%
Próiseáil Choithrom	14	24%
Iarratas Rochtana	10	17%
An ceart go ligí i ndearmad	4	7%
Slándáil	2	3%

Bhain mórchuid na gcásanna a tugadh chun críche ag an DPC le **Iarratas Rochtana** (30%) Bhain an chéad chatagóir eile chásanna le **Próiseáil Choithrom** (19%), agus ina dhiaidh sin **Nochtadh** (15%).

#### **Láimhseáil Gheatáin**

Nuair is féidir sin, féachann an DPC le gearáin a réiteach go cairdiúil — mar a phoráltear in Alt 109(2) den Acht um Chosaint Sonraí 2018. Cuirtear an rogha ar fáil plé lena gceist go cairdiúil do dhaoine aonair le linn saolré a ngearán, is cuma cé chomh fada is a tugadh an cheist chun cinn trí bhealaí géaraithe. Is féidir teacht ar chásanna-staidéir a léiríonn na bealaí géaraithe seo ag deireadh na caibidle seo.

Nuair nach bhfuil réiteach cairdiúil agus luath indéanta, géaraíonn an DPC ceisteanna de réir chatagóir an ghearáin:

#### **Gearán faoi Chearta Rochtana**

Foráileann Airteagal 15 den GDPR gur féidir le duine aonair deimhniú a fháil ó rialaitheoir sonraí más rud é go bhfuil sonraí pearsanta a bhaineann leo á bpróiseáil, agus nuair atá sin amhlaidh, gur féidir leo rochtain a bheith acu ar chóip de na sonrái pearsanta sin. Is ceart tábhachtach é seo, agus is é is cúis leis an líon is mó gearán don DPC go bliantúil.

Cuireann an ceart rochtana ar chumas duine aonair dlíthiúlacht na próiseála a chinntí a bhfuil an rialaitheoir sonraí ag tabhairt fúithi agus cóipeanna a fháil dá gcuid sonraí pearsanta le haghaidh a gcuid taifead féin. Ceann de na bunchearta a bhronntar ar dhuine aonair ag an GDPR is ea é. Is ceart é freisin atá le fáil i gCairt Chearta Bunúsacha an Aontais Eorpach. Sin ráite, níl ceart rochtana duine aonair iomlán agus is féidir go mbeidh sé faoi réir ag srianta áirithe, lena n-áirítear, gan a bheith srianta dóibh, iad siúd a leagtar amach in Alt 60 den Acht um Chosaint Sonraí 2018.

Forordáíonn an GDPR meicníocht in Alt 23 chun srianta cheart a cheadú i gcúinsí áirithe sonracha. Tá cead ag gach Ballstát a chuid díolúintí féin a thabhairt isteach i reachtáiocht náisiúnta. Ní mór go mbeadh meas ag a leithéid de shrianta ar bhunús na gceart agus na saoirsí bunúsacha agus ní mór gur beart riachtanach agus comhréireach i sochaí dhaonlathach a bheadh ann. In Éirinn trasuíodh sin trí Alt 60 den Acht um Chosaint Sonraí 2018.

In aon scrúdú ar ghearáin a dtugann an DPC faoi, díríonn cuid mhór den obair ar scrúdú bhailíocht na ndíolúintí a chuirtear chun tosaigh ag an rialaitheoir sonraí chun údar a thabhairt lena dhiúltú sonraí pearsanta a chur ar fáil mar fhreagra ar iarratas rochtana. Le linn an scrúdaithe ar ghearáin, déanfaidh an DPC cinneadh más rud gur ghníomhaigh nó nár ghníomhaigh an rialaitheoir sonraí go cuí agus freagra á thabhairt acu ar an iarratas rochtana; i mórchuid na gcásanna beidh i gceist leis sin scrúdú ar an tsúl inar bhain an rialaitheoir sonraí brí as na srianta i gcomhthéacs chúinsí ar leith an cháis. Is féidir go mbeidh de thoradh air sin go scaoilfear sonraí pearsanta breise don ábhar sonraí.

Mar shampla, is minic a dheimhníonn rialaitheoirí sonraí pribhléid dlíodóra maidir le doiciméid ina bhfuil sonraí pearsanta le fáil, mar bhonn cirt chun sonraí pearsanta a choinneáil siar mar fhreagra ar iarratas rochtana.

Pléann Alt 162 den Acht um Chosaint Sonraí 2018 go sonrach le pribhléid ghairmiúl dlíodóra (LLP). Ina theannta sin, foráileann Alt 60(3)(a)(iv) go bhfuil na cearta agus na dualgais a fhoráltear in Ailt 15 srianta sa mhéid go ndéantar sonraí a phróiseáil ag smaoineamh ar, nó do bhunú, cleachtadh nó cosaint, éilimh dhlá, éilimh ionchasaigh dhlá, imeachaí dlí nó imeachaí ionchasaigh dlí — bíodh sin os comhair cúirte, bhinse reachtúil, chomhlachta reachtúil nó ghnáthaimh riarrachán nó lasmuigh den chúirt. Sa dá alt tá na bunphrionsabail mar an gcéanna agus éilíonn siad measúnú pribhléide ag an DPC.

Nuair a fhaigheann rialaitheoir sonraí iarratas rochtana tá iachall air é a chomhlíonadh gan mhoill mhíchuí agus ar a dhéanaí laistigh de mhí amháin ó fhaightear é. De réir an chur chuige rioscabbhunaithe i leith na cosanta sonrai, rud atá lárnach don GDPR, tá iachall ar gach rialaitheoir sonraí agus próiseálaí sonraí aonair bearta cuí teicniúla agus eagraíochtúla a chur i bhfeidhm chun cinntí agus chun léiriú go gcloíonn an phróiseáil sonraí a bhfuiltear ag tabhairt fúithi leis an reachtaíocht. Dá réir sin, tá sé stuama polasaí soiléir eagraíochta a bheith ann maidir le conas iarratas ar a shonraí a chur i bhfeidhm, agus tá a leithéid ríthábhachtach chun athdhéanamh oibre costasach agus fadálach a sheachaint.

### Pribhléid Dlíodóra agus an Ceart Rochtana

Is ann, go bunúsach, do dhá aicme pribhléide gairmiúla dlíodóra — pribhléid chomhairle dlí nó pribhléid dlíthíochta. Mar an chéad chéim ní mór don DPC nádúr na pribhléide a chuirtear chun cinn ag an rialaitheoir sonraí a dheimhniú.

Tá pribhléid chomhairle dlí ceangailte le cumarsáidí idir dlíodór agus cliant mar a bhfuil an chumarsáid faoi rún agus é mar chuspóir aici comhairle dhlá a thabhairt nó a fháil. Nuair is é cuspóir ceannasach na cumarsáide ná ullmhú do dhílhíocht “iarbhír nó intuigthe”, is féidir pribhléid dlíthíochta a mhaíomh.

Tar éis catagóir na pribhléide a dheimhniú, is í an chéad chéim eile ag an DPC ná stádas pribhléide na sonraí pearsanta a mheasúnú. Ceist dlí atá ann go bunúsach an cheist an mbaineann nó nach mbaineann pribhléid le sonraí pearsanta atá le fáil i ndoiciméid, agus is cóir a rá gur chorpraigh an tOireachtas na prionsabail dlí choitinn sin a bhaineann le pribhléid san Acht um Chosaint Sonraí 2018.

Agus aon scrúdú den chineál seo á dhéanamh éileoidh an DPC roinnt mhaith eolais, lena n-áirítear míniú maidir leis an mbonn ar a bhfuil an rialaitheoir sonraí ag maíomh pribhléide sa tslí gur féidir linn meastóireacht chuí a dhéanamh maidir lena bhaillí is atá sé bheith ag brath ar Alt 162. Go bunúsach beidh an DPC ag lorg insinte faoi gach doiciméad ina bhfuil sonraí pearsanta le fáil. Maidir le pribhléid dlíthíochta is é an príomhfhócas agus sonraí pearsanta á measúnú ná cén uair a smaoinigh na páirtithe faoi dhílhíocht, i.e. an dáta gur bagraíodh nó a rinneadh machnamh faoina leithéid.

### Gearán faoi Mhargaíocht Dhíreach Leictreonach

Imscrúdaíonn an DPC cionta go gníomhach, agus ionchúisíonn sé iad, i dtaca le margáíocht dhíreach leictreonach faoi I.R. 336/2011 — Rialachán na gComhphobal Eorpach (Líonraí agus Seirbhísí maidir le Cumarsáidí Leictreonacha (Príobháideachas agus Cumarsáidí Leictreonacha) 2011 (‘na Rialachán ePríobháideachais’). Cuireann na Rialachán ePríobháideachais an Treoir 2002/58/EU (‘an Treoir um Príobháideachas’) i bhfeidhm i ndí na hÉireann.

Fuair an DPC 144 ghearán nua maidir le margáíocht dhíreach leictreonach i 2020. Bhí le háireamh ina measc 66 ghearán maidir le teachtaireachtaí r-phoist, 73 ghearán maidir le teachtaireachtaí téacs, agus cúig ghearán maidir le glaonna gutháin. San iomlán tugadh 149 n-imscrúdú margáíochta dír leictreonaí chun críche i 2020. Cuimsíonn an figíúr seo gearán amháin ó 2018, 51 ó 2019 agus 97 ó 2020. D’ionchúisigh an DPC 6 chomhlacht le linn 2020 do sháruithe margáíochta dír, agus leagtar amach sonraí na gcásanna sin in Agusín 3.

### Gearán faoi Ionaid Ilfhreastail

Bunaíocht an mheicníocht ionad Ilfhreastail (OSS) faoin GDPR agus é mar chuspóir aici cuíchóiriú a dhéanamh ar an tstí ina dtéann eagraíochtaí a dhéanann gnó i níos mó ná ballstát AE amháin i dteagmháil le húdarás chosanta sonraí (a dtugtar ‘údarás mhaoirseachta’ orthu faoin GDPR). Éilíonn an OSS go mbeadh na heagraíochtaí seo faoi réir ag maoirseacht rialála ag DPA amháin, nuair atá ‘príomháit ghnó’ acu, seachas bheith faoi réir ag rialú le húdarás chosanta sonraí gach ballstáit. Go ginearálta, is í príomháit ghnó eagraíochta ná an áit ina bhfuil a riarrachán lárnach agus/nó cinnteoireachta lonnaithe. I gcás próiseálaí shonraí nach bhfuil aon áit riarrachán lárnáí acu, beidh a bpríomháit ghnó san áit ina dtarlaíonn a bpríomhgníomhaíochtaí próiseála san AE.

I 2020, fuair an DPC **354 ghearán próiseálaí trastearann** tríd an mheicníocht OSS a taisceadh ag daoine aonair le húdarás eile cosanta sonraí san AE.

### Gearán faoi Shárú Sonraí

Láimhseálann an DPC gearán freisin a bhainneann le sáruithe sonraí a cuireadh in iúl agus nár cuireadh in iúl araon. Eascaíonn mórchuid na ngearán sáraithe shonraí de thoradh ar fhógra a tugadh don DPC — ó eagraíocht nó ó eintiteas — go ndearnadh sárú maidir leis na sonraí pearsanta sin a bhfuil siad ina rialaitheoir sonraí dóibh. Is féidir go n-eascróidh gearán sáraithe shonraí freisin i gcúinsí inar cuireadh duine aonair ar an eolas go neamhspleách maidir le sárú sonraí, trí chlúdach na meán cumarsáide go minic, nó trí iarmháirt dhíobháilach a eascaíonn as an sárú (m.sh. rochtain neamhúdaraithe ar chuntais r-phoist, cuntais chustaiméara nó cuntais bhainc, srl.).

### Gearán faoin Treoir maidir le Forfheidhmiú Dlí

Trasuíodh an Treoir AE a dtugtar an Treoir maidir le Forfheidhmiú Dlí (AE 2016/680) (an LED) i ndí na hÉireann ar 25 Bealtaine 2018 le hachtú an Actica um Chosaint Sonraí

2018. Baineann an LED le feidhm nuair a chuirtear sonraí pearsanta i bhfeidhm do chuspóirí chosc, imscrídú, aimsiú nó ionchúiseamh cionta coiriúla, nó forghníomhú phonós coiriúil. Le go mbeadh an LED infheidhme, ní mór gur "Údarás inniúil" a bheadh sa rialaitheoir sonraí freisin, faoi mar a leagtar amach in Alt 69 den Acht um Chosaint Sonraí 2018.

I 2020, láimhseáil an DPC 37 ngearán LED, a raibh An Garda Síochána (AGS) mar an rialaitheoir sonraí ar a mórchuid. Bhain gearán le heagraíochtaí eile freisin, leithéidí Seirbhís Príosún na HÉireann, na Coimisinéirí loncaim, an Roinn Talmhaíochta & Bia, chomh maith le roinnt údarás áitiúil.

Baineann Alt 91 den Acht um Chosaint Sonraí 2018 le próiseáil sonraí pearsanta do chuspóirí forfheidhmithe dhlí agus leagtar amach ann na coinníollacha atá i gceist le go mbeadh daoine aonair in ann rochtain a bheith acu ar a gcuid sonraí pearsanta, nó lena gcur i gceart nó a scríosadh. Tagraítear d' iarratas chun rochtain a bheith agat ar chóip sonraí atá taifeadta ar chórais AGS, sonraí faoi ionchúiseamh ag na Coimisinéirí loncaim, ní fineáil bhruscair a fhorfheidhmítear ag údarás áitiúil mar iarratas duine ar a shonraí LED Alt 91.

Is minic a thagann an DPC ar chásanna mar a ndéanann ábhair shonraí iarratais duine ar shonraí, agus iad ag lorg eolais tríú páirtí, leithéidí ainm agus seoladh duine a líomhnaítear go ndearna siad ionsáí, nó sonraí duine a thuairiscigh ceist faoi rún. Foráileann Alt 91(7) den Acht um Chosaint Sonraí 2018 nach gcuirfidh rialaitheoir sonraí (Údarás inniúil faoin LED) sonraí pearsanta ar fáil do dhaione aonair a bhaineann le duine aonair eile, nuair a nochtfadh a leithéid céannacht an duine eile, ní dá mbeadh an baol sin ann. Is iad na cúinsí sin amháin nuair nach mbaineann Alt 91(7) le feidhm ná nuair a thoilíonn tríú pártí soláthar a gcuid eolais don ábhar sonraí atá ag déanamh an iarratais, faoi mar a leagtar amach in Alt 91(8) den Acht. Foráileann Alt 91(9) den Acht freisin nach mbainfidh an ceart rochtana le feidhm le sonraí ach an oiread a bhfuil i gceist leo cur in iúl tuairime faoi dhuine aonair ag duine eile a tugadh faoi rún nó ar an mbonn tuisceana go bpléifi leis an tuairim mar thuairim faoi rún.

## Gearán a fuarthas faoi na hAchtanna um Chosaint Sonraí 1988 agus 2003

Leanann an DPC air de bheith ag fáil agus ag scrúdú gearán a thagann faoi scáth na nAchtanna um Chosaint Sonraí 1988 agus 2003. Faoi Acht 2018 agus faoi na hAchtanna 1988 agus 2003 araon, tá sé mar dhualgas reachtúil ag an DPC bheith ag déanamh a dhíchill chun gearán a réiteach go cairdiúil a fhaightear ó bhaill den phobal. I 2020, tugadh mórchuid na ngearán a thagann faoi scáth na nAchtanna 1998 agus 2003 chun críche go cairdiúil idir páirtithe an ghearán, gan é a bheith riachtanach cinneadh foirmiúil a eisiúint faoi Alt 10 de na hAchtanna 1988 agus 2003. Tá 77 gcinneadh foirmiúil eisithe ag an gCoimisinéir faoi na hAchtanna um Chosaint Sonraí 1988 agus 2003 ó bhí MÍ Eanáir 2020 ann; sheas 50 ceann acu leis an ngearán go hiomlán agus dhiúltáigh 18 gcinn acu an gearán. I naoi gcás eile, seasamh go páirteach leis an ngearán.

## Tugadh gearán chun críche le Cinntí faoi na hAchtanna um Chosaint Sonraí 1988 agus 2003

Gearán ar seasadh leo	50
Gearán a diúltáiodh	18
Gearán ar seasadh go páirteach leo	9
<b>Iomlán:</b>	<b>77</b>

## Cosaint sonraí agus na cúirteanna agus iad ag gníomhú ina gcáilíocht bhreithiúnach

Cé gurb é an DPC an t-údarás maoirseachta do dhlíthe cosanta sonraí in Éirinn, baineann sainrialacha le feidhm nuair atá na cúirteanna ag tabhairt faoi bhearta próiseála. Tagann na sainrialacha seo ó Airteagal 55(3) den GDPR, a chuireann cosc ar an DPC, ar aon dul le DPA eile de chuid an AE, ó bheith ag déanamh maoirseachta ar oibríochtaí próiseála sonraí na gcúirteanna agus iad ag gníomhú ina gcáilíocht bhreithiúnach. Déantar sin chun neamhspleáchas na mbreithiúna a chinntí maidir le cur i bhfeidhm a gcuid tascanna breithiúnacha, cinnteoireacht san áireamh.

Rialaíonn Ailt 157 go 160 den Acht um Chosaint Sonraí 2018, in éineacht leis na Rialacha Cúirte ábhartha, conas is gá do chúirteanna na HÉireann sonraí pearsanta a phróiseáil agus conas ba chóir eifeacht a thabhairt do rialacha áirithe cosanta sonraí sa GDPR (aon srianta maidir le cearta cosanta sonraí san áireamh). Tá san áireamh ansin foráil do cheapadh breithimh shonraigh ag Príomh-Bhreitheamh na HÉireann chun gníomhú mar an maoirseoir cosanta sonraí maidir le próiseáil sonraí pearsanta, rud a tharlaíonn agus cúirteanna na HÉireann ag gníomhú ina gcáilíocht bhreithiúnach. Is féidir teacht ar thuilleadh eolais faoi mhaoirseachta phróiseála sonraí ag cúirteanna na Éireann agus iad ag gníomhú ina gcáilíocht bhreithiúnach ag <https://www.courts.ie/courts-data-protection-notice>

## Idirdhealú a dhéanamh idir ról an DPC agus an Bhreithimh Cheaptha

Ní gá go mbeadh gach gníomhaíocht phróiseála a bhaineann leis na cúirteanna laistigh de raon feidhme na gcúirteanna agus iad ag gníomhú ina gcáilíocht bhreithiúnach. Do cheisteanna cosanta sonraí atá lasmuigh den raon feidhme sin, is é an DPC an t-údarás maoirseachta ábhartha. Faigheann an DPC gearán ó dhaione aonair i gcásanna inar féidir go mbaineann na ceisteanna a thógtar leis na cúirteanna agus iad ag gníomhú ina gcáilíocht bhreithiúnach; ní ceisteanna iad sin, mar sin de, ar féidir leis an DPC iad a láimhseáil. Tá gearán eile a bhaineann le gníomhaíochtaí cúirte níos leithne mar chuid de shainchúram an DPC. Léiríonn cás-staidéir 13-17 na réimsí ina bhfuil an DPC nó an Breitheamh Ceaptha ina údarás maoirseachta cuí.

Example A:

## Na Cúirteanna mar fhostóir

((Cásanna nuair is é an DPC an t-údarás maoirseachta inniúil)

D'admhaigh an tSeirbhís Cúirteanna gur úsáid bainistoir CCTV chun monatóireacht a dhéanamh ar uaireanta oibre fhostaí.

Ós rud é nach mbaineann na ceisteanna a bhfuil an gearán fúthu le gníomhaíochtaí próiseála sonraí na gcúirteanna agus iad ag gníomhú ina gcáilíocht bhreithiúnach, ba é an DPC an t-údarás cuí chun déileáil leis an ngearán seo.

Example B:

## Nochtadh Orduithe Cúirte a bhí á gcoinneáil ag tríú páirtithe

((Cásanna nuair is é an DPC an t-údarás maoirseachta inniúil)

Ba pháirtí é an gearánach in imeachtaí Dlí Teaghlaigh mar ar thug Breitheamh na Cúirte Dúiche treoir go ndéanfaí leanáí na bpáirtithe a atreorú chun teiri pe shúgartha a fháil. Nocht na dlíodóirí don mháthair dhá ordú cúirte (a bhaineann le rochtain) don teiri peoir súgartha. Rinneadh sin cheal ordú cúirte chun a leithéid a dhéanamh nó ar iarratas an teiri peora shúgartha. Ní raibh an t-eolas a bhí le fáil sna horduithe riachtanach do chuspóirí na teiri pe súgartha agus nochtadh ann eolas a bhain le ceisteanna eile, lena n-áirítear cothabháil.

Ós rud é nach mbaineann na ceisteanna a bhfuil an gearán fúthu le gníomhaíochtaí próiseála sonraí na gcúirteanna agus iad ag gníomhú ina gcáilíocht bhreithiúnach, ba é an DPC an t-údarás cuí chun déileáil leis an ngearán seo.

Example C:

## Nochtadh sonraí pearsanta ar bhonn deonach

(Cásanna nuair is é an DPC mar an t-údarás maoirseachta inniúil)

Cuireadh sonraí pearsanta an ghearánaigh san áireamh i Mionnscríbhinn Fhollasaithe dheonach ar thug duine mionn fúithi nach raibh ina pháirtí ag na himeachtaí. Tharla sin cheal Ordaithe Chúirte a d'fhágfadh gur ghá folasú neamhpháirtí a dhéanamh agus

mar sin de níorbh ann d' aon bhunús dlí chun an folasú a dhéanamh.

Ós rud é nach mbaineann na ceisteanna a bhfuil an gearán fúthu le gníomhaíochtaí próiseála sonraí na gcúirteanna agus iad ag gníomhú ina gcáilíocht bhreithiúnach, ba é an DPC an t-údarás cuí chun déileáil leis an ngearán seo.

Example D:

## Rochtain ar an gcomhad Cúirte

(Cásanna nuair is é an Breitheamh Ceaptha an t-údarás maoirseachta inniúil)

Rinne an gearánach iarratas rochtana chuig oifig chúirte áitiúla do na sonraí pearsanta ar fad a bhí i seilbh na Seirbhíse Cúirteanna agus a bhain leis ag eascairt as láithreas os comhair na cúirte, lena n-áirítear na taifid chúirte

agus taifeadadh digiteach fuaimé na héisteachta. Diúltaíodh an t-iarratas..

Ós rud é go mbaineann na ceisteanna a bhfuil an gearán fúthu le gníomhaíochtaí próiseála sonraí na gcúirteanna agus iad ag gníomhú ina gcáilíocht bhreithiúnach, ba é an Breitheamh Ceaptha an t-údarás cuí chun déileáil leis an ngearán seo.

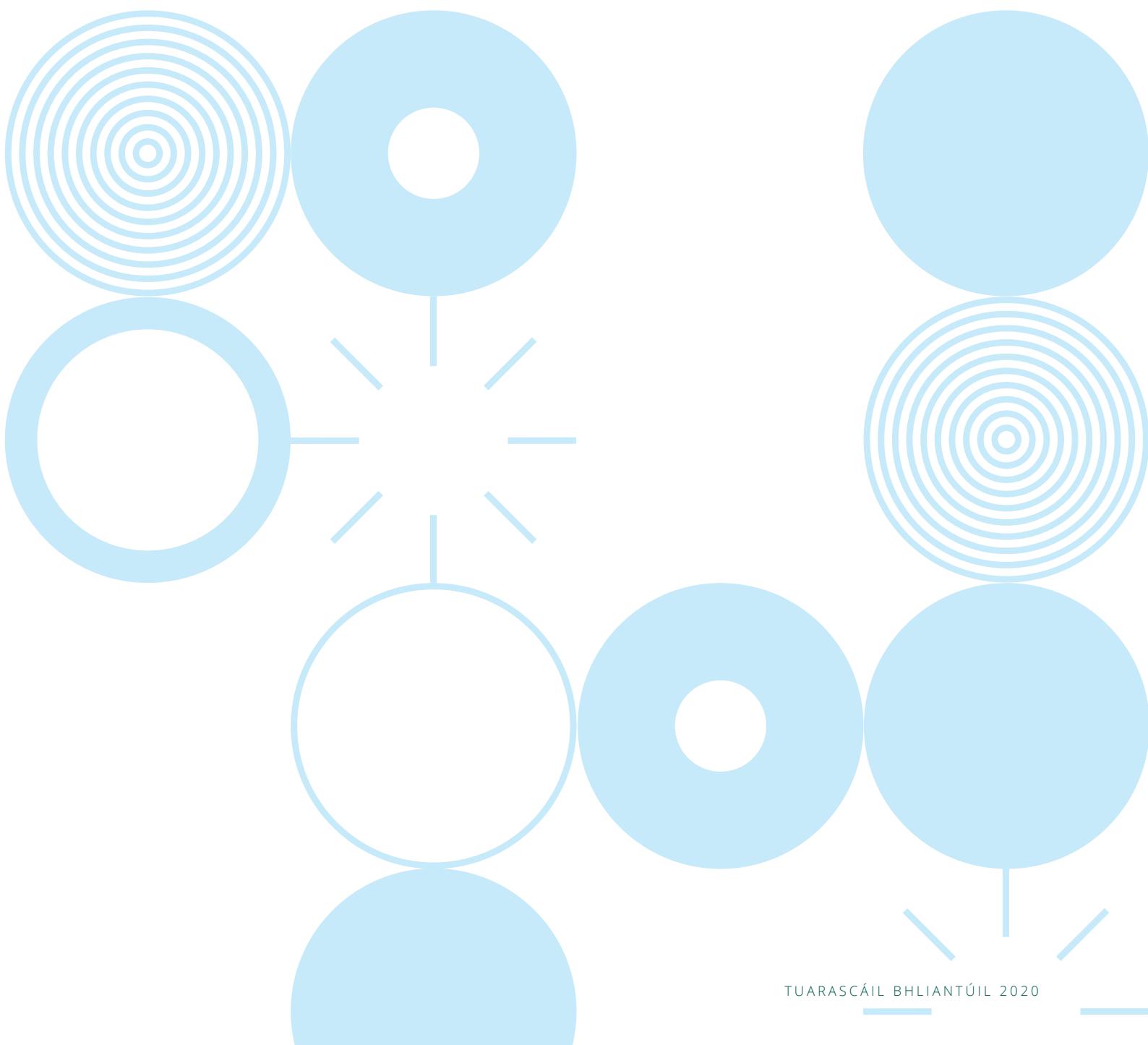
Example E:

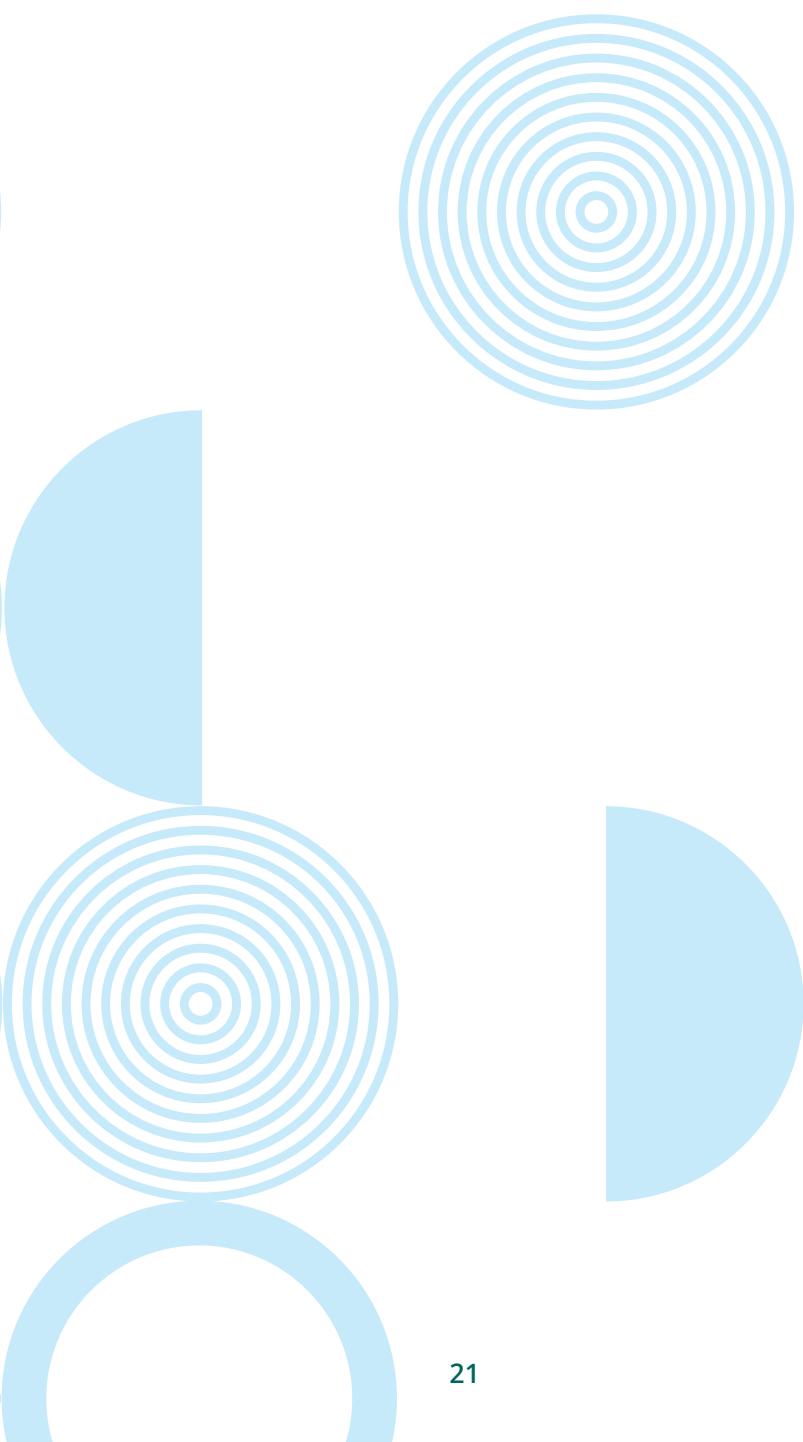
## Gearán faoin Taifead Cúirte

(Cásanna nuair is é an Breitheamh Ceaptha an t-údarás maoirseachta inniúil)

TLíomhnaíonn an gearánach (arbh é an cosantóir in imeachtaí os comhair na gcúirteanna é) mírialtachtaí sna horduithe a rinneadh ag an gcúirt agus lorg sé coigeartú díobh sin.

AÓs rud é go mbaineann na ceisteanna a bhfuil an gearán fúthu le gníomhaíochtaí próiseála sonraí na gcúirteanna agus iad ag gníomhú ina gcáilíocht bhreithiúnach, ba é an Breitheamh Ceaptha an t-údarás cuí chun déileáil leis an ngearán seo.





# Cás-staidéir

Cás-staidéar 1:

## Foilsíú neamhúdaraithe grianghraif (Réiteach Cairdiúil)

Fuair an DPC gearán ó dhuine aonair a bhain le foilsíú a ngrianghraif in alt a bhí mar chuid de nuachtlitir ionaid oibre gan a dtoiliú a bheith faighte. Chuir an rialaitheoir sonraí, arbh é fostóir earnála poiblí an duine aonair é, in iúl don duine gur chóir go mbeadh toiliú faighte aige chun an grianghraf a úsáid i nuachtlitir an ionaid oibre, ós rud é nárbh é seo an cuspóir a bhfuarthas an grianghraf lena aghaidh. Chuir an rialaitheoir sonraí in iúl don duine aonair freisin go raibh sárú sonraí tar éis tarlú sa chás seo.

Aithníodh an gearán seo mar cheann a bhfuil seans ann go bhféadfaí é a réiteach go cairdiúil faoi Alt 109 den Acht um Chosaint Sonraí 2018; d' aontaigh an gearánach agus an rialaitheoir sonraí araon go n-oibreodh siad leis an DPC chun iarracht a dhéanamh an cheist a réiteach go cairdiúil.

Chuaigh an rialaitheoir sonraí i dteagmháil leis an DPC faoin gceist, agus chomhairligh sé go raibh imscrúdú inmhéánach curtha i gcrích aige agus dheimhnigh sé gurbh fhíor gur tharla sárú sonraí agus gur chóir toiliú a bheith faighte chun grianghraf an duine aonair a úsáid i nuachtlitir an ionaid oibre. Ní raibh foilsíú i nuachtlitir i measc na gcuspóirí dá bhfuarthas an grianghraf sa chéad dul síos. Ghabh an fostóir a leithscéal leis an duine aonair. Níor mheas an gearánach, áfach, gur réiteach cuí é seo don ghearán a bhí idir lámha.

Chuir an DPC moltaí ar fáil go ndéanfaí bileog eolais faoi chúrsaí toilithe a dháileadh don fhoireann sula mbainfí úsáid as grianghrafadóireacht, ábhar fuaimé agus/nó fiseáin, agus go ndéanfaí foirm thoilithe do ghrianghrafadóireacht, ábhar fuaimé agus fiseáin a chomhlánú agus a shníú sula bhfaighfí íomhánná nó taifeadtaí; chuir an rialaitheoir an chomhairle seo i bhfeidhm ina dhiaidh sin.

Dearbhaíonn Airteagal 5(1)(b) den GDPR go "ndéanfar sonraí pearsanta a bhailíú chun críocha sonraithe sainráite dlisteanacha agus ní dhéanfar iad a phróiseáil tuilleadh ar shlí atá neamhréir leis na críocha sin ('teorannú de réir cuspóra').

Bhí an DPC sásta go ndearna an rialaitheoir sonraí tuilleadh próiseála ar shonraí pearsanta an duine aonair gan a dtoiliú (ná bunús eile dlí) chun a leithéid a dhéanamh nuair a d' fhoilsigh sé grianghraf an fhostaí i nuachtlitir an ionaid oibre. D' eisigh an DPC litir thoraidh a chuir an méid sin in iúl don ghearánach. Bhí an DPC sásta leis na bearta eagraíochta a tugadh isteach ina dhiaidh sin agus mar sin de níor ghá don rialaitheoir aon bhearta breise a dhéanamh sa chás seo.

Sa chás-staidéar seo, níorbh fhéidir a mheas gurbh ann do bhaol suntasach maidir le cearta agus saoirsí bunúsacha an duine aonair, ach mar sin féin, chuir próiseáil na sonraí pearsanta isteach ar an duine aonair agus is sárú den GDPR é sna cúinsí. Léiríonn sin an gá atá ann le go gcuirfeadh gach eagraíocht oiliúint ar a gcuid foirne — ag gach leibhéal agus i ngach ról — le go mbeidís ar an eolas faoin GDPR agus le go gcuirfidís a chuid prionsabal san áireamh.

## Cás-staidéar 2:

# Ní bhfuarthas aon fhreagra ar iarratas duine ar a shonraí (Réiteach Cairdiúil)

Fuair an DPC gearán ó dhuine aonair maidir le hiarratas duine ar a shonraí a rinne an duine sin do rialaitheoir sonraí, comhlacht ceantála ar bhain an gearánach úsáid as a n-ardán chun earraí a dhíol; ba é ábhar an iarratais ná cóip den eolas ar fad a bhain leo. Ní bhfuarthas aon fhreagra ón rialaitheoir sonraí in ainneoin gur eisigh an duine aonair dhá mheabhrúchán ina dhiaidh sin.

Aithníodh an gearán seo mar cheann a raibh seans ann gurbh fhéidir réiteach cairdiúil a fháil dó faoi Alt 109 den Acht um Chosaint Sonraí 2018; d’ontaigh an gearánach agus an rialaitheoir sonraí araon bheith ag obair leis an DPC chun iarracht a dhéanamh an cheist a réiteach go cairdiúil.

Chuaigh an rialaitheoir sonraí i dteagmháil leis an DPC faoin gceist agus chuir sé in iúl dúinn, cé go raibh caidreamh gnó aige leis an duine aonair i 2016, nach raibh aon eolas a bhain leo á choinneáil aige, ós rud é go raibh córas nua suiteáilte aige i Mí na Bealtaine 2018, agus nár coiméadadh aon sonraí ón tréimhse roimhe sin. Chuir sé in iúl don DPC freisin go raibh gach comhad páipéis stíallta aige agus gur chuir a chomhairleoir dlí in iúl dóibh nach raibh iachall air iad a choimeád.

Sholáthair an rialaitheoir sonraí seatanna scáileáin don DPC freisin óna chóras leictreonach maidir le torthaí cuardaigh in aghaidh ainm an duine aonair, cuardach nár aimsigh aon torthaí le taispeáint.

Dearbhaíonn Airteagal 12(3) den GDPR “*go soláthróidh an rialaitheoir fainseis maidir leis an ngníomhaíocht a rinneadh i dtaca le hiarraidh faoi Airteagal 15 go 22 don ábhar sonraí agus déanfaidh sé sin gan mhoill mhíchuí agus in aon chás laistigh d’ aon mhí amháin tar éis an iarraidh a fháil.*”

Tar éis dó an cheist a scrúdú go mion, ba léir don DPC gur sháraigh an rialaitheoir sonraí Airteagal 12(3) den GDPR ós rud é go bhfuil sé mar dhualgas ar rialaitheoirí freagra a thabhairt ar iarratas duine ar a shonraí laistigh den tráthchlár reachtúil, faoi mar a leagtar amach in Airteagal 12 den GDPR, fiú nuair nach bhfuil a leithéid de shonraí ag an rialaitheoir.

Maidir le hiarratas an duine ar a shonraí níor ghá aon bheart breise a dhéanamh maidir leis an gceist seo ós rud é nár bh ann d’ aon fhianaise a chuirfeadh in iúl go raibh aon sonraí a bhain leis an duine aonair á gcoinneáil ag an rialaitheoir sonraí.

D’eisigh an DPC comhairle don rialaitheoir sonraí, ag cur a chuid dualgas i gcuimhne dó faoi Ailt 12 agus 15 agus an riachtanas atá ann eolas a sholáthar maidir le bearta a rinneadh i dtaca le hiarratas duine ar a shonraí, fiú nuair nach bhfuil i gceist sna cúinsí ach cur in iúl do dhuine aonair nach bhfuil aon sonraí á gcoinneáil aige.

### Cás-staidéar 3:

## Coimeád sonraí pearsanta duine atá faoi aois ag Gníomhaireacht Stáit (Réiteach Cairdiúil)

(Dlí Infheidhme — Na hAchtanna um Chosaint Sonrai, 1988 agus 2003)

Sa chás seo, bhí iarratas déanta ag gearánaigh an cháis roimhe seo go scriosfadh gníomhaireacht stáit Éireannach comhad a bhain le heachtra ar scoil ina raibh a leanbh óg páirteach, agus a cuireadh in iúl don ghníomhaireacht sa chéad dul síos. Cé go raibh cinneadh déanta ag an nGníomhaireacht nár ghá tuilleadh imscrúdaithe a dhéanamh ar an eachtra, dhiúltaigh sí sonraí pearsanta an duine faoi aois a scriosadh — ag tabhairt le fios go gcoimeádtar a leithéid de chomhaid go dtí go mbaineann an duine faoi aois faoi thrácht aois 25 bliana amach.

Rinne an DPC iarratas go dtabharfadhl an ghníomhaireacht stáit achoimre ar an mbonn dlí a bhí acu chun sonraí pearsanta an duine faoi aois a choimeád. Sholáthair an ghníomhaireacht an méid sin agus luagh sí a polasaí coimeádta faoi mar atá dearbhaite do na gearánaigh, ach níor mheas an DPC go raibh lántréimhse choimeádta infheidhme sna cúinsí ar leith.

Chuir an DPC an dá pháirtí ar an eolas faoin bpróiseas réitigh chairdiúil agus dúirt siad beirt go raibh siad toilteanach tabhairt faoina leithéid. Tar éis do na gearánaigh agus don rialaitheoir teagmháil a dhéanamh lena chéile arís agus arís eile chun an cheist a phlé, dheimhnigh an ghníomhaireacht stáit do na gearánaigh go scriosfaí an comhad ina raibh sonraí pearsanta a linbh le fáil.

### Cás-staidéar 4:

## Pribhléid Dlíodóra agartha chun sonraí pearsanta a choinneáil siar (Gearáin faoi iarratas Rochtana)

Phléigh an DPC le cás ina raibh i gceist iarratas ag duine aonair ar ospidéal lena gcuid sonraí pearsanta a fháil. Bhí an duine aonair seo tar éis treoir a thabhairt dá ndlíodór i dtaca le caingean failí in aghaidh an ospidéil ag eascairt as cúram a bhí faighte acu.

Faoi am a ndearna an duine aonair gearán leis an DPC trína ndlíodór bhí an t-ospidéal tar éis roinnt taifead leighis a scaoileadh, ach chuir an duine aonair in iúl go raibh siad ag fanacht le nótáí neamhchliniciúla; bhí an t-ospidéal ag diúltú iad sin a scaoileadh ar an mbonn go raibh siad faoi réir ag pribhléid dlíthíochta. Go sonrach ba í tuairim an duine aonair (a raibh a ndlíodór mar ionadaí acu sa ghearrán a rinneadh don DPC) go rabhthas tar éis

ráitis éagsúla ó bhaill fhoirne a choinneáil siar. Trí mheán an phróisis láimhseála ghearáin fuair an DPC amach gur ullmhaíodh ráitis bhaill fhoirne le linn athbhreithnithe inmhéanaigh ag an ospidéal maidir leis an gcúram a tugadh don otherar.

D’iarr an DPC go mbeadh sé in ann — ar bhonn deonach — féachaint ar na doiciméid sin a coinníodh siar ón duine aonair mar fhreagra ar an iarratas rochtana, chun a bheith sásta gur cuireadh a n-ábhar agus a gcáilitheacht maidir le díolúine scailte i bhfeidhm ar bhealach bailí.

I gcúinsí nuair a ullmhaíodh an ráiteas don chuspóir ceannasach seo, athbhreithniú inmhéanach, agus nár cuireadh túis le dlíthíocht, ná níor bagraíodh a leithéid ag dáta cruthaithe na ráiteas, ní raibh an DPC sásta gur bhain an phribhléid dlíthíochta le feidhm, agus thug sé treoir go ndéanfaí iad a scaoileadh.

## Cás-staidéar 5:

# Monatóireacht Fhrestail agus Aithint Aghaidhe ag meánscoil (Idirghabháil Dhíreach)

**Tar éis tuairiscí meáin chumarsáide i dtaca le tástáil aitheanta aghaidhe do chuspóirí monatóireachta freastail i meánscoil, bhuail an DPC le baill fhoirne agus le Bord Bainistíochta na scoile i Mí Feabhra 2020.**

Thug an DPC achoimre ar na ceisteanna cosanta sonraí a bhaineann le húsáid sonraí bithmhéadracha, go sonrach teicneolaíocht aitheanta aghaidhe, i dtimpeallacht oideachasúil, lena n-áirítear próiseáil sonraí daoine atá faoi aois. Thagar an DPC do chéad fhíneáil údarás cosanta sonraí na Sualainne faoin GDPR, i dtaca le tionscadal tástála i meánscoil nuair a baineadh úsáid as teicneolaíocht aitheanta aghaidhe chun freastal na ndaltaí a chlárú.

Chuaigh an DPC trí na céimeanna a bhaineann le sainmhíniú na sonraí bithmhéadracha faoi mar a leagtar iad amach in Airteagal 4(14) den GDPR agus chuir sé béim ar fhorálacha breise GDPR in Airteagal 5 — Teorannú de réir an chuspóra agus íoslachdú

sonraí; Airteagal 9 — Sonraí íogaire; agus Airteagal 35 agus 36 — Measúnú Tionchair ar Chosaint Sonraí (DPIA) agus Réamhchomhairliúchán.

Tar éis an chruinnithe, sholáthair an scoil tuairisc ionlán scríofa don DPC faoin gceist, a raibh mar chuid di deimhniú nach ndeachaigh sí ar aghaidhe le tástáil an táirge mhonatóireachta freastail faoi thrácht.

Go traidisiúnta glacann údaráis chosanta sonraí Eorpacha le seasamh láidir i dtaca le haithint aghaidhe i scoileanna agus i dtaca le húsáid chórás bithmhéadrach freastail san earnáil oideachais. In Éirinn, cuireann an DPC iniúchtaí i gcrích go rialta i scoileanna mar a bhfaigtear tuairiscí faoi chórás nó faoi thástálacha freastail bhithmhéadraigh.

Measann an DPC gur féidir, nuair a bhíonn teagmháil acu le modhanna cunóracha faireachais gan dóthain bhunús díl ná boinn chirt, gur féidir leis sin íogaireacht na ndaltaí a laghdú go hóg maidir lena leithéid de theicneolaíocht, rud a d'fhéadfadh iad a spreagadh chun a gcuid ceart cosanta sonraí a ghéilleadh i gcomhthéacsanna eile freisin.

## Cás-staidéar 6:

# Láimhseáil ghearáin duine Éireannaigh is ábhar do na sonraí in aghaidh Cardmarket, atá lonnaithe sa Ghearmáin, ag úsáid mheicníocht ionaid Ilfhreastail an GDPR.

(Dlí infheidhme — an GDPR & an tAcht um Chosaint Sonraí 2018)

Fuair an DPC gearán ó dhuine aonair Éireannach in aghaidh Cardmarket, ardán Gearmánach r-thráchtala agus trádála. Fuair an duine r-phost ó Cardmarket, ag cur in iúl dó go rabbhthas tar éis é a haiceáil agus gur féidir gur sceitheadh cuid dá chuid eolais phearsanta úsáideora. Chuir an duine aonair an DPC ar a airdeall agus chuir sé gearán faoina bhráid maidir leis an sárú.

Faoi meicníocht ionaid Ilfhreastail (OSS) a cruthaídh ag an GDPR, socráonn suíomh phríomh-heagraíocht Eorpach chomhlachta cé acu údarás Eorpach a ghníomhóidh mar an príomhúdarás maoirseachta i dtaca le haon ghearáin a fhaightear. Nuair a dheimhnítear an priomhúdarás (LSA), gníomhaíonn an t-údarás a fuair an gearán mar údarás maoirseachta ábhartha (CSA). Is é an CSA an t-idirghabhálai idir an LSA agus an duine aonair. I measc rudáil eile, is é an fáth atá leis an scaradh seo ná le gur féidir le húdarás maoirseachta cumarsáid a dhéanamh le gearánaigh aonair ina dteanga dhúchais.

Sa chás seo, ghníomhaigh DPA Bheirlín mar an LSA, ós rud é go raibh príomhshuíomh an chomhlachta i limistéar críche Bheirlín. Ghníomhaigh an DPC mar CSA, ag déanamh cumarsáide le DPA Bheirlín agus ag cur ar aghaidh nuashonruithe maidir leis an imscrúdú (tar éis iad a aistriú ó Ghearmáinis go Béarla) don ghearánach in Éirinn.

Thug DPA Bheirlín a imscrúdú chun críche maidir leis an sárú agus maidir le gearán an duine aonair.

D' uaslódáil sé dhá dhréachtchinneadh, ceann a bhain leis an sárú iomlán, a chuaigh i bhfeidhm ar a lán úsáideoirí eile de chuid an ardáin ar fud na hEorpa, agus ceann eile maidir leis an ngearán sonrach a taisceadh ag an Éireannach leis an DPC agus a cuireadh in iúl do DPA Bheirlín.

Gné thábhachtach de chuid mheicníochta OSS ná gur féidir le CSA tuairim a chur in iúl maidir le dréachtchinneadh a eisítear ag príomhúdarás maoirseachta. Déantar sin le cinntíú go bhfuil údaráis maoirseachta Eorpacha ag cur an GDPR i bhfeidhm go comhsheasmhach, .i. go mbeadh an chonclúid chéanna ag baint leis an gcinneadh deiridh a dhéanann DPA Bheirlín agus a bheadh ag baint le cinneadh de chuid an DPC dá mbeadh an comhlacht lonnaithe in Éirinn agus dá mbeadh an DPC tar éis imscrúdú a dhéanamh ar an ngearán mar an príomhúdarás maoirseachta.

Bhí an DPC sásta le dréachtchinntí DPA Bheirlín agus níor mheas sé é a bheith riachtanach aon phointí soiléirithe nó iarratais leasaithe a lua an uair seo. Chuir an DPC an duine aonair ar an eolas faoi thoradh imscrúdú DPA Bheirlín, ag soláthar dóibh cóip den chinneadh iomlán maidir leis an imscrúdú a rinneadh ar an sárú agus an cinneadh a phléigh lena ngearán sonrach.

Léiríonn an cás seo na gnéithe dúshlánaча ‘ná cuir do ladar isteach’ agus aistrithe oibre a bhaineann leis an meicníocht OSS a bunaíodh ag an GDPR. Léiríonn sé méid an chomhoibrithe idir údaráis maoirseachta Eorpacha a theastaíonn le haghaidh chur i bhfeidhm comhsheasmhach an GDPR san Eoraip.

## Cás-staidéar 7:

# Feidhmiú Nós Imeachta Airteagail 60 i nGearáin Trasteorann: Groupon

Fuair an DPC gearán i Mí Iúil 2018 ó údarás cosanta sonraí na Polainne ar son gearánaigh Pholannaigh in aghaidh Groupon International Limited ("Groupon"). Bhain an gearán leis na riachtanais a bhí i bhfeidhm ag Groupon ag an am sin chun céannacht daoine aonair a dheimhniú a rinne iarratais chosanta sonraí don chomhlacht. Sa chás seo, mhaígh an gearánach go raibh cleachtas Groupon, is é sin ceangal a chur orthu a gcéannacht a dheimhniú trí chur isteach leictreonach chóip chárta náisiúnta aitheantais, i gcomhthéacs iarratais a bhí déanta acu chun sonraí pearsanta a scriosadh de bhun Airteagail 17 den GDPR, ina shárú ar phrionsabal an íoslaghdaithe shonraí faoi mar a leagtar sin amach in Airteagal 5(1) (c) den GDPR, i gcúinsí nuair nár ghá doiciméad aitheantais a sholáthar agus cuntas Groupon á chruthú. Ina theannta sin, mhaígh an gearánach gur shárú ar a gceart ar scriosadh faoi Alt 17 a bhí i dteip Groupon ina dhiaidh sin gníomhú maidir leis an iarratas scriosta (i gcúinsí nuair a chuir an duine in aghaidh cóip dá gcárta náisiúnta aitheantais a sholáthar).

Chuir an DPC túis le himscrídú an ghearán tar éis dó sin a fháil. Le linn a chomhfhereagrais le Groupon faoin gceist, ba léir gur éiríodh as polasaí Groupon ceangal a chur ar iarratasóir cóip a sholáthar de chárta náisiúnta aitheantais, a bhí i bhfeidhm roimh theacht i bhfeidhm an GDPR (agus a bhí i bhfeidhm ag am iarratas scriosta an ghearánaigh), gur éiríodh as sin ó Mhí Dheireadh Fómhair 2018 ar aghaidh. Ina áit sin bhí Groupon tar éis córas fiordheimhnithe r-phoist a chur i bhfeidhm a lig d'úsáideoirí Groupon deimhniú gur leo an cuntas. Rinne an DPC iarracht an gearán a réiteach go cairdiúil (de bhun Ailt 109(2) den Acht um Chosaint Sonraí 2018) ach ní raibh an gearánach toilteanach glacadh le moltaí Groupon maidir leis sin. Dá réir sin, b' éigean

cinneadh a dhéanamh faoin gceist trí chinneadh faoi Airteagal 60 den GDPR.

### (i) Dréachtchinneadh Tosaigh

Bhí i gceist le chéad chéim phróiseas Ailt 60 ná ullmhú dréachtchinnidh ag an DPC i dtaca leis an ngearán. Ina dhréachtchinneadh tosaigh, rinne an DPC cinntí gur sáraíodh Airteagail 5(1)(c) agus 12(2) den GDPR ag Groupon. Chuir an DPC an dréachtchinneadh ar fáil do Groupon le cur ar a chumas aighneachtaí a dhéanamh. Ina dhiaidh sin rinne Groupon roinnt aighneachtaí a cuireadh san áireamh (in éineacht le hanailís an DPC díobh) i leagan breise den dréachtchinneadh.

### (ii) Soláthar an Dréachtchinnidh Thosaigh do na hÚdarás Maoirseachta Ábhartha.

Bhí i gceist le dara céim phróiseas Ailt 60 uaslódáil dréachtchinneadh tosaigh an DPC don IMI lena scaipeadh i measc na nÚdarás Maoirseachta Ábhartha (CSA), de bhun Airteagail 60(3) den GDPR. Rinneadh dréachtchinneadh an DPC a uaslódáil don IMI ar 25 Bealtaine 2020; de bhun Airteagail 60(4) den GDPR, ina dhiaidh sin bhí ceithre seachtaine ag na CSA chun aon agóid ábhartha agus réasúnach a chur isteach maidir leis an gcinneadh.

Ina dhiaidh sin fuair an DPC roinnt agóidí ábhartha agus réasúnacha chomh maith le tuairimí faoina chinneadh ó CSA. Go sonrach, rinne CSA áirithe an cás dó gur chóir sáruithe breise den GDPR a bheith aimsithe, agus ina theannta sin gur chóir iomardú agus/nó fineáil riarrachán a bheith curtha i bhfeidhm.

### (iii) Dréachtchinneadh Athbhreithnithe

Chuir an chéad chéim eile de phróiseas Ailt 60 iachall ar an DPC machnamh cúramach a dhéanamh faoi gach agóid ábhartha agus réasúnach agus gach tuairim a fuarthas i dtaca lena dhréachtchinneadh, agus a anailís de na rudaí sin a chorprú i ndréachtchinneadh athbhreithnithe. Agus é ag athbhreithniú a dhréachtchinnidh, thug an DPC aird ar chuid de na hagóidí ábhartha agus réasúnacha a fuarthas, ach níor thug sé aird ar agóidí ábhartha agus réasúnacha áirithe eile. Fuair dréachtchinneadh athbhreithnithe an DPC, agus é ag cur san áireamh a anailís ar na hagóidí ábhartha agus réasúnacha agus na tuairimí maidir lena dhréachtchinneadh, fuair sé sáruithe breise ar Airteagail 17(1)(a) agus 6(1) den GDPR

ag Groupon. Ina theannta sin, mhol an DPC ina dhréachtchinneadh athbhreithnithe iomardú a thabhairt do Groupon, de bhun Airteagail 58(2)(b) den GDPR. Sholáthair an DPC a dhréachtchinneadh athbhreithnithe do Groupon chun cur ar a chumas aighneachtaí deiridh a dhéanamh. Fuarthas roinnt aighneachtaí deiridh ó Groupon, a cuireadh san áireamh (in éineacht le hanailís an DPC thíos) i ndréachtchinneadh athbhreithnithe an DPC.

(iv) Soláthar Dréachtchinnidh Athbhreithnithe chuig na hÚdarás Mhaoirseachta Ábhartha.

Bhí i gceist le chéad chéim eile phróiseas Airteagail 60 gur uaslódáil an DPC a dhréachtchinneadh athbhreithnithe don IMI, lena scainpeadh i measc na CSA. Faoi Airteagal 60(5) den GDPR, bhí na CSA i dteideal dhá sheachtain bhereise a bheith acu chun aon agóidí breise a chur isteach maidir leis an gcinneadh.

Tógadh saincheist amháin eile maidir le dréachtchinneadh athbhreithnithe an DPC. Mar gheall air sin b'ann don fhéidearthacht go mbeadh gá ann leis an nós imeachta Réitigh Achrainn a úsáid faoi Airteagal 65 den GDPR, a thabharfadhbh isteach rannpháirtíocht an EDPB, agus é ag tabhairt breithe faoin bpointe/faoi na pointí easaontais, agus a chuirfeadh leis an tréimhse ama inarbh fhéidir an cinneadh a chomhlánú i dtaca leis an gcás. Aistarraingíodh an fiosrúchán breise ina dhiaidh sin, áfach.

(v) Glacadh leis an gCinneadh Deiridh

Tar éis aistarraingt na hagóide deiridh ábhartha agus réasúnaí, agus an spriocdháta thart chun aon agóidí

breise a fháil, bhí i gceist le céim dheiridh phróiseas Airteagail 60 gur ghlac an DPC leis an gcinneadh deiridh, a ndearnadh é a uaslódáil don IMI agus a cuireadh in iúl do Groupon. Rinneadh an cinneadh deiridh a uaslódáil ar 16 Nollaig 2020. De réir Airteagail 60(6) den GDPR, measadh go raibh na CSA ar aon tuairim ag an bpointe seo leis an gcinneadh agus go raibh orthu cloí leis. De bhun Airteagail 60(7), bhí údarás cosanta sonraí na Polainne, ar taisceadh an gearán leis i dtús báire, freagrach as an gcinneadh a chur in iúl don ghearánach.

Mar achoimre, fuair an DPC sáruithe na nAirteagail seo a leanas den GDPR maidir leis an gcás seo: Airteagail 5(1)(c), 12(2), 17(1)(a) agus 6(1).

Léiríonn an cás-staidéar seo, nuair nach féidir gearán cosanta sonraí trasteorann a réiteach go cairdiúil, go bhfuil an nós imeachta Airteagail 60 a leanann dá bharr sin an-chasta, an-deacair agus an-fhadálach, go háirithe ós rud é gur gá tuairimí na n-údarás maoirseachta eile ar fud an AE/LEE a chur san áireamh agus machnamh cúramach a dhéanamh fúthu i ngach cás dá leithéid. Sa chás seo, tar éis tabhairt chun críche imscrúdú an ghearán, rinneadh dréacht tosaigh chinneadh an DPC a uaslódáil don IMI ar 25 Bealtaine 2020, agus glacadh leis an gcinneadh deiridh — a chorpraíonn aighneachtaí ó Groupon, agóidí ábhartha agus réasúnacha agus tuairimí ó CSA, agus anailís an DCA thíos — glacadh leis ar 16 Nollaig 2020, seacht mí níos déanaí.

## Cás-staidéar 8:

# Réiteach Cairdiúil i nGearáin Trasteorann: MTCH

Fuair an DPC gearán i Mí Mheithimh 2020, trí mheán a chuid foirmearcha gréasáin ghearáin, in aghaidh MTCH Technology Services Limited (Tinder). Cé go ndearnadh an gearán go díreach don DPC, ó chónaitheoir Éireannach, tar éis measúnaithe measadh é a bheith ina ghearán trasteorann ós rud é gur bhain sé le polasaithe ginearálta oibriochtúla Tinder agus, ós rud é go bhfuil Tinder ar fáil ar fud an AE, measadh gur chineál próiseála í an phróiseáil a ndearnadh gearán fúithi “.... a bhfuil éifeacht shubstainteach ag an bpróiseáil sin ar ábhair shonraí i níos mó ná Ballstát amháin nó gur dóchúil go mbeidh éifeacht shubstainteach aici orthu” (de réir shainmhíniú na próiseála trasteorann faoi Airteagal 4(23) den GDPR.)

Bhain an gearán le cosc an ghearánaigh ó ardán Tinder; ina dhiaidh sin bhí iarratas déanta ag an ngearánach do Tinder le go scriosfaí a chuid sonraí pearsanta faoi Airteagal 17 den GDPR. Mar fhreagra ar a iarratas scriosta, d’iarr Tinder ar an ngearánach féachaint ar a pholasáil príobháideachais chun eolas a fháil i dtaca lena chuid polasaithe coimeádta maidir le sonraí pearsanta. Go háirithe, chuir Tinder an méid seo in iúl don ghearánach “tar éis dhúnadh cuntais, cibé cúis a bheadh leis sin (scriosadh ag an úsáideoir, cosc ar an gcutas srl.), níl sonraí an úsáideora infheicthe ar an tseirbhís níos mó (faoi réir ag cur san áireamh moille réasúnaí) agus cuirtear na sonraí de láimh de réir pholasáil príobháideachais [Tinder]”.

Bhí an gearánach míshásta leis an bhfreagra seo agus chuaigh sé ar ais go Tinder, ag déanamh iarratais go scriosfaí a chuid sonraí pearsanta. D’fhreagair Tinder, ag athdhearbhú an méid seo: “...is gnáth go scriostar sonraí pearsanta “ar scriosadh an chuntais chomhfhreagraigh”, ag lua lena chois sin go bhfuil scriosadh a leithéid de shonraí pearsanta “faoi réir ag cúiseanna dlisteanacha agus dlíthiúla amháin chun iad a choimeád, lena n-áirítear chun cloí lenár gcuid dualgas reachtúil coimeádta shonraí agus do bhunú, cleachtadh nó cosaint éileamh dlí, faoi mar a cheadaítear faoi Airteagal 17(3) den GDPR.” Ina dhiaidh sin rinne an gearánach a ghearán leis an DPC.

Tar éis don DPC dul i dteaghmáil le Tinder maidir leis an ngearán seo, chuir Tinder in iúl don DPC go raibh cosc ar an ngearánach an t-ardán a úsáid ós rud é go raibh a chuid eolais logála isteach ceangailte le próifil choiscithe eile. D’aimsigh Tinder aon chuntas déag eile freisin a bhain le comhartha aitheantais ghléas an ghearánaigh. Bhí na cuntais seo ar fad coiscithe ó ardán Tinder ós rud é go raibh an chuma ar an scéal go raibh cliant neamhofigiúil á úsáid chun teacht ar Tinder (sin sárú ar théarmaí seirbhíse Tinder).

Chuaigh an DPC ar ais don ghearánach leis an eolas seo, agus chuir an gearánach in iúl dó go raibh cliant oifigiúil Tinder úsáidte aige do Android chomh maith le suíomh gréasáin oifigiúil Tinder ar Firefox. Faoi mar a tharla, áfach, leagan saincheaptha Android a bhí á úsáid aige ar a fhón, le roinnt forlíontán slándála agus príobháideachais. Dá thoradh sin bhí comhartha aitheantais gléis dhifriúil ag a fhón tar éis gach nuashonraithe/athbhútala. Ba í tuairim an ghearánaigh gur dhócha gur sin ba chíos le cosc a bheith air Tinder a úsáid. Agus a leithéid de chosc á chur san áireamh, de réir pholasáí Tinder faoi choimeád sonraí, bheadh a chuid sonraí pearsanta á gcoimeád do thréimhse fhada ama. Sna cúinsí, áfach, mar réiteach cairdiúil beartaithe, d’ofráil Tinder go scriosfadh siad sonraí pearsanta an ghearánaigh láithreach sa tsú go mbeadh sé in ann cuntas nua a oscailt.

Bhí cúis imní áirithe fós ag an ngearánach maidir leis an tsú ina dtugann Tinder freagra ar iarratais scriosta. Nuair a cuireadh in iúl dó go bhfuil a leithéid de cheisteanna á scrúdú ag an DPC mar chuid d’fhiosrúchán reachtúil ar leith, d’ontaigh an gearánach glacadh le moladh Tinder chun an gearán a réiteach go cairdiúil. Dá réir sin, réitiodh an cheist go cairdiúil de bhun Ailt 109(3) den Acht um Chosaint Sonraí 2018 (an tAcht), agus faoi Alt 109(3) den Acht measadh an gearán a bheith aistarraingthe.

Léiríonn an cás-staidéar seo gur féidir, trí dhianscrúdú a dhéanamh ar ghearán a bhfuil cuma doréitithe air, gur féidir é a réiteach go cairdiúil, agus gur minic go mbeidh de thoradh air sin réiteach cothrom agus éifeachtach don duine a mbaineann an cás leo ar bhealach tráthúil. Sa chás seo, chabhraigh an t-eolas sin a fuair an DPC amach nuair a rinne sé iniúchadh níos doimhne maidir le cúinsí chosc an ghearánaigh ó Tinder — is é sin gur bhain an gearánach úsáid as leagan saincheaptha de Android le forlíontán slándála agus príobháideachais — chabhraigh sin le go mbeadh tuiscint níos fearr idir na páirtithe agus dá thoradh sin rinne Tinder moladh chun an cás a réiteach, moladh ar ghlac an gearánach leis.

Cás-staidéar 9:

## Réiteach Cairdiúil i nGearáin Trasteorann: Facebook Ireland

Fuair an DPC gearán ilghnéitheach i Mí Aibreán 2019 a bhain le hiarratais rochtana (faoi Airteagal 15 den GDPR), coigeartú (faoi Airteagal 16 den GDPR) agus scriosadh (faoi Airteagal 17 den GDPR) a bhí déanta ag an ngearánach le Facebook Ireland Limited ("Facebook"). Rinneadh an gearán go díreach don DPC, ó ábhar sonraí atá lonnaithe sa RA. Tar éis measúnaithe sa DPC, measadh gur ghearán trasteorann a bhí sa ghearán, ós rud é gur bhain sé le polasaithe ginearálta oibríochtúla Facebook agus, mar go bhfuil Facebook ar fáil ar fud an AE, measadh gur chineál próiseála í an phróiseáil a ndearnadh an gearán fúithi ná ceann "...a bhfuil éifeacht shubstainteach ag an bpróiseáil sin ar ábhair sonraí i níos mó ná Ballstát amháin nó gur dóchúil go mbeidh éifeacht shubstainteach aici orthu" (de réir shainmhíniú na próiseála trasteorann faoi Airteagal 4(23) den GDPR).

I dtús báire rinne an gearánach a chuid iarratas do Facebook cionn is go raibh a chuntas Facebook glasálite le breis is bliain anuas, gan aon chuíis i dtuairim an ghearánaigh, agus chreid sé go raibh sonraí pearsanta míchruinne á gcoinneáil ag Facebook a bhain leis. Ba í mian an ghearánaigh, i ndeireadh na dála, go scriosfaí na sonraí pearsanta ar fad a bhí á gcoinneáil ag Facebook a bhain leis, agus ba í barúil an ghearánaigh go raibh an t-eolas míchruinn seo ag cur coisc air ó bheith in ann logál isteach chuig a chuntas Facebook go rafar chun túis a chur leis an bpróiseas scriosta. Bhí sé tar éis iarratas rochtana a dhéanamh do Facebook, mar sin de, ach ní raibh sé in ann a chéannacht a dheimhniú ar bhealach a shásaign Facebook. Ina dhiaidh sin rinne an gearánach a ghearán leis an DPC.

Tar éis cuid mhór teagmhála ag an DPC le Facebook agus leis an ngearánach araon agus é i gceist an gearán a réiteach go cairdiúil, agus an gearánach tar éis a bheith ábalta a chéannacht a dheimhniú

ar bhealach a shásaign Facebook, d' aontaigh Facebook nasc a chur ar fáil don ghearánach ina raibh na sonraí pearsanta le fáil a bhí á gcoinneáil ag an gcomhlacht agus a bhain leis. D' oscail an gearánach an t-ábhar sa nasc, ach bhí sé fós míshásta mar gur mhaigh sé go raibh an t-ábhar a cuireadh ar fáil easnamhach. Thug an gearánach le fios go háirithe gur mhian leis go gcuirfi ar an eolas é i dtaca le haon sonraí pearsanta á bhí á gcoinneáil ag Facebook seachas na cinn sin a príseáladh chun a phróifil Facebook a fheidhmiú.

Thug Facebook freagra ar an DPC, ag tabhairt le fios go raibh na sonraí cuntais ar fad a bhí á gcoinneáil ag an gcomhlacht maidir leis le fáil san ábhar a tugadh don ghearánach trí mheán an naisc. Bhí an gearánach fós míshásta leis an bhfreagra seo, ag tabhairt le fios gur mhian leis eolas a fháil maidir le haon sonraí pearsanta a bhí á gcoinneáil ag Facebook maidir leis féin nár bhain lena chuntas Facebook. Dúirt sé arís gur chreid sé gur féidir go bhfuil cuid de na sonraí pearsanta seo, a líomhnaítear go bhfuil siad á gcoinneáil ag Facebook ach nach mbaineann lena chuntas Facebook, gur féidir go bhfuil cuid acu míchruinn, agus sa chás sin ba mhian leis go ndéanfaí iad a choigeartú.

Mar fhreagra, chuir Facebook in iúl don DPC go raibh feabhsuithe áirithe déanta ag an gcomhlacht maidir leis an uirlis 'Íoslódáil do Chuid Eolais' ó cuireadh túis leis an ngearán. Tar éis an nuashonraithe seo i dtaca lena chuid uirlisí rochtana, bhí an comhlacht tar éis cinneadh gurbh ann do mhéid an-bheag de shonraí pearsanta breise maidir le cuntas Facebook an ghearánaigh, agus cuireadh nasc nua ar fáil don ghearánach ina raibh na sonraí pearsanta ar fad le fáil a bhí á gcoinneáil ag an gcomhlacht maidir leis an ngearánach, na sonraí breise seo san áireamh. D' oscail an gearánach an t-ábhar breise seo agus lorg an gearánach, agus é i gceist aige a ghearán a réiteach, lorg sé deimhniú nach gcoinneodh Facebook aon sonraí pearsanta a bhain leis a thuilleadh tar éis do scriosadh a chuntais a bheith curtha i gcrích. Tháinig Facebook ar ais agus é mar fhreagra acu gurbh iad na sonraí ionlána a bhí á gcoinneáil ag an gcomhlacht maidir leis an ngearánach agus a bhí laistigh de scóip Ailt 15 a bhí san ábhar a cuireadh ar fáil dó, agus thug an comhlacht le fios go rachadh sé ar aghaidh le scriosadh shonraí pearsanta an ghearánaigh

nuair a thabharfadh sé le fios go raibh sé sásta go ndéanfadh an comhlacht a leithéidanois.

Bhí an gearánach sásta an cheist a thabhairt chun críche ar an mbonn seo agus, dá réir sin, réitíodh an cheist go cairdiúil de bhun Ailt 109(3) den Acht um Chosaint Sonraí 2018 (an tAcht), agus faoi Alt 109(3) den Acht measadh an gearán a bheith tarraingthe siar.

Léiríonn an cás-staidéar seo buanna — i dtaca le gearánaigh ar daoine aonair iad — idirghabháil an DPC trí mheán phróiseas an réitigh chairdiúil. Sa chás seo bhí an gearánach in ann, mar gheall ar rannpháirtíocht an DPC, a chéannacht a dheimhniú ar bhealach a shásaign Facebook, agus sholáthair Facebook naisc dó faoi dhó ina raibh a chuid sonraí pearsanta le fáil. Bhí de thoradh ar rannpháirtíocht

an DPC leis an rialaitheoir freisin gur dheimhnigh an rialaitheoir, ar bhealach a shásaign an gearánach, go rabhthas tar éis na sonraí pearsanta ar fad a bhí le scaoileadh mar fhreagra ar iarratas Airteagail 15 a chur ar fáil dó. Tharla toradh cothrom mar gheall air sin a bhí sásúil don dá pháirtí sa ghearán.

Léiríonn an cás-staidéar seo freisin an dianinfheistíocht acmhainní atá riachtanach ó thaobh na DPA de, chun ceisteanna den chineál seo a réiteach. Tógann an gearánach sa chás seo ceist ar ábhar imní dóibh féin é agus is cuí go dtabharfaí aghaidh air sin. Is í an cheist a thógann an cás ná ar chóir nó nár chóir go mbeadh an rialaitheoir sa chás seo in ann an cheist seo a réiteach gan go mbeadh gá ann acmhainní leitheadacha DPA a úsáid chun idirghabháil a dhéanamh maidir leis an toradh.

## Cás-staidéar 10:

### **Neamhfhreagra Airteagail 60 ar iarratas Rochtana ag Ryanair**

**Sa chás seo, chuir an gearánach a ngearán faoi bhráid Oifig an Choimisiúneara Fhaisnéise (ICO) sa RA i dtús báire, agus fuair an DPC an gearán ina dhiaidh sin, ar 2 Márta 2019. Bhain an gearán le teip a líomhnaítear go ndearna Ryanair DAC (Ryanair) maidir le hiarratas duine ar a shonraí a cuireadh faoina bhráid ag an ngearánach ar 26 Meán Fómhair 2018 de réir Airteagail 15 den GDPR. Sholáthair an ICO cóip den fhoirm ghearáin don DPC a cuireadh faoi bhráid an ICO ag an ngearánach, cóip den admháil, agus dáta 26 Meán Fómhair 2018 air, a fuair an gearánach ón rialaitheoir sonraí nuair a chuir sé an t-iarratas rochtana isteach, agus cóip den ríomhphost a chuir an gearánach don rialaitheoir sonraí ina dhiaidh sin ag iarraidh nuashonraithe maidir lena n-iarratas.**

Agus é ag gníomhú ina cháilíocht mar an príomhúdarás maoirseachta, chuir an DPC tú le scrúdú ar an ngearán trí theagmháil a dhéanamh leis an rialaitheoir sonraí, ag tabhairt achoimre ar shonraí an ghearáin agus ag tabhairt treorach don rialaitheoir sonraí freagra ionlán a thabhairt ar an iarratas rochtana agus cóip den litir chlúdaigh a sholáthar don DPC a eisíodh don gheáránach. Sholáthair Ryanair rochtain ar chóipeanna dá gcuid sonraí pearsanta don gheáránach a bhain leis an uimhir thagartha shonrach chur in áirithe a raibh an gearánach tar éis í a chur ar fáil don ICO chomh maith le sonraí a bhain le gearán eile. Chuir Ryanair in iúl nach raibh sé in ann cóip den taifeadadh glao a chur ar fáil don gheáránach a bhí iarrtha acu mar, de bharr na moille ó thaobh Ryanair de maidir le próiseáil an iarratais, bhíothas tar éis an taifeadadh glao a scriosadh de réir pholasáí an chomhlactha agus ní raibh siad in ann é a fháil ar ais. Chuir Ryanair in iúl don DPC go raibh sin tugtha le fios don gheáránach acu trí mheán thairseach ar líne an chomhlactha. Dhearnbháigh Ryanair ag an am gur cuireadh an t-iarratas faoina mbráid, mar gheall ar mhéid na n-ábhar sonraí nár dheimhnigh a seoladh ríomhphoist, nár tugadh iarratais rochtana don rannóg ábhartha go dtí gur deimhníodh an r-phost

ag an ábhar sonraí. Chuir Ryanair in iúl don DPC gur fhreagair an gearánach an t-iarratas, ag deimhniú a seoladh r-phoist, ach go raibh an gníomhaire a bhí ag obair ar an iarratas tar éis éirí as bheith ag obair ar an tairseach ar líne agus nár tugadh an t-iarratas mar chúram don rannóg ábhartha, mar sin de. Dhearbaigh Ryanair nach bhfuarthas amach faoin earráid seo go dtí tamall ina dhiaidh sin, nuair a tugadh an t-iarratas do Rannóg na Seirbhís Custaiméara chun na sonraí riachtanacha a sholáthar, an taifeadadh glao san áireamh, agus faoin am sin bhí an taifead dlí tar éis a bheith scriosta de réir pholasáí coimeádta Ryanair. Sholáthair Ryanair cóip dá pholasáí coimeádta don DPC, mar a ndearbháitear go gcoinnítear taifeadtaí glao ar feadh tréimhse 90 lá ó dháta an ghlaao. Chuir Ryanair an méid seo in iúl: ós rud é go ndearnadh glao an ghearránaigh ar 5 Meán Fómhair 2018, go scriosfaí é go huathoibríoch ar 04 Nollaig 2018. Dhearbaigh Ryanair freisin nach bhfuil an fheidhmiúlacht acu chun taifeadtaí glao a scriosadh a fháil ar ais.

De bhun Ailt 109(2) den Acht um Chosaint Sonraí 2018, rinne an DPC iarracht réiteach cairdiúil an ghearráin a éascú. Ní raibh an gearánach toilteanach, áfach, glacadh le moltaí Ryanair maidir leis an gceist seo. Dá réir sin, b' éigean cinneadh a dhéanamh faoin gceist trí chinneadh faoi Airteagal 60 den GDPR.

#### **(i) Dréachtchinneadh Tosaigh**

Ós rud é gur bhain an gearán le próiseáil trasteorann, b' éigean don DPC, de réir phróiseas Airteagail 60, dréachtchinneadh a dhéanamh maidir leis an ngearán. Ina leagan tosaigh den dréachtchinneadh, rinne an DPC an cinneadh gur sáraíodh Airteagal 15 den GDPR sa mhéid gur theip ar Ryanair cóip dá gcuid sonraí pearsanta a bhí á bpróiseáil ag am an iarratais a chur ar fáil don ghearránach. Fuair an DPC freisin gur sáraíodh Airteagal 12(3) den GDPR sa mhéid gur theip ar Ryanair eolas a chur ar fáil don ghearránach maidir le bearta a rinneadh ar iarratas uathu faoi Airteagal 15 laistigh den achar ama reachtúil de mhí amháin. Chuir an DPC an dréachtchinneadh ar fáil do Ryanair le cur ar a chumas aighneachtaí a dhéanamh. Ina dhiaidh sin sholáthair Ryanair roinnt aighneachtaí, a cuireadh san áireamh sa dréachtchinneadh (in éineacht le hanailís an DPC díobh).

#### **(ii) Soláthar an Dréachtchinnidh do na hÚdarás Mhaoirseachta Ábhartha**

De réir phróiseas Airteagail 60, lean an DPC ar aghaidh gur chuir sé a dréachtchinneadh faoi bhráid an IMI lena scaipeadh i measc na CSA, de bhun Airteagail 60(3) den GDPR. Rinneadh dréachtchinneadh an DPC a uaslódáil don IMI ar 25 Bealtaine 2020, agus de bhun Airteagail 60(4) den GDPR, bhí ceithre seachtaine ag na CSA ina dhiaidh sin chun aon agóidí ábhartha agus réasúnacha a chur isteach maidir leis an gcinneadh.

Ina dhiaidh sin fuair an DPC roinnt agóidí ábhartha agus réasúnacha agus roinnt tuairimí maidir lena dréachtchinneadh ó na CSA. D'áitigh roinnt CSA, go háirithe, gur chóir sáruithe breise ar an GDPR a bheith aimsithe, agus ina theannta sin gur chóir iomardú a bheith curtha i gcrích.

#### **(iii) Dréachtchinneadh Athbhreithnithe**

De réir Airteagail 60(3) den GDPR, tá iachall ar an DPC tuairimí na CSA a chur san áireamh go cuí. Agus na hágóidí agus tuairimí a fuarthas ó na CSA san áireamh, rinne an DPC machnamh go cúramach faoi gach agóid ábhartha agus réasúnach chomh maith le gach tuairim a fuarthas maidir leis an dréachtchinneadh. Rinne an DPC athbhreithniú ar a dréachtchinneadh chun achoimre agus analíis de na hágóidí agus na tuairimí a chuirtear in iúl ag na CSA a chur san áireamh. Agus é ag déanamh athbhreithnithe ar a dréacht tosaigh, ghlac an DPC le cuid de na hágóidi ábhartha agus réasúnacha a fuarthas, ach níor ghlac sé le hágóidí ábhartha agus réasúnacha áirithe eile. Ina dréachtchinneadh athbhreithnithe, mhol an DPC go ndéanfaí iomardú a eisiúint i leith Ryanair, de bhun Airteagail 58(2)(b) den GDPR. Sholáthair an DPC a dréachtchinneadh athbhreithnithe do Ryanair le cur ar a chumas aighneachtaí deiridh a dhéanamh. Thug Ryanair faoi deara go bhfuair an DPC amach go raibh an GDPR sáraithe aige, agus go raibh a chuid cumhactaí curtha i bhfeidhm ag an DPC sa chás seo de réir Cuntais 129 agus de réir na riachtanas próise cuí in Airteagal 58 den GDPR. Chuir Ryanair in iúl don DPC gur ghlac sé leis an gcinneadh agus leis an iomardú a bhain leis agus nár mhian leis aon aighneachtaí breise a dhéanamh.

#### **(iv) Soláthar Dréachtchinnidh Athbhreithnithe chug na hÚdarás Mhaoirseachta Ábhartha**

De réir Airteagail 60(5) den GDPR, nuair a chuir an DPC a dréachtchinneadh athbhreithnithe faoi bhráid na CSA lena gcuid tuairimí a fháil, bhí coicís bhreise ag na CSA chun aon agóidí breise a chur isteach maidir leis an gcinneadh.

De bhun Airteagail 60(5) den GDPR, chuir an DPC a dréachtchinneadh athbhreithnithe faoi bhráid na CSA chun a dtuairim a fháil ar 20 Deireadh Fómhair 2020. Ós rud é nach bhfuair an DPC aon agóidí ná tuairimí breise maidir leis an dréachtchinneadh athbhreithnithe ó na CSA laistigh den tréimhse reachtúil, measadh gur aontaigh na CSA le dréachtchinneadh athbhreithnithe an DPC agus go raibh siad ag cloí leis de réir Airteagail 60(6) den GDPR.

#### **(v) Glacadh leis an gCinneadh Deiridh**

Tar éis don spriocdháta a bheith thart chun aon agóidí breise a fháil, lean an DPC ar aghaidh gur ghlac sé leis an gcinneadh deiridh, de réir Airteagail 60(7) den GDPR. Ansin rinne an DPC a chinneadh deiridh

a uaslódáil don IMI agus chuir sé é in iúl do Ryanair. Rinneadh an cinneadh deiridh a uaslódail ar 11 Samhain 2020. De bhun Ailt 60(7), bhí an ICO, lenar taisceadh an gearán i dtús báire, freagrach as an gcinneadh a chur in iúl don ghearránach.

Mar achoimre, fuair an DPC sáruithe ar Airteagal 12(3) agus Airteagal 15 den GDPR maidir leis an ngearán seo.

Léiríonn an cás-staidéar seo, nuair nach féidir le gearán a bhaineann le próiseáil trasteorann sonraí pearsanta a réiteach go cairdiúil, go mbíonn nós imeachta Airteagail 60 a tharlaíonn dá bharr sin

an-chasta, an-deacair agus an-fhadálach ar fad. Sa chás seo, rinneadh an dréacht tosaigh de chinneadh an DPC a uaslódáil don IMI ar 25 Bealtaine 2020, agus níor glacadh leis an gcinneadh deiridh go dtí 11 Samhain 2020, 6 mhí níos déanaí.

Léiríonn an cás-staidéar seo — arís eile — méid na n-acmhainní DPA a úsáidtear agus torthaí á seachadadh ar cheisteanna arbh fhéidir iad a réiteach ag an rialaitheoir gan dul i muinín an DPC, ag ardú arís ceist chur amú acmhainní DPA gan chúis, á n-atreorú ó réiteach cheisteanna córasacha níos leithne a bhainfeadh torthaí feabhsaithe amach don líon is mó daoine aonair.

## Cás-staidéar 11:

### Teorannú Cuspóra — An Treoir maidir le Forfheidhmiú Dlí

Scrúdaigh an DPC gearán mar ar mhaígh duine aonair go raibh sonraí a bailíodh i gcomhthéacs áirithe amháin forfheidhmithe dhlí á úsáid ag an rialaitheoir sonraí céanna do chuspóir eile forfheidhmithe dhlí. Bhain an gearán le hionchúiseamh duine aonair do chionta i réimse na leigheasanna eachaí agus ainmhithe ag an Roinn Talmhaíochta, Bia & Mara (RTBM) agus atreorú ar leith ag RTBM líomhaintí mí-iompair ghairmiúil do Chomhairle na Tréidlia (CT) maidir leis an duine céanna.

Tar éis don DPC na ceisteanna a tógadh a scrúdú, d'atreoraigh sé an gearánach d'Alt 71(5) den Acht um Chosaint Sonraí 2018:

*Nuair a bhailíonn rialaitheoir sonraí pearsanta do chuspóir sonraithe in Alt 70(1)(a), is féidir leis an rialaitheoir nó rialaitheoir eile na sonraí a phróiseáil do chuspóir a sonraíodh seachas an cuspóir dár bailíodh na sonraí, sa mhéid go bhfuil—*

(a) an rialaitheoir údaraithe chun a leithéid de shonraí pearsanta a phróiseáil le haghaidh a leithéid de chuspóir de réir dhlí an Aontais Eorpaigh nó dlí an Stáit, agus go bhfuil

(b) an phróiseáil riachtanach agus comhsheasmhach leis an gcuspóir dá bhfuil na sonraí á bpróiseáil.

Maidir le hAlt 70(1)(a) agus "dlí an Stáit", thug an DPC faoi deara na forálacha a leagtar amach san Acht um Chleachtas Tréidliachta 2005 i dtaca le cur i gcrích fhiosrúchán ag an CT faoi líomhaintí mí-iompair ghairmiúil. Tugann Alt 76 den Acht um Chleachtas Tréidliachta 2005, go háirithe, achoimre gur féidir leis an CT nó aon duine iarratas a dhéanamh ar fhiosrúchán maidir le hoiriúnacht duine chláraithe chun tréidliacht a chleachtadh. Ar an mbonn seo ní dhearna an DPC machnamh faoi reachtaíocht chosanta sonraí chun atreorú ar leith RTBM a dhícheadú maidir le líomhaintí mí-iompair ghairmiúil don CT i dtaca le duine, i gcomhar le himeachtaí ionchúisimh ag RTBM in aghaidh an duine chéanna do chionta i réimse na leigheasanna eachaí agus ainmhithe.

## Cás-staidéar 12:

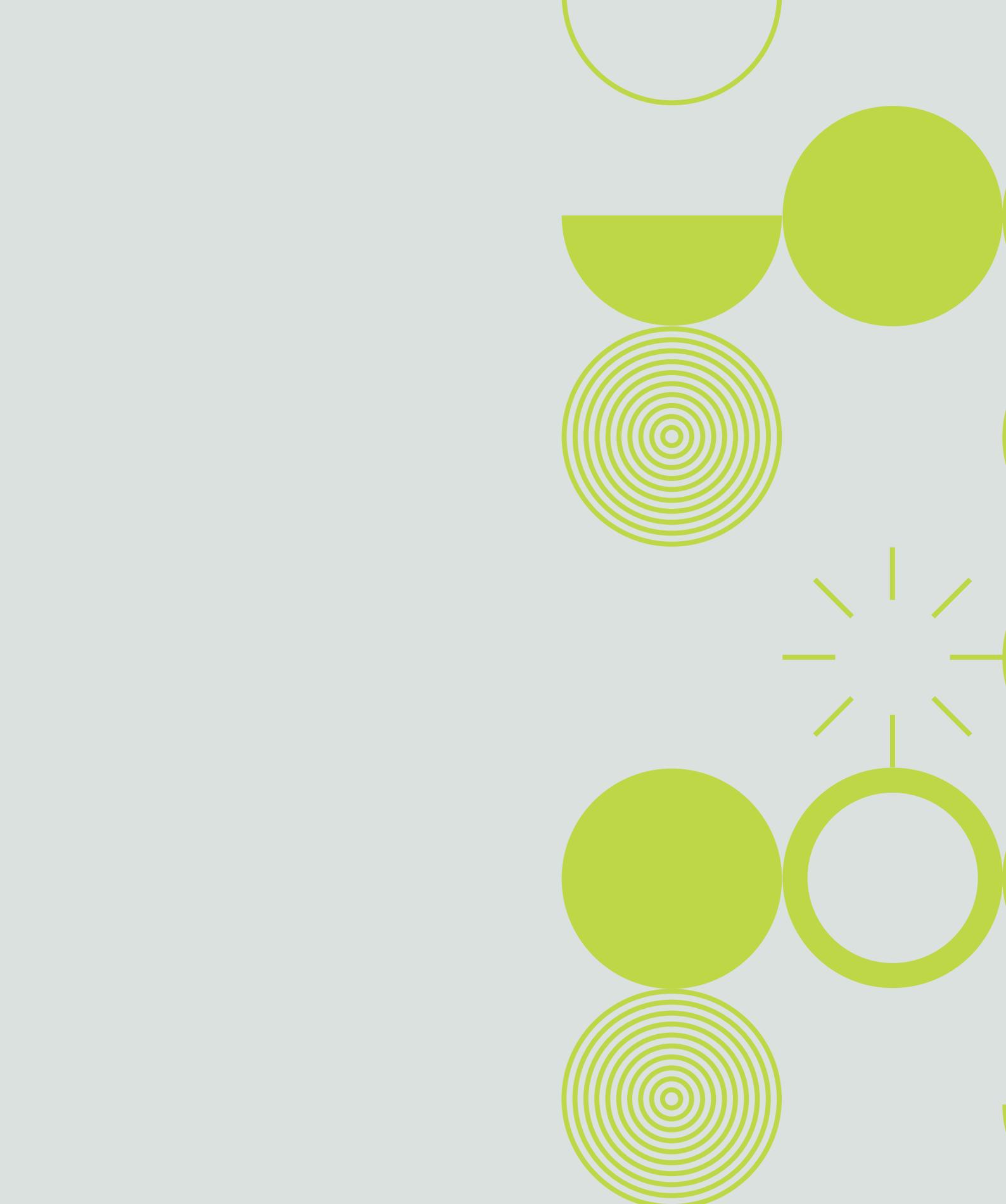
# Nochtadh líomhnaithe shonraí pearsanta an ghearánaigh ag údarás áitiúil (Gearán Sáraithe Shonraí)

Fuair an DPC gearán ó dhuine aonair maidir le nochtadh líomhnaithe shonraí pearsanta an ghearánaigh ag údarás áitiúil. Líomhnaigh an gearánach go raibh ainm an ghearánaigh, a sheoladh poist agus eolas a bhain le híocaíocht cúnaimh tithíochta go hearráideach chuig tríu páirtí nochtaithe ag an údarás áitiúil. Bhí an t-údarás áitiúil tar éis cur in iúl don duine aonair gur tharla an nochtadh seo. Bhí an duine aonair míshásta, áfach, leis na bearta a rinne an t-údarás áitiúil mar fhreagra ar an nochtadh agus níor mhian leis dul i dteagmháil tuilleadh leis an údarás áitiúil agus é i gceist réiteach cairdiúil an ghearáin a lorg.

Scrúdaigh an DPC an gearán agus rinne sé teagmháil leis an údarás áitiúil chun tuilleadh eolais a lorg maidir le líomhaintí an duine aonair. Dheimhnigh an t-údarás áitiúil don DPC go raibh sárú sonraí pearsanta tar éis tarlú nuair a cuireadh sonraí pearsanta an ghearánaigh san áireamh, go hearráideach, i bhfreagra ar iarratas Saorála Faisnéise chuig tríu páirtí.

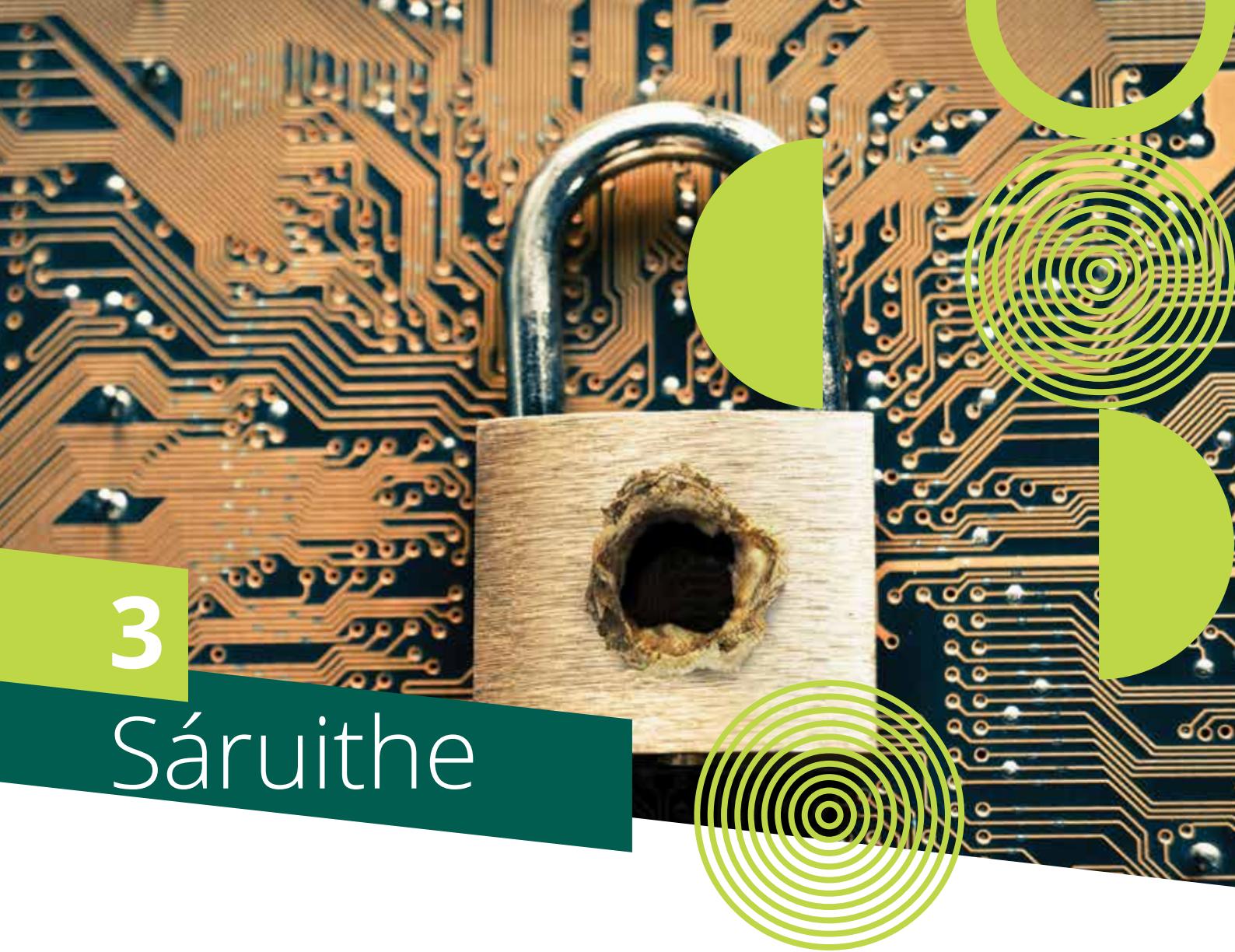
Chomh maith leis an eolas a cuireadh ar fáil ag an údarás áitiúil don DPC i gcomhthéacs a scrúdaithe den ghearán, cuireadh an eachtra faoi thrácht in iúl don DPC ag an údarás áitiúil mar shárú sonraí pearsanta, faoi mar a éilítear ag Airteagal 33 den GDPR. Sa chomhthéacs sin, rinne an DPC teagmháil leitheadach leis an údarás áitiúil maidir le cúinsí an tsáraithe shonraí pearsanta, na bearta slándála sonraí a bhí i bhfeidhm ag an am gur tharla an sárú sonraí pearsanta agus na bearta maolaitheacha a rinne an t-údarás áitiúil, lena n-áirítear iarrachtaí leanúnacha an údarás áitiúil chun na sonraí a fháil ar ais ón bhfaigteoir.

Bunaithe ar an eolas seo, thug an DPC chun críche a scrúdú den ghearán trí chur in iúl don duine aonair go raibh an DPC sásta nár próiseáladh sonraí pearsanta an ghearánaigh ag an údarás áitiúil ar bhealach a chinntigh slándáil chuí na sonraí pearsanta agus go raibh nochtadh neamhídaraíthe shonraí pearsanta an ghearánaigh tar éis tarlú, rud atá ina shárú sonraí pearsanta. Bunaithe ar na bearta a rinneadh ag an údarás áitiúil mar fhreagra ar an sárú sonraí pearsanta agus, go háirithe, gurbh amhlaidh nár thug faigteoir shonraí pearsanta an ghearánaigh na sonraí ar ais don údarás áitiúil, níor mheas an DPC go raibh gá le haon bheart breise in aghaidh an údarás áitiúil maidir le hábhar an ghearáin.



# 3

## Sáruithe



### Sáruithe faoin GDPR

I 2020, fuair an DPC 6,783 fhógra sáraithe shonraí faoi Airteagal 33 den GDPR, ar aicmíodh 110 gcás díobh (2%) mar neamhsháruithe ós rud é nár chomhlíon siad sainmhíniú de shárú shonraí pearsanta faoi mar a leagtar sin amach in Airteagal 4(12) den GDPR. San iomlán taifeadhadh 6,673 shárú cosanta sonraí bailí ag an DPC i 2020, sin méadú de 10% (604) i gcomparáid leis an lín a tuairiscíodh i 2019.

Ar aon dul le blianta eile, aicmíodh an catagóir ab airde sháruithe sonraí a cuireadh in iúl faoin GDPR mar Nochtuithe Neamhúdaraithe agus ba iad a bhí i gceist le 86% de na fógraí sáraithe shonraí ar fad a fuarthas i 2020. Tharla mórchuid acu sna hearnálacha seo:

An Earnáil Phríobháideach	4097
An Earnáil Phoiblí	2559
Dheonach	16
Charthanachta	1
<b>Iomlán</b>	<b>6673</b>

Thug an DPC méadú faoi deara freisin maidir le húsáid innealtóireachta sóisialta agus ionsaithe fioscaireachta chun rochtain a fháil ar chórais TFC rialaitheoirí agus próiseálaithe. Cé gur chuir a lán eagrafochtaí, i dtús báire, bearta éifeachtacha slándála TFC i bhfeidhm, is léir nach bhfuil eagraíochtaí ag gníomhú go honnghníomhach chun monatóireacht agus athbhreithniú a dhéanamh ar na bearta seo, nó chun oiliúint a chur ar a bhfoireann chun cinntíú go bhfuil siad ar an eolas faoi bhagairtí de réir mar a thagann siad chun cinn. Sna cásanna seo, leanaimid orainn de bheith ag moladh go dtabharfadh eagraíochtaí faoi athbhreithnithe tréimhsíula ar a gcuid beart slándála TFC agus go gcuirfidís i bhfeidhm plean cuimsitheach oiliúna d'fhostaithe le tacaíocht ó oiliúint athnuachana agus cláir fheasachta chun na rioscaí sin a mhaolú a bhaineann le tírdhreach ina bhfuil bagairtí ag teacht chun cinn.

Fógraí sáraithe shonraí de réir na catagóire	Príobháideach	Poiblí	Iomlán
Nochtadh (neamhúdaraithe)			5,837
Heaiceáil			146
Bogearraí mailíseacha			19
Fioscaireacht, innealtóireacht shóisialta san áireamh.			74
Bogearraí éirice/diúltú seirbísé			32
Laigí Forbartha Bogearraí			5
Gléas caillte nó goidte (criptithe)			19
Gléas caillte nó goidte (neamhchriptithe)			29
Páipéar caillte nó goidte			275
Dramhthrealamh leictreonach (sonraí pearsanta le fail ar ghléas as feidhm)			1
Cur de láimh neamhoiriúnach páipéis			21
Míchumraíocht Chórás			40
Rochtain Neamhúdaraithe			146
Foilsíú ar líne neamhbheartaithe			61
Eile			78
<b>Iomlán</b>			<b>6,783</b>

## Sáruithe E-Phríobháideachais

San iomlán fuair an DPC **70 fógra bailí sháraithe shonraí faoi na Rialacháin e-Phríobháideachais** (I.R. Uimh. 336 ó 2011), sin rud beag le cois 1% den líon iomlán cásanna bailí a fógraíodh don bhliain.

## Sáruithe LED

Fuair an DPC freisin **25 fhógra sáraithe maidir leis an LED**, (Treoir (AE) 2016/680), a trasúíodh i ndíl na hÉireann ag codanna áirithe den Acht um Chosaint Sonraí 2018.

## Measúnú DPC ar shárú

Nuair a dhéantar fógra sáraithe a thaisceadh leis an DPC, déanann an DPC measúnú air, ag cur san áireamh gnéithe iomadúla an tsáraithe agus na rioscaí sin a ghabhann leis. Is é an chéad ghné acu seo ná nádúr an tsáraithe, lena n-áirítear na rudaí seo: an ndearnadh é d'aon ghnó ná de thimpiste, an ndearnadh gadaíocht sonraí ná ar fágadh sonraí dorochtana, agus na modhanna teicneolaíochta agus eagraíochta atá i gceist. Is féidir go léireodh stair sháruithe de chineál ar leith ceist chórásach a théann i bhfeidhm ar rialaitheoir sonraí aonair, ar áit ar leith ná ar earnáil eacnamaíoch iomlán.

Tá tréithe na sonraí pearsanta atá i gceist ríthábhachtach do mheasúnú an DPC. Áirítear orthu seo cineálacha, formáid agus fogaireacht na sonraí pearsanta, líon na ndaoine agus na dtaifead atá buailte, agus an poiténseal ar ann dó go léifí ná go scaipí na sonraí. Breathnóidh an DPC ar an gceist an raibh gnéithe éagsúla ag tarlú, leithéidí próifíliú, cinnteoireacht uathoibrithe, monatóireacht ná rianú.

Ar an tsíl chéanna, is féidir go mbeadh catagóiriú na n-ábhar sonraí — leithéidí an leanáí ná daoine leochaileacha iad — agus tréithe an rialaitheora shonraí agus/ná an phróiseálaí, leithéidí freagrachtaí reachtúla ná próiseáil chineálacha eile sonraí pearsanta, is féidir leis sin bheith an-tábhachtach go deo. Cuirtear san áireamh méid na n-ábhar sonraí agus suíomh na n-ábhar sonraí seo.

Fachtóirí eile atá le cur san áireamh ná na hábhair dhíobhála do na hábhair shonraí a d'fhéadfadh a bheith ag baint le nochtadh, mí-úsáid ná caillteanas sonraí pearsanta a raibh baint ag an sárú leo. Is minic a dhéanann rialaitheoirí sonraí dearmad ar an ngné seo den mheasúnú riosca. Is féidir go mbeadh i gceist leis na díobhála ó chur isteach sealadach go rioscaí an-trom-chúiseacha, leithéidí bradaíl aitheantais, caillteanas airgid, agus mídhagnóis fhadhanna sláinte ná dochar do chlú duine. Déanfaidh an DPC machnamh faoi cad é an

tionchar ar na daoine atá buailte, lena n-áirítear déine, scóip agus comhthéacs na ndaoine.

Go deireanach, déanann an DPC measúnú ar fhachtóirí maolaithe, leithéidí an bhfuil cíltacuithe ar fáil, an dtugtar aghaidh ar laigí, agus an bhfaightear na sonraí ar ais nó an gcuirtear cosc ar nochtadh breise. Is minic nach gcuireann rialaitheoirí sonraí bearta simplí i bhfeidhm, leithéidí criptiú eolais a roinntear trí mheán r-phoist, ag cinntiú go bhfuil gach beart slándála TF i bhfeidhm agus go ndéantar iad a nuashonrú go rialta freisin. Cuirtear na fachtóirí seo san áireamh sa mheasúnú.

Mura bhfuil na fíricí go hiomlán ar an eolas nó má tá siad fós doiléir tar éis mheasúnú thosaigh an DPC go ndearnadh sárú, leanfaidh siad orthu de bheith ag dul i dteagmháil leis an rialaitheoir go dtí go bhfuil freagra tugtha ar gach ceist, chun sástacht an DPC. I gcásanna áirithe, is féidir go n-iarrfar ar an rialaitheoir nó ar an bpróiseálaí athmheasúnú a dhéanamh ar chuíseanna agus ar iarmhairtí an tsáraithe le tuairisc a thabhairt ar a chinneadh. Is féidir go n-éileoidh sáruithe ina bhfuil ceisteanna casta TF i gceist measúnú agus anailís ag speialtóirí teicniúla an DPC. I gcásanna nuair a tháirg nó a choimisiúnaigh an rialaitheoir tuairisc theicniúil nó tuairisc imscrúdaithe maidir leis an sárú, iarrfar cóip de sin.

Ag feitheamh le tabhairt chun críche a imscrúdaithe, is féidir go dtabharfaidh an DPC treoir faoi agus go ndéanfaidh sé monatóireacht ar dhul chun cinn — ar bhonn atrátha — i dtaca le bearta a cuireadh i bhfeidhm chun éifeachtaí an tsáraithe a réiteach nó a mhaolú. D'fhéadfadh sé go mbeadh mar chuid díobh seo cur ábhar sonraí ar an eolas faoin sárú faoi Airteagal 34 den GDPR, nó cur i bhfeidhm bheart teicniúil nó eagraíochtaí chun aghaidh a thabhairt ar laigí.

Bunaithe ar a mheasúnú agus ar bhearta an rialaitheora chun eachtraí breise den chineál céanna a chosc nó a mhaolú, is féidir go dtabharfaidh an DPC a imscrúdú chun críche ag an bpointe seo. Mura bhfuil an DPC sásta leis na maoluithe nó leis na freagraí ón rialaitheoir, is féidir leis an cheist a ghéarú do bhearta breise imscrúdaithe/forfheidhmithe.

# Cás-staidéir

Cás-staidéar 13:

## Fógra Sáraithe (Earnáil Dheonach) — Ionsaí Bogearraí Éirice

I Mí na Bealtaine 2020, fuair an DPC fógra sáraithe ó phróiseálaí sonraí Éireannach agus ina dhiaidh sin fuair sé fógra ó rialaitheoir sonraí Éireannach atá ag feidhmiú san earnáil dheonach a bhí tar éis an próiseálaí seo a fhostú chun óstáil suíomhanna gréasáin agus seirbhísí bainistithe shonraí a sholáthar.

Bhain an sárú le hionsaí bogearraí éirice a tharla san ionad sonraí a úsáideann an próiseálaí sonraí, agus a tharla de thoradh ar bhogearraí mailíseacha a bhain rochtain amach trí phort<sup>4</sup> RDP don fhriothálaí.

<sup>4</sup> RDP — Prótacal Ciandeisce

Chuaigh an DPC i dteaghmháil leis an rialaitheoir agus leis an bpróiseálaí agus trí mheán roinnt cumarsáidí — lena n-áirítear eisiúint cheistneoirí teicniúla agus eagraíochtúla a dhíríonn ar réimsí ina bhféadfaí neamhchomhlíonadh na rialachán cosanta sonraí a bheith i gceist. Áiríodh ar na réimsí seo úsáid an phróiseálaí ionaid sonraí laistigh de na Stáit Aontaithe chun sonraí cíltaca a stóráil gan chomhantuithe dóthanacha — ná maoirseacht dhóthanach ag an rialaitheoir ar a phróiseálaí — faoi mar a éilítear faoi Airteagal 28 den GDPR.

Chuaigh an DPC i dteaghmháil go mion minic leis an dá pháirtí agus thug an DPC an cás seo chun críche trí mholtá a eisiúint don rialaitheoir agus don phróiseálaí araon. Ina dhiaidh sin lean an DPC air de bheith ag dul i dteaghmháil leis an dá pháirtí chun cinniú go raibh cur i bhfeidhm mholtá an DPC tar éis tarlú.

Cás-staidéar 14:

## Fógra Sáraithe (Earnáil Phoiblí) Foilsíú Mícheart ar Twitter

Chuir eagraíocht earnála poiblí in iúl don DPC go raibh sonraí pearsanta foilsithe acu trí thimpiste trí mheán a n-ardáin mheáin shóisialta (Twitter).

Rinneadh na sonraí pearsanta a phostáil, rud a sháraigh a pholasaí a chuid ábhair go léir a anaithnidíú, rud a d'fhéadfadh duine aonair ar ábhar sonraí iad a aithint. Chuir an eagraíocht faoi thrácht in iúl don DPC gurbh earráid dhaonna ba

bhunchúis leis an eachtra seo, agus gur baineadh an tvuít sháraithe gan mhoill mhíchuí.

Bunaithe ar an mbeart a bhí déanta ag an rialaitheoir sonraí chun an riosca a mhaolú go dtarlódh an cineál seo eachtra arís thug an DPC a scrúdú chun críche ar an gceist seo agus d'eisigh sé roinnt moltaí breise don eagraíocht, ag díriú ar úsáid chuí a chuid ardán meáin shóisialta agus conas ba chóir a chuid cuntas meáin shóisialta a chosaint agus a shrianú do líon sonraithe pearsanra údaraithe.

Cás-staidéar 15:

## Fógra Sáraithe (Earnáil Airgeadais) Sonraí Bainc curtha trí WhatsApp

Chuir eagraíocht earnála airgeadais príobháidí in iúl don DPC go raibh iarratas déanta ag custaiméir chun a n-uimhreacha IBAN agus BIC a fháil, uimhreacha a bhí á gcoimeád ar comhad. Bhí aithne phearsanta ag an gcustaiméir a bhí ag déanamh an iarratais ar an mball fairne a bhí ag plé leis an iarratas. Ag imeacht ó chleachtais fhaofa, bhain an ball fairne úsáid as a bhfón póca pearsanta chun pictiúr a chur den eolas a bhí á lorg, dar leo, thar ardán curtha teachtaireachtaí (WhatsApp). Go hearráideach, áfach, chuir an ball fairne sonraí a bhain le custaiméir eile chuig an gcustaiméir a rinne an t-iarratas.

Rinne an custaiméir a fuair an t-eolas seo teagmháil leis an eagraíocht chun cur in iúl dóibh nár bhain an t-eolas a fuarthas lena gcuntas siúd agus go raibh siad tar éis glacadh orthu féin an t-ábhar sáraithe ar fad a bhaint dá ngléas. Chuaigh an eagraíocht i dteagmháil le baill fhoirne le cur i gcuimhne dóibh nár chóir ach modhanna údaraithe cumarsáide a úsáid agus iarratais den chineál seo á láimhseáil sa todhchaí. Ghabh an eagraíocht a leithscéal leis na hábhair shonraí go léir a bhí buailte freisin.

D'eisigh an DPC roinnt moltaí a chuimsíonn úsáid uirlisí faofa cumarsáide eagraíochtúla amháin, ag fágáil go bhfuil an fhoireann go hiomlán ar an eolas faoi iompar inghlactha agus do-ghlactha agus uirlisí cumarsáide eagraíochtúla á n-úsáid acu, agus le cinntíú gur cuireadh oiliúint chuí ar an bhfoireann i dtéarmaí a gcuid dualgas/freagrachtaí faoi phorálacha an GDPR agus an Achta um Chosaint Sonraí 2018.

Cás-staidéar 16:

## Fógra Sáraithe (12 Chomhar Creidmheasa) Earráid Chódúcháin an Phróiseálaí

Fuair an DPC tuairiscí sáraithe ar leith ó 12 chomhar creidmheasa a d’fhostaigh seirbhísí an phróiseálaí chéanna, a bhí lonnaithe sa RA. D’eascair an sárú ag an bpróiseálaí as earráid chódúcháin a rinneadh ag an bpróiseálaí agus bearta á gcur i bhfeidhm a tugadh isteach mar fhreagra ar phaindéim Covid-19.

Tá iachall ar chomhair chreidmheasa eolas a thuairisciú do Bhanc Ceannais na hÉireann a bhaineann lena gcuid iasachtaithe agus le feidhmíocht a gcuid iasachtaí. Baineann an Banc Ceannais úsáid as an eolas seo chun an Clár Creidmheasa Lárnach (nó CCR) a chothabháil. Lena seal baineann iasachtóirí agus gníomhaireacháí rátála creidmheasa úsáid as an eolas seo chun fiacha agus stair chreidmheasa iasachtaithe a dheimhniú. Baineann líon mór iasachtóirí, go háirithe comhair chreidmheasa, úsáid as comhlachtaí próiseála sonraí chun a leithéid d’fhillteáin CCR a ullmhú agus chun iad a chur ar aghaidh chuig an mBanc Ceannais.

Le linn 2020, thug Rialtas na hÉireann sraith bheart isteach chun anás airgeadais a mhaolú a bhfuil mar chúis aige an phaindéim agus na dianghlásálacha a d’eascair aisti sin. Áiríodh i measc na mbeart seo cur ar chumas institiúidí airgeadais aisíofaíochtaí iasachta a stopadh gan cur isteach ar bhealach dochrach ar rátáil chreidmheasa na n-iasachtaithe. Tugadh treoir do na hiasachtóirí coidí ar leith a úsáid sna fillteáin CCR chun bratach a chur le hiasachtaí a stopadh go sealadach. Ba é a bhí i gceist leis sin ná cosc a chur ar léirmhíniú na n-iasachtaí sin mar iasachtaí faillitheora nó a bheith ag cur in iúl ar bhealach eile go raibh acmhainneacht creidmheasa na n-iasachtaithe ábhartha tar éis dul in olcas.

San eachtra seo bhain an próiseálaí a fostáodh ag na 12 chomhar creidmheasa úsáid as cód mhíchearta ar fhillteáin CCR a bhí ag plé le hiasachtaí a stopadh go sealadach. Thug na códí mhíchearta le fios go raibh na hiasachtaithe a bhí buailte tar éis tabhairt faoi ‘imeacht athstruchtúraithe’ — is minic a tharlaíonn imeacht athstruchtúraithe nuair nach mbíonn iasachtaí in ann iasachta a aisíoc thar an tréimhse chomhaontaithe, agus aontaíonn an t-iasachtóir téarmaí na hiasachta a athrú chun feabhas a chur ar chumas an iasachtaí an iasachta a aisíoc. Is féidir leis sin rátáil chreidmheasa iasachtaí a laghdú go mór, agus mar sin de d’fhéadfadh iarmhairtí tromchúiseacha a bheith ag baint le taifead míchruinn CCR imeachta athstruchtúraithe do na daoine atá buailte.

Cuireadh na comhair chreidmheasa faoi thrácht ar an eolas faoi earráid chódúcháin an phróiseálaí maidir lena gcuid fillteán CCR roinnt seachtainí tar éis don phróiseálaí fillteáin CCR a chur chucu den chéaduair agus iad ag úsáid na gcód mícheart don Bhanc Ceannais. Tuairiscíodh an cheist don DPC mar shárú agus thóg na comhair chreidmheasa an cheist leis an bpróiseálaí go díreach agus trí mheán grúpa úsaideoirí. Cheadaigh sin gurbh fhéidir na taifid a bhí buailte a aithint, gurbh fhéidir na nósanna imeachta cuí códúcháin a oibriú amach, agus fillteáin cheartaithe CCR a chur chuig an mBanc Ceannais.

Léiríonn na cásanna seo an tábhacht a bhaineann le conarthaí próiseála a chuireann i bhfeidhm i gceart riachtanais Airteagail 28 den GDPR. Is é an rud is mó a bhaineann le hábhar sna cásanna seo ná nach mór do na conarthaí próiseála soláthar a dhéanamh dó go mbeidh an phróiseálaí ag cabhrú leis an rialaitheoir chun a chuid dualgas a chomhlíonadh i dtaca le slándáil phróiseála, agus i dtaca le tuairisciú agus bheith ag tabhairt freagra ar sháruithe.



4

## Fiosrúcháin

Ar 31 Nollaig 2020, bhí **83 fiosrúchán reachtúla idir lámha ag an DPC, lena n-áirítéar 27 bhfiosrúchán trasteorann.**

### Fiosrúcháin Reachtúla Trasteorann ar cuireadh tús leo ó 25 Bealtaine 2018.

<b>Comhlacht</b>	<b>Cineál Fiosrúcháin</b>	<b>Ceist atá á scrúdú</b>
Apple Distribution International	Gearánbhunaithe	<i>Bunús dlí don phróiseáil.</i> Ag scrúdú más rud é gur chomhlíon Apple a chuid dualgas GDPR i dtaca leis an mbunús dlí ar a bhfuil sé ag brath chun sonraí pearsanta a phróiseáil i gcomhthéacs anailísé iompraíochta agus fógraíochta spriocdhírithe ar a ardán.
Apple Distribution International	Gearánbhunaithe	<i>Tréðhearcacht.</i> Ag scrúdú más rud é gur chomhlíon Apple a chuid dualgas GDPR i dtaca leis an eolas atá le fáil ina pholasáí príobháideachais agus a chuid doiciméad ar líne maidir le próiseáil sonraí pearsanta úsáideoirí a chuid seirbhísí.
Apple Distribution International	Gearánbhunaithe	<i>Ceart Rochtana</i> Ag scrúdú más rud é gur chloígh Apple le forálacha ábhartha an GDPR maidir le hiarratas rochtana do shonraí pearsanta a bhaineann le seirbhís chustaiméara.
Facebook Inc.	Féintoiliú	<i>Sárú bídeach Facebook Meán Fómhair 2018</i> Ag scrúdú más rud é gur chomhlíon Facebook Inc. a chuid dualgas GDPR chun bearta eagraíochtúla agus teicniúla a chur i bhfeidhm chun sonraí pearsanta a chuid úsáideoirí a dhaingniú agus a chosaint.
Facebook Ireland Limited	Gearánbhunaithe	<i>Ceart Rochtana agus Iniomparthacht Sonrai</i> Ag scrúdú más rud é gur chomhlíon Facebook a chuid dualgas GDPR maidir leis an gceart rochtana ar shonraí pearsanta i mbunachar sonraí Facebook 'Hive' chomh maith le hiniomparthacht sonraí pearsanta "breathnaithe".
Facebook Ireland Limited	Gearánbhunaithe	<i>Bunús dlí don phróiseáil maidir le Téarmaí Seirbhíse agus Polasáí Sonrai Facebook.</i> Ag scrúdú más rud é gur chomhlíon Facebook a chuid dualgas GDPR maidir leis an mbunús dlí a bhfuil sé ag brath air chun sonraí pearsanta dhaoine aonair a phróiseáil atá ag úsáid ardán Facebook.
Facebook Ireland Limited	Gearánbhunaithe	<i>Bunús dlí don phróiseáil.</i> Ag scrúdú más rud é gur chomhlíon Facebook a chuid dualgas GDPR maidir leis an mbunús dlí a bhfuil sé ag brath air chun sonraí pearsanta a phróiseáil i gcomhthéacs anailísé iompraíochta agus margaochta spriocdhírithe ar a ardán.
Facebook Ireland Limited	Féintoiliú	<i>Sárú bídeach Facebook Meán Fómhair 2018</i> Ag scrúdú más rud é gur chomhlíon Facebook a chuid dualgas GDPR chun bearta eagraíochtúla agus teicniúla a chur i bhfeidhm chun sonraí pearsanta a chuid úsáideoirí a dhaingniú agus a chosaint.
Facebook Ireland Limited	Féintoiliú	<i>Sárú bídeach Facebook Meán Fómhair 2018</i> Ag scrúdú chomhlíontacht Facebook le dualgais fhógra sháraithe an GDPR.

<b>Comhlacht</b>	<b>Cineál Fiosrúcháin</b>	<b>Ceist atá á scrúdú</b>
Facebook Ireland Limited	Féintoiliú	<p><i>Tosaithe mar fhreagra ar líon mór sáruithe a cuireadh in iúl don DPC le linn na tréimhse ó bhí 25 Bealtaine 2018 ann (cás ar leith ón sárú bídeach)</i></p> <p>Ag scrúdú más rud é gur chomhlíon Facebook a chuid dualgas GDPR chun bearta eagraíochtúla agus teicniúla a chur i bhfeidhm chun sonraí pearsanta a chuid úsáideoirí a dhaingniú agus a chosaint.</p>
Facebook Ireland Limited	Féintoiliú	<p>Pasfhocail Facebook stóráilte i bhformáid ghnáth-théacs ina chuid friotháilthe inmheánacha. Ag scrúdú más rud é gur chomhlíon Facebook a chuid dualgas faoi fhorálacha ábhartha an GDPR</p>
Facebook Ireland Limited	Féintoiliú	<p>Fiosrúchán ag scrúdú más rud é gur chomhlíon Facebook Ireland Limited Caibidil V GDPR (go háirithe Airteagal 46) ag cur san áireamh bhrefidh an CJEU ar 16.07.20</p>
Google Ireland Limited	Féintoiliú	<p><i>Tosaithe mar fhreagra ar aighneachtaí a fuarthas.</i></p> <p>Ag scrúdú más rud é gur chomhlíon Google forálacha ábhartha an GDPR. Scrúdófar freisin prionsabail thréadhearcacht agus íoslachdú shonraí an GDPR, chomh maith le cleachtais choimeádta shonraí Google.</p>
Google Ireland Limited	Féintoiliú	<p>Ag scrúdú más rud é go bhfuil bunús dlí ag Google chun sonraí suímh a chuid úsáideoirí a phróiseáil agus más amhlaidh go bhfuil sé ag déanamh freastail ar a chuid dualgas mar rialaitheoir sonraí maidir le tréadhearcacht.</p>
Instagram (Facebook Ireland Limited)	Gearánbhunaithe	<p><i>Bunús dlí don phróiseáil maidir le Téarmaí Úsáide Instagram agus Polasaí Sonraí Instagram.</i></p> <p>Ag scrúdú más rud é gur chomhlíon Facebook a chuid dualgas GDPR i dtaca leis an mbunús dlí ar a bhfuil sé ag brath chun sonraí pearsanta dhaoine aonair a phróiseáil ag úsáid ardán Instagram.</p>
Instagram (Facebook Ireland Limited)	Féintoiliú	<p>Fiosrúchán maidir le comhlíontacht Facebook a chuid dualgas GDPR i dtaca lena phróiseáil sonraí pearsanta úsáideoirí Instagram faoi aois 18 ("Úsáideoirí ar Linbh iad") i dtaobh na socruithe cuntasí.</p>
Instagram (Facebook Ireland Limited)	Féintoiliú	<p>Fiosrúchán maidir le comhlíontacht Facebook a chuid dualgas GDPR i dtaca lena spleáchas ar bhunús dlí de bhun Airteagail 6 den GDPR do phróiseáil sonraí pearsanta úsáideoirí Instagram faoi aois 18 ("Úsáideoirí ar Linbh iad").</p>
LinkedIn Ireland Unlimited Company	Gearánbhunaithe	<p><i>Bunús dlí don phróiseáil.</i></p> <p>Ag scrúdú más rud é gur chomhlíon LinkedIn a chuid dualgas GDPR i dtaca leis an mbunús dlí ar a bhfuil sé ag brath chun sonraí pearsanta a phróiseáil i gcomhthíseacs na hanailísé iompraíochta agus na fógraíochta spriocdhírithe ar a ardán.</p>

<b>Comhlacht</b>	<b>Cineál Fiosrúcháin</b>	<b>Ceist atá á scrúdú</b>
MTCH Technology Services Limited (Tinder)	Féintoiliú	Ag scrúdú más rud é go bhfuil bunús dlí ag an gcomhlacht do phróiseáil leanúnach shonraí pearsanta a chuid úsáideoirí agus más rud é go bhfuil sé ag déanamh freastail ar a chuid dualgas mar rialaitheoir sonraí i dtaca le trédhearcacht agus a chomhlíontacht iarratais chearta ábhar sonraí.
Quantcast International Limited	Féintoiliú	Tosaithe mar fhreagra ar aighneacht a fuarthas. Ag scrúdú chomhlíontacht Quantcast le forálacha ábhartha an GDPR. Scrúdófar freisin prionsabal GDPR na gcleachtas trédhearcachta agus coimeádta.
Twitter International Company	Gearánbhunaithe	<i>Ceart Rochtana</i> Ag scrúdú más rud é gur chomhlíon Twitter a chuid dualgas maidir leis an gceart rochtana ar naisc a osclaíodh ar Twitter.
Twitter International Company	Féintoiliú	<i>Tosaithe mar fhreagra ar an lín mó rásárithe a cuireadh in iúl don DPC le linn na tréimhse ó bhí 25 Bealtaine 2018 ann. Ag scrúdú más rud é gur chomhlíon Twitter a chuid dualgas GDPR chun bearta eagraíochta agus teicniúla a chur i bhfeidhm chun sonraí pearsanta a chuid úsáideoirí a dhaingníú agus a chosaint.</i>
Twitter International Company	Féintoiliú	Tosaithe mar fhreagra ar fhógra sáraithe. Ag scrúdú ceiste a bhaineann le comhlíontacht Twitter le hAirteagal 33 den GDPR.
Verizon Media/Oath	Féintoiliú	<i>Trédhearcacht.</i> Ag scrúdú chomhlíonadh an chomhlactha leis na riachtanais chun eolas trédhearcach a sholáthar d'ábhair shonraí faoi fhorálacha Airteagail 12-14 den GDPR.
WhatsApp Ireland Limited	Gearánbhunaithe	<i>Bunús dlí don phróiseáil maidir le Téarmai Seirbhíse agus Polasaí Príobháideachais WhatsApp</i> Ag scrúdú más rud é gur chomhlíon WhatsApp a chuid dualgas GDPR maidir leis an mbunús dlí a bhfuil sé ag brath air chun sonraí pearsanta dhaoine aonair a phróiseáil a bhaineann úsáid as ardán WhatsApp.
WhatsApp Ireland Limited	Féintoiliú	<i>Trédhearcacht.</i> Ag scrúdú más rud é gur chomhlíon WhatsApp a chuid dualgas trédhearcachta GDPR maidir le soláthar eolais agus trédhearcacht an eolais sin d'úsáideoirí agus do neamhúsáideoirí sheirbhís WhatsApp, lena n-áirítear eolais a sholáthraítear d'ábhair shonraí faoi phróiseáil eolais idir WhatsApp agus comhlacthaí eile de chuid Facebook.
Yelp	Féintoiliú	Fiosrúchán maidir le comhlíontacht Yelp le hAirteagail 5,6,7 agus 17 den GDPR tar éis roinnt gearán a fuarthas ag an DPC i dtaca le próiseáil sonraí pearsanta ag Yelp ar a shuíomh gréasáin.

## Fiosrúcháin Reachtúla Intíre tosaithe ó 25 Bealtaine 2018

Egraíocht	Cineál Fiosrúcháin	Ceist atá á scrúdú
31 údarás áitiúil agus an Garda Síochána	Féintoiliú	Ag scrúdú fhaireachas ar shaoránaigh ag earnáil an stáit do chuspóirí forfheidhmithe dhlí trí úsáid teicneolaíochtaí leithéidí CCTV, ceamaraí a chaitear ar an gcorp, córais le cuidiú uathaitheanta uimhirphlátaí (ANPR), drón agus teicneolaíochtaí eile. Is é cuspóir na bhfiosrúchán seo ná iniúchadh a dhéanamh más rud é go bhfuil próiseáil na sonraí pearsanta a tharlaíonn sna cúinsí sin comhlíontach le dlí na cosanta sonraí.
An Garda Síochána	Féintoiliú	Ag scrúdú rialachais agus maoirseachta maidir le hiarratais nochta laistigh den AGS agus laistigh d'eagraíochtaí a bhíonn ag próiseáil a leithéid d'íarratais, chomh maith le bheith ag scrúdú na n-iarratas iarbhír a dhéantar ag an AGS chuig tríu páirtithe.
An Garda Síochána	Féintoiliú	Ag scrúdú sháraithe shlándála a raibh de thoradh air ábhar nochta neamhúdaraithe shonraí pearsanta a bhí á gcoimeád don phróiseáil LED.
Banc na hÉireann	Féintoiliú	Tosaithe mar fhreagra ar an lín mór sáruthe sonrá a cuireadh in iúl don DPC le linn na tréimhse ó 25 Bealtaine 2018.
Banc na hÉireann	Féintoiliú	Ag scrúdú ábhar nochta neamhúdaraithe shonraí pearsanta sa tsúl gur fheistigh BOI custaiméirí áirithe Banking 365. Tharla eachtraí iomadúla ina raibh i gceist go ndearna an banc míchumraíocht ar phróifíl 365 chustaiméara nua sa tsúl go mbeadh custaiméir in ann teacht a bheith acu trí thimpiste ar shonraí pearsanta agus ar chuntas reatha custaiméara eile.
BEO Solutions	Féintoiliú	Ag scrúdú sáraithe shonraí pearsanta a cuireadh in iúl maidir le caillteanas ghléis stórála USB. Bainteach leis an bhfiosrúchán faoi PIAB.
An Eaglais Chaitliceach	Féintoiliú	Scrúdú ghearán iomadúil maidir le comhlíontacht le hiarratais ar an gceart coigearaithe & an ceart go ligfí i ndearmad.
An Roinn Coimirce Sóisialaí (RGFCS roimhe seo)	Féintoiliú	Ag scrúdú sheasamh an Oifigigh Chosanta Sonraí faoi Airteagal 38 den GDPR.
An Roinn Coimirce Sóisialta (RGFCS roimhe seo)	Féintoiliú	Ag scrúdú más rud é go bhfuil próiseáil áirithe agus/nó próiseáil bheartaithe áirithe shonraí pearsanta ag an Roinn i gcomhthéacs na measúnuithe/seiceálacha leanúnacha incháilitheachta don sochar linbh comhlíontach leis an GDPR agus leis an Acht um Chosaint Sonraí 2018.
FSS Laighin Láir (Saotharlanna Thulach Mhór)	Féintoiliú	Tosaithe mar fhreagra ar shárú a cuireadh in iúl don DPC.
FSS Ospidéal Mhuire Lourdes	Féintoiliú	Ag scrúdú shlandáil na próiseála sonraí, bearta cú eagraíochtaí agus teicniúla tar éis chailteanas sonraí pearsanta íogaire.

FSS an Deisceart	Féintoiliú	Tosaíthe mar fhreagra ar shárú a cuireadh in iúl don DPC.
Eagraíocht	Cineál Fiosrúcháin	Ceist atá á scrúdú
Biúró Creidmheasa na hÉireann	Féintoiliú	Tosaíthe mar fhreagra ar shárú a cuireadh in iúl don DPC.
Seirbhís Príosún na hÉireann	Féintoiliú	Ag scrúdú más rud é gur chomhlíon SPÉ a chuid dualgas GDPR maidir leis an mbunús dlí a bhfuil sí ag brath air chun sonraí pearsanta a phróiseáil.
Ollscoil Mhá Nuad	Féintoiliú	Tosaíthe mar fhreagra ar shárú a cuireadh in iúl don DPC maidir le heachtra fioscaireachta.
Move Ireland Limited	Féintoiliú	Ag scrúdú chomhlíontachta le dualgais GDPR maidir le caillteanas sheisiún comhairleoireachta taifeadta ina raibh sonraí pearsanta íogaire i gceist.
An Bord Measúnaithe Díobhálacha Pearsanta	Féintoiliú	Ag scrúdú chomhlíontachta le dualgais GDPR maidir le sárú sonraí pearsanta a cuireadh in iúl a tharla trí chaillteanas ghléis stórála USB. Bainteach le fiosrúchán faoi BEO Solutions.
Comhar Creidmheasa Bhaile Shláine	Féintoiliú	Tosaíthe mar fhreagra ar shárú a cuireadh in iúl don DPC maidir le noctadh neamhúdaraithe.
SUSI	Féintoiliú	Tosaíthe mar fhreagra ar shárú a cuireadh in iúl don DPC.
An Chomhairle Mhúinteoiriachta	Féintoiliú	Ag scrúdú comhlíontachta le dualgais GDPR i dtaca le fioscaireacht dhá chuntas ríomhphoist ar le baill fhoirne na Comhairle iad; socráodh rialacha atreoraithe r-phoist a spreag próiseáil neamhúdaraithe 332 r-phost a raibh sonraí pearsanta le fáil iontu a bhain le líon mór ábhar sonraí.
TUSLA	Féintoiliú	Tosaíthe mar fhreagra ar roinnt sáruithe a cuireadh in iúl don DPC.
TUSLA	Féintoiliú	Tosaíthe mar fhreagra ar roinnt sáruithe a cuireadh in iúl don DPC le linn na tréimhse ó 25 Bealtaine 2018.
TUSLA	Féintoiliú	Tosaíthe mar fhreagra ar shárú a cuireadh in iúl don DPC.
UCD	Féintoiliú	Tosaíthe mar fhreagra ar roinnt sáruithe a cuireadh in iúl don DPC le linn na tréimhse ó 25 Bealtaine 2018.
Ollscoil Luimnigh	Féintoiliú	Tosaíthe mar fhreagra ar shárú a cuireadh in iúl don DPC maidir le heachtra fioscaireachta.



# 5

## Cinntí

### Cinntí faoin Acht um Chosaint Sonraí 2018

Déanann an DPC cinneadh, de bhun fiosrúchán reachtúil, más rud é gur tharla sáruithe na reachtaíochta cosanta sonraí. Tá mar chuid de na fiosrúcháin reachtúla seo fiosrúcháin féintoilthe agus fiosrúcháin de bhun gearán. Nuair a fhaightear sáruithe, déanann an cinnteoir cinneadh freisin más rud é gur chóir cumhacht cheartaitheach a chur i bhfeidhm, agus, más rud é gur chóir, cad é an chumhacht/cad iad na cumhactaí atá le cur i bhfeidhm.

Nuair a chinneann an DPC fíneál riarrachán a ghearradh, agus mura ndéantar achomharc in aghaidh an chinnidh sin, ní mór don DPC iarratas a dhéanamh ar bhealach achomhair chuig an gCúirt Chuarda do dheimhniú an chinnidh chun fíneál riarrachán a ghearradh de bhun Ailt 143(1) den Acht um Chosaint Sonraí 2018. Foráileann Alt 143(2) go ndeimhneoidh an Chúirt Chuarda an cinneadh ach amháin má tá cúis mhaith aici gan a leithéid a dhéanamh. Íocatar gach fíneál DPC don Státhiste tar eis í a fháil de réir Ailt 141(7) den Acht um Chosaint Sonraí 2018.

## Eagraíochtaí

## Cinneadh eisithe

Comhairle Contae Chiarraí	25-Már-20
Comhairle Cathrach agus Contae Phort Láirge	21-D.Fó-20
Tusla An Ghníomhaireacht um Leanaí agus an Teaghlaigh (3 shárú)	07-Aibr.-20
Tusla An Ghníomhaireacht um Leanaí agus an Teaghlaigh (1 shárú)	21-Beal-20
Tusla An Ghníomhaireacht um Leanaí agus an Teaghlaigh (71 shárú)	12-Lún-20
Feidhmeannacht na Seirbhise Sláinte (FSS An Deisceart)	18-Lún-20
Feidhmeannacht na Seirbhise Sláinte (Ospidéal Mhuire Lourdes)	29-M.Fó-20
Ryanair	11-Sam-20
Twitter International Company	9-Noll-20
Groupon	16-Noll-20
Coláiste na hOllscoile, Baile Átha Cliath	17-Noll-20

### Comhairle Contae Chiarraí

I Méarca 2020, d'éisigh an DPC cinneadh do Chomhairle Contae Chiarraí maidir le ceann den lín fiosrúchán féintoilithe ar thug sé faoi a bhaineann le hÚdarás Áitiúla. Déanann na fiosrúcháin seo machnamh faoi raon leathan ceisteanna a bhaineann le teicneolaíochtaí faireachais a mbaineann údarás Stáit feidhm astu. Cuireadh an fiosrúchán i gcrích i dtús báire trí mheán iniúchta faoi Alt 136 den Acht um Chosaint Sonrai 2018. D'éascaigh sin an DPC agus é ag cur firicí le chéile maidir le húsáid teicneolaíochtaí faireachais ag an gComhairle. Tugadh tuairisc dheiridh an DPC chun críche ar 4 Deireadh Fómhair 2019 agus cuireadh í faoi bhráid an chinnteora (an Coimisinéir).

Fuarthas amach sa chinneadh seo go raibh córais áirithe CCTV a bhí á bhfeidhmiú ag Comhairle Contae Chiarraí mídhleathach cheal údaraithe ó Choimisinéir na nGardaí faoi Alt 38 den Acht um an Gharda Síochána 2005. Go suntasach, rinneadh machnamh cuimsitheach faoin Acht um Thruailliu ó Bhruscar 1997, an tAcht um Bainistiú Dramhaíola 1996, agus an tAcht Rialtais Áitiúil 2001 agus fuarthas amach sa chinneadh nach soláthraíonn na hAchtanna sin bunús dlí d'úsáid CCTV do chuspóirí fhorfheidhmithe dhí.

Mar chuid den chinneadh rinneadh machnamh freisin faoin gcomharthaíocht a úsáidtear ag an gComhairle chun an pobal a chur ar an eolas faoina úsáid CCTV, fuarthas amach go raibh cuid den chomharthaíocht easnamhach ag cur san áireamh riachtanais an Acharta um Chosaint Sonrai 2018. Mar chuid den chinneadh rinneadh machnamh faoi réimse radhairc an CCTV atá á fheidhmiú ag an gComhairle agus fuarthas amach an méid seo, cheal mhascadh príobháideachais, bhí an bailiú sonrai iomarcach i roinnt suíomhanna inar ghabh an CCTV tithe príobháideacha freisin. Rinneadh cinntí freisin maidir

leis an easpa rialacha nó treoirlínte scríofa a rialaíonn rochtain fhoirne don CCTV; úsáid fhón cliste nó gléasanna taifeadta eile i seomra monatóireachta an CCTV; an cleachtas atá ann de bheith ag roinnt sonraí logála isteach chun teacht ar scannánaíocht an CCTV; bearta slándála chun scannánaíocht CCTV a aistriú chuig an nGarda Síochána; agus an riachtanas do Mheasúnachtaí Tionchair Chosanta Sonrai.

Chuir an cinneadh cosc sealadach i bhfeidhm ar phróiseáil Chomhairle Contae Chiarraí shonraí pearsanta maidir le ceamarai áirithe CCTV. Mar chuid den chinneadh freisin ordaíodh don Chomhairle a cuid próiseála a thabhairt chun comhlíontachta trí bheart sonraithe a dhéanamh agus tugadh iomardú don Chomhairle maidir leis na sáruithe. Ar 27 Aibreán 2020, thaisc Comhairle Contae Chiarraí achomharc in aghaidh an chinnidh don Chúirt Chuarda. Ar 8 Meán Fómhair 2020, tharraing Comhairle Contae Chiarraí siar an t-achomharc, ag glacadh le hábhar an chinnidh.

### Comhairle Cathrach agus Contae Phort Láirge

I Méarca 2020, d'éisigh an DPC cinneadh do Chomhairle Cathrach agus Contae Phort Láirge maidir le fiosrúchán eile a bhaineann le teicneolaíochtaí maoirseachta a úsáidtear ag údarás Stáit. Cuireadh an fiosrúchán i gcrích i dtús báire trí mheán iniúchta faoi Alt 136 den Acht um Chosaint Sonrai 2018. D'éascaigh sin an DPC agus é ag cur firicí le chéile maidir le húsáid teicneolaíochtaí faireachais ag an gComhairle. Tugadh an tuairisc dheiridh chun críche ar 24 Deireadh Fómhair 2019 agus cuireadh í faoi bhráid an chinnteora (an Coimisinéir).

Fuarthas amach sa chinneadh nach bhfuil bunús dlí ag úsáid Chomhairle Cathrach agus Contae Phort Láirge

cheamaraí deaise agus cheamaraí faoi cheilt chun caitheamh bruscair agus dumpáil a aimsiú do chuspóirí fhorfheidhmithe dhlí san Acht um Thruailliú ó Bhruscar 1997 agus san Acht um Bainistiú Dramhaíola 1996. Fuarthas amach sa chinneadh freisin go raibh ceamaraí áirithe CCTV a bhí á bhfeidhmiú ag an gComhairle do chosc ar an gcoireacht mídhleathach cheal údaraithe ó Choimisiún na nGardaí faoi Alt 38 den Acht um an Gharda Síochána 2005.

Fuarthas amach sa chinneadh gurb iad an Garda Síochána agus Comhairle Cathrach agus Contae Phort Láirge comhrialaitheoirí maidir le ceamaraí áirithe CCTV faoi Alt 38(3)(c) den Acht um an Gharda Síochána 2005. I dtaca leis seo, fuarthas amach sa chinneadh gur sháraigh Comhairle Cathrach agus Contae Phort Láirge Alt 79 den Acht um Chosaint Sonraí 2018 trí theip comhaontú a chur i bhfeidhm i scribhinn leis an nGarda Síochána. Rinneadh cinntí freisin maidir le sásúlacht pholasáí Chomhairle Cathrach agus Contae Phort Láirge maidir lena húsáid drón do chomhlíonadh monatóireachta ar láithreáin cheadaithe dramhaíola agus cosc dumpála ar láithreáin dramhaíola mhídleathacha, agus an dualgas atá uirthi logleabhar sonraí a chothabháil do bhearta sonracha rochtana do thaifeadtaí CCTV.

Chuir an cinneadh cosc sealadach i bhfeidhm ar phróiseáil Chomhairle Cathrach agus Contae Phort Láirge shonraí pearsanta trí mheán cheamaraí fillasacha áirithe, ceamaraí deaise do chuspóirí fhorfheidhmithe dhlí agus ceamaraí faoi cheilt. Mar chuid den chinneadh freisin ordaíodh don Chomhairle a cuid próiseála a thabhairt chun comhlíontachta trí bheart sonraithe a dhéanamh agus tugadh iomardú don Chomhairle maidir leis na sáruithe. Ní dhearna Comhairle Cathrach agus Contae Phort Láirge achomharc in aghaidh an chinnidh seo.

## Tusla — Aibreán 2020

I Mí Aibreáin 2020, d' eisigh an DPC cinneadh maidir le fiosrúchán féintoilithe i dtaca le 3 shárú sonraí pearsanta a cuireadh in iúl don DPC ag Tusla. Tharla na sáruithe seo nuair a theip ar Tusla doiciméid a fholú agus iad á roinnt le triú páirtithe. Tharla an chéad sárú sonraí pearsanta nuair a sholáthair Tusla trí thimpiste seoladh chúramóra altrama d' athair bheirt leanaí faoi chúram. Tharla an dara sárú nuair a sholáthair Tusla trí thimpiste do dhuine a raibh drochúsáid ghnéasach leanaí á cur ina leith seoladh an linbh a rinne an gearán chomh maith le huimhir theileafóin a máthar. Tharla an tríú sárú nuair a sholáthair Tusla trí thimpiste do sheanmháthair linbh faoi chúram seoladh agus sonraí teagmhála thuismitheoirí altrama an linbh chomh maith le suíomh scoil an linbh.

Cuireadh túis leis an bhfiosrúchán ar 24 Deireadh Fómhair 2019 agus scrúdaíodh más rud é go raibh a chuid dualgas comhlíonta ag Tusla maidir leis na sáruithe, chun cinneadh ar briseadh aon fhoráil/fhorálacha den GDPR agus/nó an Acharta um Chosaint Sonraí 2018 ag Tusla. Tugadh an tuairisc fhiosrúcháin deiridh chun críche ar 24 Feabhra 2020 agus cuireadh í faoi bhráid an chinnteora (an Coimisiún).

Sa chinneadh rinneadh machnamh faoi oiriúnacht na mbeart teicniúil agus eagraíochtúil a bhí i bhfeidhm ag Tusla ag am na sáruithe. Fuarthas amach sa chinneadh go raibh Airteagal 32(1) den GDPR sáraithe ag Tusla trí theip bearta cuí a chur i bhfeidhm maidir le folú doiciméad. Sa chinneadh rinneadh machnamh freisin faoi cheann de na sáruithe sonraí pearsanta a cuireadh in iúl maidir leis an dualgas an DPC a chur ar an eolas gan mhoill mhíchuí de bhun Airteagail 33(1) den GDPR. Chuir Tusla an sárú seo in iúl don DPC 5 lá tar éis dó fáil amach faoi. Fuarthas amach sa chinneadh gur mhoill mhíchuí a bhí ann sna cúinsí agus fuarthas amach go raibh Airteagal 33(1) sáraithe ag Tusla.

Sa chinneadh tugadh iomardú do Tusla, ordaíodh dó a chuid próiseála a thabhairt chun comhlíontachta le Airteagal 32(1) den GDPR, agus gearradh fineáil riarracháin de €75,000. Ní dhearnadh aon achomharc ag Tusla in aghaidh chinneadh an DPC. Ar 4 Samhain 2020, rinne an DPC iarratas don Chúirt Chuarda chun a chinneadh a dheimhniú san fhiosrúchán seo chun an fhíneáil riarracháin a ghearradh. Dheimhnigh an Chúirt Chuarda an cinneadh de bhun Ailt 143 den Acht um Chosaint Sonraí 2018.

## Tusla — Bealtaine 2020

I Mí na Bealtaine 2020, d' eisigh an DPC cinneadh maidir le fiosrúchán eile féintoilithe a bhaineann le Tusla. Bhain an fiosrúchán seo le sárú amháin sonraí pearsanta a chuir Tusla in iúl don DPC ar 4 Samhain 2019. Cuireadh túis leis an bhfiosrúchán ar 11 Nollaig 2019 agus scrúdaíodh más rud é go raibh a chuid dualgas comhlíonta ag Tusla i dtaca le hábhar an tsáraithe chun socrú an raibh aon fhoráil/fhorálacha den GDPR agus/nó den Acht um Chosaint Sonraí 2018 briste ag Tusla.

Tharla an sárú nuair a scríobh Tusla litir chumhdaigh chuig triú páirtí a raibh le fáil inti céannacht daoine aonair a raibh líomhaintí drochúsáide déanta acu chomh maith le sonraí na líomhaintí a rinneadh. Roinneadh an litir a nocta na sonraí níos déanaí ar na meáin shóisialta ag faighteoir na litreach. Ar 19 Mártá 2020, tugadh an tuairisc fhiosrúcháin deiridh chun críche agus cuireadh í faoi bhráid an chinnteora (an Coimisiún).

Sa chinneadh rinneadh machnamh faoi oiriúnacht na mbeart teicniúil agus eagraíochtúil a bhí i bhfeidhm ag Tusla ag am an tsáraithe maidir lena phróiseas litreach cumhdaigh. Fuarthas amach gur sháraigh Tusla Airteagal 32(1) den GDPR trí theip bearta eagraíochtúla a chur i bhfeidhm a bhí oiriúnach don riosca. Sa chinneadh rinneadh machnamh freisin faoin sárú maidir leis an dualgas an sárú a chur in iúl don DPC gan mhoill mhíchuí de bhun Airteagail 33(1) den GDPR. Cuireadh an sárú seo in iúl don DPC breis is 29 seachtaíne tar éis do Tusla bheith curtha ar an eolas faoi. Fuarthas amach sa chinneadh gur sháraigh Tusla Alt 33(1) trí theip an sárú a chur in iúl don DPC gan mhoill mhíchuí. Sa chinneadh tugadh iomardú do Tusla, ordaíodh dó a chuid próiseála a thabhairt chun comhlíontachta, agus gearradh fineáil riarracháin de €40,000. Ní dhearna Tusla achomharc in aghaidh an tsocraithe seo. Agus é seo á scríobh, táthar

ag feitheamh le hiarratas an DPC os comhair na Cúirte Cuarda chun an fhíneáil riarcháin a dheimhniú.

## Tusla — Mí Lúnasa 2020

I Mí Lúnasa 2020, d' eisigh an DPC cinneadh maidir le fiosrúchán féintoilithe i dtaca le 71 shárú sonraí pearsanta a cuireadh in iúl don DPC ag Tusla. Tharla na sáruthe ábhartha idir 25 Bealtaine 2018 agus 16 Samhain 2018 agus bhain siad go léir le nochtadh, nó rochtain neamhúdaraithe, ar shonraí pearsanta a bhí á bpróiseáil ag Tusla. Cuireadh túis leis an bhfiosrúchán ar 6 Nollaig 2018 agus scrúdaíodh más rud é gur chomhlíon Tusla a chuid dualgas i dtaca le hábhar na sáruthe le cinneadh más rud é go raibh aon fhoráil/fhorálacha den GDPR agus/nó den Acht um Chosaint Sonraí 2018 briste ag Tusla. Tugadh an tuairisc fhiosrúcháin deiridh chun críche ar 3 Aibreán 2020 agus cuireadh í faoi bhráid an chinnteora (an Coimisinéir).

Rinneadh cinntí maidir le slándáil phróiseála, cruinneas sonraí pearsanta, agus dualgas Tusla sáruthe sonraí pearsanta a chur in iúl gan mhoill mhíchuí. Maidir le slándáil phróiseála, fuarthas amach sa chinneadh cúig shárú ar leith Airteagail 32(1) den GDPR maidir le dualgas Tusla bearta oiriúnacha teicniúla agus eagraíochtúla a chur i bhfeidhm chun leibhéal slándála a chinntí atá oiriúnach don riosca atá i gceist lena chuid oibríochtaí éagsúla próiseála. Bhain na hoibríochtaí próiseála a bhí á mbreithniú le seachadadh Tusla shonraí pearsanta ar a chóras faisnéise inmheánach; seachadadh Tusla shonraí pearsanta go hinmheánach trí r-phost; seachadadh Tusla sonraí pearsanta go seachtrach trí phost agus trí r-phost; prioritáil agus scanadh Tusla; agus bainistiú taifead agus láimhséail eolais Tusla. Fuarthas amach sa chinneadh gur sháraigh Tusla Airteagal 32(4) den GDPR trí theip gníomhú chun cinntí nach ndéanann daoine atá ag gníomhú faoina údarás sonraí pearsanta áirithe a phróiseáil seachas faoi threoir ó Tusla. Fuarthas amach sa chinneadh gur sháraigh Tusla Airteagal 5(1)(d) den GDPR ceithre huaire trí theip cinntí go raibh na sonraí pearsanta a bhí á bpróiseáil aige cruinn, agus nuair is gá sin, nuashonraithe. Ar deireadh, fuarthas amach sa chinneadh gur sháraigh Tusla Alt 33(1) trí theip sáruthe sonraí pearsanta a chur in iúl don DPC gan mhoill mhíchuí ocht n-uaire.

Sa chinneadh tugadh iomardú do Tusla maidir lena sháruthe Airteagail 5(1)(d), 32(1), 32(4), agus 33(1) den GDPR. Sa chinneadh ordaíodh freisin do Tusla a chuid próiseála a thabhairt chun comhlíontachta le hAirteagal 32(1) den GDPR trí bhearta sonraithe cuí teicniúla agus eagraíochtúla a chur i bhfeidhm chun leibhéal slándála a chinntí atá cuí i dtaca leis na rioscaí a aimsíodh.

I gcúinsí nuair a bhain cuid de na sáruthe leis na hoibríochtaí próiseála céanna nó le hoibríochtaí nasctha, agus nuair nach raibh ceann de sháruthe Airteagail 32(1) nasctha leis na hoibríochtaí próiseála eile a bhí á mbreithniú sa chinneadh, fuarthas amach sa chinneadh go raibh sé cuí dhá fhíneáil riarcháin ar leith a ghearradh ar Tusla. Ghearr an chinneadh fineáil riarcháin amháin ar luach €50,000, agus fineáil riarcháin amháin ar luach €35,000. Ní dhearna Tusla achomharc in aghaidh an

tsocraithe seo. Agus é seo á scríobh, táthar ag feitheamh le hiarratais an DPC roimh an gCúirt Chuarda chun na fineálacha riarcháin a dheimhniú.

## FSS — Mí Lúnasa 2020 & Mí Mheán Fómhair 2020

I Mí Lúnasa 2020, d' eisigh an DPC cinneadh maidir le fiosrúchán féintoilithe a bhain le sárú sonraí pearsanta a cuireadh in iúl ag an FSS don DPC ar 14 Meitheamh 2019. Tharla an sárú sonraí pearsanta nuair a cuireadh de láimh i lárionad athchúrsála poiblí doiciméid a raibh le fáil iontu sonraí pearsanta 78 n-ábhar sonraí, lena n-áirítear sonraí pearsanta sainchataogóire maidir le seisear de na hábhair shonraí sin. Cruthaíodh na doiciméid in Ospidéal Máithreachais na hOllscoile Corcaigh, ach ba bhall den phobal a tháinig orthu i limistéar athchúrsála poiblí. Cuireadh túis leis an bhfiosrúchán ar 17 Deireadh Fómhair 2019 agus scrúdaíodh más rud é gur chomhlíon an FSS a cuid dualgas i dtaca le hábhar an tsáraithe shonraí pearsanta sin agus chun cinneadh más rud é gur briseadh aon fhoráil/fhorálacha den Acht um Chosaint Sonraí 2018 agus/nó an GDPR ag an FSS sa chomhthéacs sin. Tugadh an tuairisc fhiosrúcháin deiridh chun críche ar 27 Aibreán 2020 agus cuireadh í faoi bhráid an chinnteora (an Coimisinéir).

I Mí Mheán Fómhair 2020, d' eisigh an DPC cinneadh maidir le fiosrúchán eile féintoilithe a bhain leis an FSS. Bhain an fiosrúchán le sárú sonraí pearsanta a chuir an FSS in iúl don DPC ar 1 Bealtaine 2019. Tharla an sárú sonraí pearsanta sin i gcúinsí nuair a chuir ball den phobal in iúl don FSS go raibh doiciméid faighte ina ngairdín tosaigh acu, atá suite cóngarach d' Ospidéal Mhuire Lourdes. Nótá aistrithe othar a bhí sna doiciméid faoi thrácht, iad ginte ag an FSS chun othair a aithint a thagann faoi chúram na foirne ag gach athrú sealá oibre. Tá na nótá riachtanach do chúram agus do chóir leighis leanúnach na n-othar. Bhí sonraí pearsanta 15 ábhar sonraí le fáil sna nótá agus bhí san áireamh iontu sonraí a bhain le heolas cliniciúil agus cóireálacha leighis a fuarthas. Clóbhualaileadh na nótá ar 11 Aibreán 2019, ach ní raibh an FSS in ann an dáta a shonrú nuair a tharla an sárú i dtús báire. Ní raibh aon mhíniú ar cá háit a raibh na nótá idir an dáta gur clóbhualileadh iad agus an uair go bhfuarthas iad. Cuireadh túis leis an bhfiosrúchán ar 26 Samhain 2019 agus scrúdaíodh ann más rud é gur chomhlíon an FSS a cuid dualgas i dtaca le hábhar an tsáraithe shonraí pearsanta chun cinneadh más rud é gur briseadh aon fhoráil/fhorálacha den Acht um Chosaint Sonraí 2018 agus/nó den GDPR ag an FSS sa chomhthéacs sin.

Fuarthas amach i gcinneadh Mhí Lúnasa 2020 gur sháraigh an FSS Airteagail 5(1)(f) agus 32(1) den GDPR trí theip chur i bhfeidhm bheart cuí teicniúil agus eagraíochtúil chun leibhéal slándála a chinntí atá cuí i dtaca leis na rioscaí a chuireann a úsáid i láthair, chomh maith le cur de láimh dhoiciméad cóipe crua ina bhfuil sonraí pearsanta othar le fáil. Sa chinneadh gearradh fineáil riarcháin de €65,000 ar an FSS as a cuid sáruthe d' Airteagail 5(1)(f) agus 32(1) den GDPR. Tugadh iomardú ann freisin don FSS agus ordaíodh di a cuid oibríochtaí

próiseála maidir le húsáid agus cur de láimh dhoiciméad cóipe crua ina bhfuil sonraí pearsanta othar le fáil a thabhairt chun comhlíontacha le hAireagail 5(1)f) agus 32(1) den GDPR trí bhearta áirithe sonraithe a chur i bhfeidhm. Ní dhearna an FSS achomharc in aghaidh an chinnidh seo. Agus é seo á scríobh, táthar ag feitheamh le hiarratas an DPC os comhair na Cúirté Cuarda chun an fhíneáil riarcháin a dheimhniú.

Ar an tslí chéanna, fuarthas amach sa chinneadh i Mí Mheán Fómhair 2020 gur sháraigh an FSS Aireagail 5(1) (f) agus 32(1) den GDPR trí theip bearta cuí teicniúla agus eagraíochtúla a chur i bhfeidhm chun leibhéal slándála a chinntí atá cuí i dtaca leis an riosca a chuireann a úsáid i láthair, chomh maith le cur de láimh dhoiciméad cóipe crua ina bhfuil sonraí pearsanta othar le fáil. Maidir leis an ordú, an t-iomardú, agus an fhíneáil a gearradh i dtaca le cinneadh na FSS i Mí Lúnasa 2020, fuair an DPC amach nach raibh sé cuí tuilleadh cumhactaí ceartaitheacha a chleachtadh sa Chinneadh seo. Bhain cinntí na sáruthe sa dá chinneadh leis na hoibríochtaí céanna próiseála, ar thug an rialaitheoir céanna fúthu, le linn na tréimhse céanna ama.

## Twitter International Company — Mí na Nollag 2020

I Mí na Nollag 2020, d' eisigh an DPC cinneadh maidir le fiosrúchán féintoillithe i dtaca le Twitter International Company (TIC). Cuireadh túis leis an bhfiosrúchán ar 22 Eanáir 2019, agus bhain sé le ceist chomhlíontacht TIC lena chuid dualgas faoi Aireagail 33(1) agus 33(5) den GDPR maidir le cur in iúl agus doiciméadú sháraithe shonraí pearsanta. D' eascraigheann an sárú sonraí pearsanta as fabht in aip mhóibíleach Twitter do Android a chiallaigh go ndearnadh tvúiteanna "cosanta" go léir (cinn nach bhfuil infheicthe ach ag a gcuid "leantóirí") aon úsáideora a d' athraigh an seoladh r-phoist a bhain lena gcontas, go ndearnadh na tvúiteanna sin inrochtana go poibl.

Fuarthas amach sa chinneadh gur sháraigh TIC Aireagal 33(1) den GDPR trí theip an sárú sonraí pearsanta a chur in iúl don DPC gan mhoill mhíchuí. I dtéarmaí amlíne an fhógra, fuarthas an sárú sonraí pearsanta amach ag fophróiseálaí sonraí ar 26 Nollaig 2018 agus measadh é a bheith ina ábhar sáraithe shonraí faoin GDPR ag eagraíocht Twitter go ginearálta ar 3 Eanáir 2019. Tharla moill, áfach, (go dtí 7 Eanáir 2019), maidir le cur in iúl an tsáraithe do TIC (mar rialaitheoir) agus don DPO Domhanda, moill a d' eascraigheann as teip fhostaithe Twitter Inc. treoir inmheánach a leanúint. Le linn an fhiosrúcháin, rinne TIC aighneacht go raibh sé tar éis, i gcúinsí gur chuir sé an sárú in iúl don DPC ar 8 Eanáir, a chuid dualgas a chomhlíonadh faoi Aireagal 33(1).

Sa chinneadh tugadh achoimre nárbh fhéidir le TIC (mar rialaitheoir), ar aimsiú shárú Aireagal 33(1) dó, nárbh fhéidir leis bheith ag brath ar theip ag a phróiseálaí próiseas inmheánach a leanúint agus / nó mí-éifeacht sa phróiseas sin chun freagracht a sheachaint faoi Aireagal 33(1) den GDPR as fógra mall an tsáraithe don DPC. Fuarthas amach sa chinneadh freisin gur sháraigh TIC Aireagal 33(5) den GDPR trí theip an sárú sonraí pearsanta a dhoiciméadú go sásúil.

Chuir an DPC a dhréachtchinneadh san fhiosrúchán seo faoi bhráid CSA eile faoi Airteagal 60 den GDPR ar 22 Bealtaine 2020. Ba é seo an chéad dréachtchinneadh a chuaigh trí phróiseas réitigh achrainn Ailt 65 agus ba é an chéad dréachtchinneadh i gcás "teicneolaíochta móire" ina ndeachthas i gcomhairle le gach údarás maoirseachta san AE mar CSA. Ghlac an Bord Eorpach um Chosaint Sonraí lena chinneadh faoi Alt 65(1)(a) ar 9 Samhain 2020. D' eisigh an DPC a chinneadh deiridh do TIC ar 9 Nollaig 2020. Sa chinneadh sin gearradh fineáil riarcháin de \$500,000 (measta don chuspóir seo mar €450,000) ar Twitter mar bheart éifeachtach, comhréireach agus athchomhairleach.

## UCD — Mí na Nollag 2020

I Mí na Nollag 2020, d' eisigh an DPC cinneadh maidir le fiosrúchán féintoillithe a bhain le Coláiste na hOllscoile Baile Átha Cliath ('UCD'). Bhain an fiosrúchán seo le seacht sárú sonraí pearsanta a chuir UCD in iúl don DPC idir 8 Lúnasa 2018 agus 21 Eanáir 2019. Cuireadh túis leis an bhfiosrúchán ar 19 Iúil 2019 agus scrúdaíodh más rud é go raibh a chuid dualgas comhlíonta ag UCD i dtaca le hábhar na sáruthe agus cinneadh más rud é go raibh aon fhóráil/fhorálacha d' Acht 2018 agus/nó den GDPR briste ag UCD sa chomhthiéacs sin.

Bhain na sáruthe sonraí pearsanta le cásanna inar oscail tríú páirtithe neamhúdaraithe cuntais r-phoist UCD, nó nuair a postáileadh an t-eolas logála isteach do chuntais r-phoist UCD ar líne. Ar 8 Iúil 2020, thug an DPC chun críche an tuairisc fhiosrúcháin deiridh agus chuir sé í faoi bhráid an chinnteora (an Coimisinéir).

Sa chinneadh rinneadh machnamh faoi oiriúnacht na mbeart teicniúil agus eagraíochtúil a cuireadh i bhfeidhm ag UCD ag am na sáruthe maidir lena seirbhís r-phoist. Fuarthas amach ann gur sháraigh UCD Aireagal 5(1) (f) agus 32(1) den GDPR trí theip sonraí pearsanta a phróiseáil ar a seirbhís r-phoist ar bhealach a chinntigh slándáil chuí na sonraí pearsanta ag úsáid bheart cuí teicniúil agus eagraíochtúil. Fuarthas amach sa chinneadh freisin gur sháraigh UCD Aireagal 5(1)(e) den GDPR trí stóráil sonraí pearsanta áirithe i gcontas r-phoist i bhfoirm a cheadaigh aithint ábhar sonraí ar feadh tréimhsí níos faide ná mar a bhí riachtanach don chuspóir dá ndearnadh na sonraí pearsanta a phróiseáil. Fuarthas amach sa chinneadh freisin go raibh Aireagal 33(1) den GDPR sáraithe ag UCD trí theip ceann de na sáruthe sonraí pearsanta a chur in iúl don DPC gan mhoill mhíchuí. Cuireadh an sárú sonraí pearsanta seo in iúl 13 lá tar éis do UCD bheith ar an eolas faoi.

Sa chinneadh ordaiodh do UCD a chuid oibríochtaí próiseála a bhain lena seirbhís r-phoist a thabhairt chun comhlíontacha leis na haití sháraithe, tugadh iomardú do UCD maidir lena chuid sáruthe, agus gearradh fineáil riarcháin ar luach €70,000 maidir leis na sáruthe. Ní dhearna UCD achomharc in aghaidh an chinnidh seo. Agus é seo á scríobh, tá an DPC ag ullmhú a iarratais chun an fhíneáil riarcháin a dheimhniú.

## Ryanair

I mí na Samhna 2020, ghlac an DPC cinneadh maidir le Ryanair. Bhain an gearán le trastearann próiseáil ina raibh an DPC inniúil chun gníomhú mar phríomhúdarás maoirseachta. Fuair an cinneadh é sin Sháraigh Ryanair Airteagal 15 GDPR trí mhainneachtain an gearánach le cóip de thaifeadadh glao ina dhiaidh iarratas ar rochtain ar ábhar. Mar gheall ar an moill ar Ryanair's mar chuid de phróiseáil na hiarrata, scriosadh an taifeadadh ó rinneadh an iarraidh. Fuair an cinneadh sin freisin Sháraigh Ryanair Airteagal 12 (3) GDPR trí mhainneachtain soláthar a dhéanamh fainseáis an ghearánaigh faoi na bearta a rinneadh maidir lena iarraidh faoi Airteagal 15 laistigh den chreat ama reachtúil de mí amháin. Chuir an cinneadh iomardú ar Ryanair ina leith de na sáruithe. Sonraíonn Cás-Staidéar 10 den tuarascáil é seo ina iomláine.

## Groupon

I mí na Nollag 2020, ghlac an DPC cinneadh maidir le Groupon. An gearán lena mbaineann próiseáil trastearann ina raibh an DPC inniúil gníomhú mar phríomhúdarás maoirseachta. Fuarthas an cinneadh gur sháraigh Groupon Airteagal 5 (1) (c) GDPR trína cheangal an gearánach a chéannacht a fhíorú trí a cóip de dhoiciméad aitheantaí náisiúnta. Cuireadh an riacthanas i bhfeidhm nuair a rinne ábhair sonraí iarratais áirithe, ach ní cathain chruthaigh ábhair sonraí cuntas Groupon, agus níos lú réiteach sonraí-tiomáinte ar cheist an fhíoraíthe aitheantaí ar fáil do Groupon. Fuair an cinneadh sin freisin Ailt sáraithe ag Groupon 12 (2), 17 (1) (a) agus 6 (1) GDPR agus iomardaíodh Groupon i leith na sáruithe. Sonraíonn Cás-Staidéar 7 den tuarascáil é seo go hiomlán.

## Cinntí faoi na hAchtanna Cosanta Sonraí 1988 agus 2003

### INM — Mí na Nollag 2020

Chomh maith le cinntí a rinneadh de bhun an GDPR, leanann an DPC air de bheith ag tabhart chun críche méid áirithe gearán agus imscrúduithe nach móir iad a chinneadh de réir fhórálacha na nAchtanna um Chosaint Sonraí 1988 agus 2003. I Mí na Nollag 2020, thug an DPC imscrúdú chun críche maidir le Independent News and Media (INM) agus a chomhlíontacht lena chuid dualgas mar rialatheoir sonraí faoi na hAchtanna um Chosaint Sonraí 1988 agus 2003, agus eisíodh an Tuairisc Dheiridh do INM ó shin. Bhí imscrúdú an DPC i dtaca le heachtra shlándála sonraí a tharla go déanach i 2014 agus a bhain le próiseáil sonraí pearsanta á bhí á gcoinneáil i gcórais inmhéanacha TF agus cùltaca INM. Fuair an DPC amach gur bhris INM na hAchtanna ar roinnt bealaí. Baineann an cinneadh faoi shárú faoi na hAchtanna um Chosaint Sonraí 1988 agus 2003 le hAlt 2(1)(a) agus 2D (cothroime agus tréadhearcacht phróiseála), 2A(1) (bunús dlí don phróiseáil) agus 2(1)(d) agus 2C (slándáil phróiseála de shonraí pearsanta).

### Cárta Seirbhísí Poiblí

Tá Agusín III de Thuarascáil Bhliantúil 2019 an DPC leagtha amach mionsonraí an imscrúdaithe ar phróiseáil pearsanta sonraí le DEASP maidir leis an gCárta Seirbhísí Poiblí. Rinneadh gníomh forfheidhmithe i mí na Nollag 2019 ag an DPC i ndáil leis an ábhar sin trí sheirbheáil Fógra Forfheidhmithe ar an Aire Fostaóchta Gnóthaí agus Cosaint Shóisialta. An Fógra Forfheidhmithe sin rinne an tAire agus iad seo a chomharc ina dhiaidh sin tá imeachtaí a chomhaírc fós ar siúl roimh Bhaile Átha Cliath An Chúirt Chuarda. Ar leithligh tá an DPC ag leanúint dá imscrúdú ar gnéithe áirithe eile den phróiseáil a dhéanann DEASP i ndáil le PSCanna agus SAFE 2 a eisiúint córas clárúcháin, lena n-áirítear slándáil na próiseála, próiseáil meaitseála aghaidhe ag DEASP i dtaca le an CSP agus cásanna úsáide sonracha an CSP.

# 6.

# Imscrúduithe agus Bearta Forfheidhmithe Eile

## Faireachas ag Earnáil an Stáit do Chuspóirí Forfheidhmithe Dhlí

Is féidir le córais fhaireachais fhíseáin a ghabhann íomháanna dhaoine a mbíonn de thoradh orthu aithint daoine aonair, cé acu go díreach nó go hindíreach, (i.e. nuair a chomhcheangláitear iad le píosaí eile eolais), is féidir leo infheidhmeacht an GDPR a spreagadh chomh maith leis an Acht um Chosaint Sonraí 2018. Ó pheirspictiocht chosanta sonraí de, téann faireachas físeáin i bhfeidhm ar chearta agus ar shaoirsí dhaoine go suntasach agus tá sé tábhachtach, mar sin de, go mbíonn aon chórais den chineál sin ag feidhmiú de réir an dlí um chosaint sonraí.

Ba ar an mbonn seo gur chuir an DPC túis, i Mí Mheithimh 2018, le roinnt fiosrúchán féintoilithe faoin Acht um Chosaint Sonraí 2018 maidir le faireachas físeán saoránach ag earnáil an stáit do chuspóirí forfheidhmithe dhlí trí úsáid teicneolaíochtaí leithéidí CCTV, ceamaraí a chaitear ar an gcorp, dróin agus teicneolaíochtaí eile leithéidí córais le cuidiú uathaithint uimhirphláttai (ANPR). Tá na fiosrúchán féintoilithe seo á gcur i grích faoi Alt 110 agus Alt 123 den Acht um Chosaint Sonraí 2018 ag úsáid an chumhacht iniúchta cosanta sonraí a bhforáltear di in Alt 136 den Acht um Chosaint Sonraí 2018. Tá chéad chéim na bhfiosrúchán seo ag díriú ar úsáid fhaireachais fhíseáin ag na 31 údarás áitiúil in Éirinn agus freisin ag úsáid fhaireachais fhíseáin ag an nGarda Síochána. Is é cuspóir na bhfiosrúchán seo ná fiosrú a dhéanamh más rud é gur féidir le rialitheoirí sonraí a leithéid de chórais taispeánt go bhfuil a gcuid córas ag feidhmiú i gcomhlíontacht leis an reachtaíocht cosanta sonraí.

## Údaráis Áitiúla

Ó Mhí Mheán Fómhair 2018 chuir an DPC iniúchtaí i grích sna húdaráis áitiúla seo a leanas: Comhairle Contae Chill Dara, Comhairle Cathrach agus Contae Luimnígh,

Comhairle Contae na Gaillimhe, Comhairle Contae Shligigh, Comhairle Cathrach agus Contae Phort Láirge, Comhairle Contae Chiarráí agus Comhairle Bhaile Átha Cliath Theas. San ionlán, tá breis is 1,500 ceamara CCTV á bhfeidhmiú ag na seacht n-údarás áitiúla seo do chuspóirí faireachais. (Ní bhaineann na fiosrúchán le ceamaraí slándála leithéidí na cinn sin a mbaintear úsáid astu do ghnáthchuspóirí slándála.)

Mar chuid den phróiseas fiosrúchán, lorg an DPC ó na rialitheoirí sonraí faoi seach fianaise pholasaithe láidre cosanta sonraí chomh maith le fianaise mhaoirseachta gníomhaí agus rialachais fhóntha. Aithníodh laigí i roinnt údarás áitiúil a tharraing aird ar bhearnaí tréadhearcachta. Tháinig cúiseanna imní chun cinn freisin maidir le slándáil sonraí pearsanta a bailíodh trí theicneolaíochtaí faireachais.

Nuar a tharlaíonn monatóireacht bheo chóras CCTV, seachas bheith ag fáil rochtana ar an scannánaíocht ar bhonn eachtra, thug an DPC teip faoi deara ag rialitheoirí sonraí léiriú go raibh rochtain á fáil ar na córais CCTV go cuí ná go raibh siad á mbainistiú go cuí. Téama coitianta eile sna húdaráis áitiúla sin a ndearnadh iniúchadh orthu ná easpa thuairiscithe rialta faoi phríomh-mhéadracht leithéidí an líon uaireanta a ndearnadh rochtain ar chóras ná an cuspóir a bhain leis an rochtain.

Is féidir go spreagadh cineál na ngléasanna CCTV a úsáidtear cúiseanna imní cosanta sonraí freisin. Is féidir ceamaraí Pan-Tilt-Zoom (PTZ) a úsáid chun zúmáil isteach ó achar sách fada ar dhaoine aonair agus ar a réadmhaoin agus dá bharr sin is féidir go mbeadh rioscaí níos mó ag baint le cumaí phróiseála na ngléasanna seo i dtaca le príobháideachas daoine aonair. Ina theannta sin, tá úsáid cheamaraí ANPR ag éirí níos coitianta in Earnáil an Stáit ach tá easpa pholasaithe cosanta sonraí a rialáonn úsáid a leithéid de theicneolaíochtaí suntasach.

Tá i gceist freisin leis na fiosrúchán in earnáil na n-údarás áitiúil iniúchadh úsáid na gcóras pobalbhunaithe CCTV

atá údaraithe faoi Alt 38(3)(c) den Acht um an Gharda Síochána 2005. Éilíonn na scéimeanna seo gur rialaitheoir sonraí a bheadh san údarás áitiúil agus go bhfaighfí cead ó Choimisinéir na nGardaí roimh ré. Tá na fiosrúchán ag scrúdú, i measc rudaí eile, conas atá na húdaráis áitiúla ag freastal ar dhualgas rialitheora shonraí faoi mar a éilltear faoin Acht sin.

Agus é seo á scríobh, tá a chuid fiosrúchán curtha i gcrích ag an DPC maidir le 6 cinn de na húdaráis áitiúla thuasluaithe agus tá tuairisc fhiosrúchán deiridh á tabhairt chun críche faoi láthair don seachtú húdarás áitiúil. Cé go bhfuil a chur chuige suaithinseach féin ag gach ceann de na húdaráis áitiúla maidir le conas a chuireann sé faireachas i bhfeidhm ar a chuid saoránach, bhí de thoradh ar obair an DPC sa réimse seo aithint cheisteanna suntasacha comhlíontacha cosanta sonraí maidir le ceisteanna leithéidí úsáid cheamaraí CCTV faoi cheilt, úsáid CCTV chun dumpáil mhídhleathach a chosc, úsáid cheamaraí a chaitear ar an gcorp, ceamaraí deaise, drón agus ceamaraí ANPR, ceamaraí CCTV ag siúlbhealáí áiseanna nó raonta rothar, agus easpa pholasaithe agus mheasúnachtá tionchair chosanta sonraí. Ar an tsúl chéanna, is cús shuntasach imní don DPC é an tsúl ina bhfuil údarás áitiúla ag comhlíontadh a gcuid dualgas sonraí pearsanta mar rialaitheoirí sonraí agus an géaraghá atá ann le go ndéanfaidís níos mó chun a gcuid oibriochtaí a thabhairt chun comhlíontacha le reachtaíocht chosanta sonraí agus chun cuntasacht a chinntí do na córais CCTV atá faoina smacht.

## Cinntí

I measc na bhfiosrúchán éagsúil atá curtha i gcrích ag an DPC maidir le húsáid teicneolaíochtaí faireachais ag údarás áitiúla, tá dhá fhiosrúchán tugtha chun críche ag an DPC — faoi Chomhairle Contae Chiarráí agus faoi Chomhairle Cathrach agus Contae Phort Láirge maidir lena n-úsáid trealamh fhaireachais fhíseáin, ag eisiúint cinntí deireanacha sa dá cheann. Cé gur thaisc Comhairle Contae Chiarráí achomharc i dtús báire in aghaidh chinneadh an DPC ag an gCúirt Chuarda faoi Alt 150 den Acht um Chosaint Sonrái 2018, tarraingíodh an t-achomharc seo siar níos déanaí ag an gComhairle.

Tá tuilleadh eolais mionsonraithe maidir leis na cinntí seo le fáil i gCaibidil 5 den tuairisc seo.

## An Garda Síochána

Chomh maith leis na fiosrúchán leanúnacha in earnáil na n-Údarás áitiúil, cuireadh fiosrúchán i gcrích ar an nGarda Síochána maidir le scéimeanna CCTV a chuirtear i bhfeidhm ag na Gardaí (soláthraíonn Alt 38(3)(a) den Acht um an Gharda Síochána 2005 bunús díl dá leithéid de scéimeanna).

Is féidir teacht ar thuilleadh eolais mhionsonraithe maidir leis an bhfiosrúchán seo agus maidir leis an gcinneadh seo, a eisíodh i Mí Lúnasa 2019, sa tuairisc fhoilsithe *Tuairisc faoi Ghníomhaíochtaí Rialála an DPC Bealtaine 2018 – Bealtaine 2020*’ ag Agusín 1: Faireachas ag Earnáil an Stáit do Chuspóirí Forfheidhmithe Dhíl.

## Scuabadh agus Forfheidhmiú Fiosrúchán Fianán

Le linn na bliana d’fhorbair an DPC cuid mhór ár gcuid fiosrúchán fianán, ag scrúdú líon suntasach suíomhanna

gréasáin chun comhlíontacht na reachtaíochta ábhartha a mheasúnú, i.e. Rialachán 5(3), 5(4) agus 5(5) de na Rialachán ePríobháideachais (I.R. 336/2011). Foráileann an reachtaíocht sin gur gá toiliú a fháil chun aon eolas a chur ar ghléas úsáideora, nó chun teacht ar eolas atá á stóráil cheana ar a ngléas, ach amháin má chomhlíontar ceann amháin as dhá dhíolúine shrianta. Tá sé tábhachtach tabhairt faoi deara go mbaineann an díl le feidhm, ní hamhán i gcás shuíomhanna gréasáin, ach freisin aipeanna móibhíleacha agus tárgí eile a bhaineann úsáid as fianáin nó teicneolaíochtaí rianaithe den chineál céanna a osclaíonn gléas. Cuireadh túis le fiosrúchán an DPC faoi fhianáin agus fócas méadaithe an phobail le sonrú sa chúlra faoi úsáid a leithéid de theicneolaíochtaí chun daoine aonair a rianú ar fud a gcuid gléasanna agus a gcuid gníomhaíochta ar líne go ginearálta.

I Mí Aibreáin, d’fhoilsigh an DPC treoir nua maidir le húsáid fhianán agus teicneolaíochtaí rianaithe. Táirgeadh sin tar éis scuabtha fhianán a cuireadh i gcrích maidir le 40 suíomh gréasáin idir Mí Lúnasa 2019 agus Mí na Nollag 2019. Foilsíodh tuairisc faoin gcleachtadh sin in éineacht leis an treoir.

Tugadh spriocdháta 6 mhí d’eagraíochtaí chun a gcuid suíomhanna gréasáin agus seirbhísí eile a úsáideann fianáin a thabhairt chun comhlíontacha. Le linn na tréimhse sin chuir an DPC feachtas leitheadach feasacha poiblí i gcrích maidir leis an treoir nua, ag tabhairt le fios go raibh sé i gceist aige tosú ar bhearta leantacha forfheidhmithe le linn Q4 de 2020.

Ag eascairt as a chuid fiosrúchán fianán, ar 27 Samhain 2020, scríobh an DPC chui 18 n-eagraíocht agus chui dhá eagraíocht eile ar 14 Nollaig 2020, maidir le ceisteanna neamhchomhlíontacha ar a suíomhanna gréasáin, ag tabhairt rabhaíd faoi rún an DPC Fógraí Forfheidhmithe a eisiúint gan tuilleadh fógra a thabhairt, murar tugadh aghaidh ar na ceisteanna neamhchomhlíontacha seo laistigh de 14 lá. Bhí na litreacha seo éifeachtach maidir le roinnt eagraíochtaí a thabhairt go suntasach chun comhlíontacha nó chun comhlíontacha ionmláine gan gá a bheith ann le haghaidh tuilleadh beart forfheidhmithe ag an DPC. Leanfaidh an DPC air, áfach, de bheith ag déanamh monatóireachta ar staid reatha na comhlíontacha ar bhonn leanúnach ag gach eagraíocht a ndearna an DPC teagmháil leo maidir lena n-úsáid fhianán.

Theip ar roinnt eagraíochtaí dóthain céimeanna leasúcháin a thógáil chun a suíomh gréasáin a thabhairt chun comhlíontacha laistigh den tréimhse 14 lá a bhí leagtha amach ag an DPC ina chuid litreacha dóibh. Dá thoradh sin, ar 21 Nollaig 2020, sheirbheáil an DPC Fógraí Forfheidhmiúchán ar sheacht n-eagraíocht le haghaidh neamhchomhlíontacha. Eisíodh na fógraí de bhun Rialachán 17(4) de na Rialachán ePríobháideachais (I.R. 336/2011 do sháruithe Rialachán 5, lena n-áirítear teip maidir le toiliú bailí a fháil d’úsáid fhianán agus teip maidir le heolas soiléir agus cuimsitheach a sholáthar faoi úsáid fhianán ar na suíomhanna gréasáin ábhartha.

Bhí sé suntasach freisin le linn 2020 gur thosaigh an DPC de bheith ag feiceáil níos mó gearán agus cúiseanna imní ón bpobal faoi úsáid fhianán agus teicneolaíochtaí rianaithe agus táthar ag súil leis go leanfar den treoche seo.

Leanfaidh fiosrúchán agus forfheidhmiú sa réimse seo de bheith mar phríomhileimint de chuid ghníomhaíochtaí an DPC i 2021 agus níos déanaí.



7

## Gnóthaí Dlí

Uimh.	Uimh. Thaifid	Teideal	Cineál bearta agus Ionad	Dáta an Bhreithiúnais/Ordú
1.	2018/4097	<b>An tSeirbhís Cúirteanna v. DPC (Páirtí Fógra: PM)</b>	Achomharc reachtúil An Chúirt Chuarda	6 Feabhra 2020

#### Toradh:

Trí chinneadh a bhfuil dáta 13 Meitheamh 2018 air, a rinneadh faoi na hAchtanna um Chosaint Sonrai, 1988 agus 2003 (**Achtanna CS**”), mheas an Coimisinéir Cosanta Sonrai gur theip, trí fhoilsíú breithiúnais a d’ aithin an Páirtí Fógra lena ainm, i gcúinsí ina raibh treoir tugtha ag an Ardchúirt níos luaithe nár chóir ainm an Pháirtí Fhógra a fhoilsíú, gur theip ar an tSeirbhís Cúirteanna (1) a dhualgas a chomhlíonadh maidir le bearta cuí slándála a dhéanamh in aghaidh nochtadh neamhúdaraithe shonraí pearsanta an Pháirtí Fhógra, in aghaidh Ailt 2(1)(d) de na hAchtanna CS; (2) gur phróiseáil sí sonraí pearsanta an Pháirtí Fhógra (agus sonraí pearsanta íogaire) gan bunús dlí faoi Ailt 2A agus 2B de na hAchtanna CS.

Trí bhreithiúnas a fógraíodh ar 6 Feabhra 2020, dhiúltaigh an Chúirt Chuarda d’achomharc ag an tSeirbhís Cúirteanna, agus an tSeirbhís Cúirteanna tar éis orduithe a lorg chun an breithiúnas a chur ar leataobh chomh maith le cinneadh an DPC gur “rialaitheoir sonrai” a bhí sa tSeirbhís Cúirteanna do chuspóirí na nAchtanna CS.

Chuir an Chúirt Chuarda srian, áfach, leis an tréimhse ama a bhí intagartha do sháruthe na Seirbhise Cúirteanna Ailt 2A agus 2B de na hAchtanna CS go dtí an tréimhse 12 Bealtaine 2014 go 15 Bealtaine 2014. I dtaca leis an gCúirt, freisin, chuir sí ar leataobh cinneadh an DPC go raibh teipthe ar an tSeirbhís Cúirteanna a cuid dualgas (slándála) a chomhlíonadh faoi Alt 2(1)(d) de na hAchtanna CS.

Níor ordaíodh aon chostais idir an tSeirbhís Cúirteanna agus an DPC. Tugadh treoir don tSeirbhís Cúirteanna dhá thrian de chostais an Pháirtí Fhógra a íoc, agus an fuílleach le híoc ag an DPC.

Tabhair faoi deara go bhfanann na srianta tuairiscithe a cuireadh i bhfeidhm trí Ordú an Bhreithimh Linnane, dar dáta 26 Samhain 2018, maidir le céannacht an Pháirtí Fhógra, i bhfeidhm trí ordú na hArdchúirte.

2.	2019/211 CA	<b>Doolin v: DPC (Páirtí Fógra: Ospís agus Seirbhísí Cúraim Mhuire</b>	Achomharc reachtúil An Ardchúirt	21 Feabhra 2020
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#### Toradh:

Cheadaigh an Ardchúirt achomharc ar phointe dlí in aghaidh cinnidh níos luaithe na Cúirte Cuarda (1 Bealtaine 2019) inar sheas an Chúirt Chuarda lena seal le cinneadh reachtúil de chuid an Choimisinéara Chosanta Sonrai a rinneadh faoi Alt 10 de na hAchtanna um Chosaint Sonrai, 1988 agus 2003.

Mheas an Ardchúirt nár bh fhéidir cinneadh a rinneadh ag an gCúirt Chuarda ag cur in iúl gurbh ionann úsáid ábhair a baineadh as scannánaíocht CCTV i gcomhthéacs éisteachta smachtaithe agus próiseáil do chuspóirí slándála, nár bh fhéidir an cinneadh sin a cheadú bunaithe ar an bhfianaise. Dá réir sin, bhí earráid dlí déanta ag an DPC nuair a mheas sé nach ndearnadh aon phróiseáil bhreise ar shonraí pearsanta an larratasóra nuair a úsáideadh ábhar a baineadh as an scannánaíocht faoi thrácht ag fostóir an larratasóra le linn éisteachta smachtaithe, ós rud é go bhfuarthas a leithéid d’ ábhar do chuspóir difriúil, .i. cuspóir a bhain le cúrsaí slándála.

#### Stádas Reatha an Cháis:

Tá Breithiúnas agus Ordú na Cúirte Cuarda faoi réir ag achomharc don Ardchúirt faoi phointí áirithe dlí, achomharc atá déanta ag an tSeirbhís Cúirteanna.

Ar leithligh, tá iarratas déanta ag an DPC chun Breithiúnas agus Ordú na Cúirte Cuarda a athrú sa mhéid gur cheadaigh an Chúirt Chuarda an t-achomharc maidir le hAlt 2(1)(d) de na hAchtanna CS agus gur fhorphheidhmigh sí srian ama ar shárú na Seirbhise Cúirteanna Ailt 2A agus 2B. Tá an DPC ag déanamh achomhairc freisin in aghaidh orduithe na Cúirte Cuarda le haghaidh costas.

#### Stádas Reatha an Cháis:

Tá Breithiúnas agus Ordú na Ardchúirte faoi réir ag achomharc breise don Chúirt Achomhairc; tá an t-achomharc sin liostaithe le haghaidh éisteachta ar 26 Meitheamh 2021.

<b>Uimh.</b>	<b>Uimh. Thaifid</b>	<b>Teideal</b>	<b>Cineál bearta agus Ionad</b>	<b>Dáta an Bhreithiúnais/Ordú</b>
3.	2019/564 JR	<b>An Roinn Gnóthaí Fostaíochta &amp; Coimirce Sóisialta v. DPC</b>	Athbhreithniú Breithiúnach An Ardchúirt	3 Márta 2020 (Ordú Deiridh)
<b>Toradh:</b>			<b>Stádas Reatha an Cháis:</b>	
Tar éis toilithe, chuir an Ardchúirt cinneadh de chuid an DPC ar neamhní ar 5 Meitheamh 2019, cinneadh mar a raibh an DPC tar éis seasamh le gearán a rinneadh ag duine ainmnithe maidir le dlíthiúlacht phróiseáil na Roinne shonraí pearsanta a bhaineann le híocaíochtaí sochair linbh.			Imeachtaí tugtha chun críche.	
4.	2019/5078	<b>An Roinn Gnóthaí Fostaíochta &amp; Coimirce Sóisialta v. DPC</b>	Achomharc reachtúil Cúirt Chuarda Bhaile Átha Cliath	5 Márta 2020 (Ordú Deiridh)
<b>Toradh:</b>			<b>Stádas Reatha an Cháis:</b>	
Tar éis toilithe, caitheadh amach achomharc a thug an Roinn in aghaidh cinnidh de chuid an DPC a rinneadh ar 5 Meitheamh 2019 [an cinneadh céanna a ndéantar tagairt dó thusa], gan aon ordú le haghaidh costas, i gcúinsí inar cuireadh ar neamhní, de bhun imeachtaí ar leith athbhreithnithe bhrefiúnaigh a tugadh ag an Roinn, an cinneadh faoi thrácht ag ordú a rinneadh ag an Ardchúirt, tar éis toilithe, ar 3 Márta 2020 (féach an iontráil ag mír 3 thusa).			Imeachtaí scortha.	
5.	2020/305 JR	<b>Consumentenbond &amp; daoine eile v. DPC</b>	Athbhreithniú Breithiúnach An Ardchúirt	29 Meitheamh 2020 (Ordú Deiridh)
<b>Toradh:</b>			<b>Stádas Reatha an Cháis:</b>	
Ar 1 Bealtaine 2020, rinne na hlarratasóirí iarratas don Ardchúirt trí mheán athbhreithnithe brefiúnaigh chun orduithe áirithe a lorg maidir leis an gcur i gcrích ar fhirosúchán leanúnach reachtúil a bhfuil an DPC ag tabhairt faoi i dtaca le próiseáil sonraí suímh ag Google. Agus téarmáí áirithe aontaithe idir na páirtithe, caitheadh na himeachtaí amach, tar éis toilithe, ar 29 Meitheamh 2020. Ní dhearnadh aon ordú le haghaidh costas.			Imeachtaí scortha.	
6.	2018/139	<b>Nowak v. DPC</b> <b>(Páirtí Fógra: PWC)</b>	Achomharc reachtúil An Chúirt Achomhairc	1 Iúil 2020 (Breithiúnas Scríofa)
<b>Toradh:</b>			<b>Stádas Reatha an Cháis:</b>	
Sheachad an Chúirt Achomhairc breithiúnas scríofa ar <b>1 Iúil 2020</b> , ag diúltú achomhairc ag an Uas. Nowak in aghaidh breithiúnais a rinne an Ardchúirt níos luaithe ina raibh an Ardchúirt tar éis seasamh le cinneadh de chuid an DPC ag cur in iúl nach raibh sonraí pearsanta a bhain leis an Uas. Nowak le fail i meabhráin áirithe a bhí á gcoinneáil ag PWC, agus mar sin de nach raibh an tUas. Nowak i dteideal ceart rochtana ar na rudaí céanna a chleachtadh.			Imeachtaí tugtha chun críche.	
Tar éis a bhreithiúnais, sheachad an Chúirt Achomhairc rialú scríofa ar <b>27 Iúil 2020</b> faoi cheist na gcostas, ag meas go bhfuil ar an Uas. Nowak ioc as costais achomhairc an DPC os comhair na Cúirte Achomhairc agus freisin as costais na gcúirteanna faoina bun sin.			Imeachtaí tugtha chun críche.	
Ar leithligh, rinne an tUasal Nowak iarratas don Chúirt Uachtarach le haghaidh cead chun achomharc breise a thabhairt don Chúirt sin. Diúltáodh an t-iarratas sin ag cinneadh scríofa a rinneadh ag an gCúirt Uachtarach ar <b>16 Nollaig 2020</b> .			Imeachtaí tugtha chun críche.	

Uimh.	Uimh. Thaifid	Teideal	Cineál bearta agus Ionad	Dáta an Bhreithiúnais/Ordú
7.	2018/140	<b>Nowak v. DPC</b> <b>(Páirtí Fógra: Cuntasóirí</b> <b>Cairte na hÉireann)</b>	Achomharc reachtúil An Chúirt Achomhairc	1 Iúil 2020 (Breithiúnas Scríofa)

**Toradh:**

Sheachad an Chúirt Achomhairc breithiúnas scríofa ar **1 Iúil 2020**, ag diúltú achomhairc ag an Uas. Nowak in aghaidh breithiúnais a rinne an Ardchúirt níos luaithe ina raibh an Ardchúirt tar éis seasamh le cinneadh de chuid an DPC ag cur in iúl, i gcomhthéacs iarratais duine ar a shonrai, go raibh an tUas. Nowak i dteideal cóip a fháil dá chuid sonraí pearsanta amháin, tar éis don Uas. Nowak maíomh go raibh sé i dteideal teacht a bheith aige ar a chuid sonraí pearsanta ina bunfhoirm, is é sin ina foirm lom.

Tar éis a breithiúnais, sheachad an Chúirt Achomhairc rialú scríofa ar **27 Iúil 2020** faoi cheist na gcostas, ag meas go bhfuil ar an Uas. Nowak íoc as costais achomhairc an DPC os comhair na Cúirte Achomhairc. Ní dhearnadh aon ordú maidir le costais na gcúirteanna thíos.

Ar leithligh, rinne an tUasal Nowak iarratas don Chúirt Uachtarach le haghaidh cead chun achomharc breise a thabhairt don Chúirt sin. Diúltaíodh an t-iarratas sin ag cinneadh scríofa a rinneadh ag an gCúirt Uachtarach ar **16 Nollaig 2020**.

8.	C-311/18	<b>DPC v. Facebook Ireland Limited &amp; Schrems</b>	Réamhatreorú ó Ardchúirt na hÉireann CJEU	16 Iúil 2020 (Breithiúnas scríofa)
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**Toradh:**

Sheachad Cúirt Bhreithiúnais an Aontais Eorpaigh breithiúnas ar 16 Iúil 2020, inar thug sí aghaidh ar 11 cheist a cuireadh ag Ardchúirt na hÉireann i gcomhthéacs réamhatreoraithe a rinneadh ar 4 Bealtaine 2018.

Mar achoimre, sheas an CJEU le bailíocht chinneadh de chuid Choimisiún an AE ag corprú "na gclásal conarthach caighdeánach" trínr féidir sonraí pearsanta a aistriú go dlíthiúil ón AE/LEE chuig tríú thír nár glacadh le cinneadh leordhóthanachta fúithi ag Coimisiún an AE.

Is tábhachtach a rá go ndeachaigh an CJEU ar aghaidh le soiléiriú a dhéanamh ar nádúr agus ar mhéid na ndualgas a bhfuil easpórtálaithe sonraí agus údaráis mhaoriseachta faoi réir acu in aon chás mar a mbítear ag brath ar CCU chun aistrithe sonraí chuig tríú thír a dhíseán, agus é i gceist cinntíú go dtugtar, i dtéarmaí cosaintí cuí, ceart infheidhmithe agus réiteach éifeachtach dlí, leibhéal cosanta d'ábhair shonraí a n-aistritear a gcuid sonraí chuig tríú thír atá comhionann, go bunúsach, leis an leibhéal sin a ráthaítéar laistigh den AE ag an GDPR, agus an Chairt á cur san áireamh.

Tar éis cinntí áirithe a dhéanamh a bhfuil feidhm ghinearálta ag baint leo maidir le leordhóthanacht na cosanta a sholáthraítear do shaoránaigh de chuid an AE sna Stáit Aontaithe, rialaigh an CJEU freisin go raibh cinneadh Choimisiún an AE, ag glacadh leis do na socruithe "Sciath Phríobháideachais" d' aistrithe sonraí do SAM, go raibh sin neamhbhailí.

Tabhair faoi deara go raibh ceist na gcostas sna bunimeachtaí faoi réir ag rialú ar leith ag an Ardchúirt a rinneadh ar 28 Deireadh Fómhair 2020; tagraítear dó sin ag mír 12 thíos.

Féach cur síos mionsonraithe ar na himeachtaí seo in Agusín V.

**Stádas Reatha an Cháis:**

Imeachtaí tugtha chun críche.

**Stádas Reatha an Cháis:**

Imeachtaí tugtha chun críche.

<b>Uimh.</b>	<b>Uimh. Thaifid</b>	<b>Teideal</b>	<b>Cineál bearta agus Ionad</b>	<b>Dáta an Bhreithiúnais/Ordú</b>
9.	2020/5	<b>Scott v. DPC</b>	Achomharc in aghaidh ordaithe a rinneadh in athbhreithniú breithiúnach An Chúirt Achomhairc	31 Iúil 2020 (Ordú Deiridh)

**Toradh:**

Trí bhreithiúnas scríofa ó 5 Nollaig 2019, chaith an Ardchúirt amach imeachtaí athbhreithnithe bhreithiúnaigh a tugadh ag Ms Scott faoi Thaifead na hArdchúirte Uimh. 2019/95 JR. Caitheadh na himeachtaí amach ar chúiseanna bréagchúirte, ar iarratas an DPC, tar éis don DPC cinntí a sheachadadh níos lúaithe maidir le gearán áirithe a rinneadh ag an iarratasóir. (Ina cuid imeachtaí athbhreithnithe bhreithiúnais, bhí orduithe iarrtha ag Ms Scott ag déanamh riachtanach seachadadh chinntí maidir lena cuid gearán.)

Ar 3 Eanáir 2020, rinne Ms Scott achomharc in aghaidh Bhreithiúnas agus Ordú na hArdchúirte.

I ndeireadh na dála, d' aontaigh Ms Scott an t-achomharc sin a tharraingt siar. Caitheadh amach é in am tráthá, tar éis toilithe, ar 31 Iúil 2020.

Tabhair faoi deara go bhfuil ceann den dá chinneadh a seachadadh ag an DPC a dtagraítear dó thusa faoi réir faoi láthair ag achomharc reachtúil (ar leith) a tugadh ag Ms Scott i gCúirt Chuarda Bhaile Átha Cliath. Níor tosaíodh éisteacht an achomhairc sin fós.

10.	2020/00172	<b>Comhairle Contae Chiarraí v. DPC</b>	Achomharc reachtúil Cúirt Chuarda Chiarraí	10 Meán Fómhair 2020 (Ordú Deiridh)
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**Toradh:**

Tarraingíodh siar achomharc a tugadh ag Comhairle Contae Chiarraí in aghaidh chinneadh de chuid an Choi misiúin a rinneadh ar 3 Márta 2020 tar éis fiosrúcháin faoin Acht um Chosaint Sonrai 2018 (a bhaineann le húsáid CCTV ag an gComhairle i gcomhthéacsanna áirithe), tarraingíodh siar sular éist an chúirt leis. Ní dhearnadh aon ordú le haghaidh costas.

11.	2017/464 CA 2017/459 CA	<b>Grant Thornton Corporate Finance v. Scanlan</b>	Achomharc in aghaidh ordaithe a rinneadh i ngníomh iomlánach An Chúirt Achomhairc / An Chúirt Uachtarach	28 Meán Fómhair 2020 (Ordú Deiridh)
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**Toradh:**

Ar 31 Deireadh Fómhair 2019, dhiúltaigh an Chúirt Achomhairc achomharc ag an gCosantóir, Ms Scanlan, in aghaidh ordaithe a rinne an Ardchúirt níos lúaithe ag diúltú iarratas idirbhreitheach Ms Scanlan chun an DPC a cheangal leis na himeachtaí seo. (Baineann na himeachtaí le diúltú Ms Scanlan céimeanna áirithe a thógáil maidir le heolas a fuair sí ó Grant Thornton a bhaineann le trí páirtithe inaithéanta.

Diúltáodh an t-iarratas a rinne Ms Scanlan ina dhiaidh sin chun cead a fháil chun achomharc breise a thabhairt chuig an gCúirt Uachtarach, diúltáodh sin ag an gCúirt Uachtarach trí chinneadh scríofa a rinneadh ar 31 Meán Fómhair 2020.

**Stádas Reatha an Cháis:**

Imeachtaí tugtha chun críche.

**Stádas Reatha an Cháis:**

Achomharc scortha.

**Stádas Reatha an Cháis:**

Imeachtaí tugtha chun críche.

<b>Uimh.</b>	<b>Uimh. Thaifid</b>	<b>Teideal</b>	<b>Cineál bearta agus Ionad</b>	<b>Dáta an Bhreithiúnais/Ordú</b>
12.	2019/718 JR	<b>Scott v. DPC</b>	Athbhreithniú breithiúnach An Ardchúirt	13 Deireadh Fómhair 2020 (Ordú Deiridh)

**Toradh:**

Trí Ordú ó 13 Deireadh Fómhair 2020, a rinneadh le toiliú na bpáirtithe, chaith an Ardchúirt amach imeachaí athbhreithnithe bhreithiúnaigh a tugadh ag Ms Scott faoi Thaifead Ardchúirte Uimh. 2019/718 JR, tar éis don DPC cinneadh a sheachadadh níos luaithe maidir le gearán ar leith a rinneadh ag an larratasóir. (Ina cuid imeachaí athbhreithnithe bhreithiúnaigh, d’iarr Ms Scott ordú a dhéanfadh riachtanach seachadadh an chinnidh faoi thrácht).

Bronnadh na costais ar Ms Scott.

Tá an cinneadh a seachadadh ag an DPC faoi réir faoi láthair ag achomharc reachtúil (ar leith) a tugadh ag Ms Scott i gCúirt Chuarda Bhaile Átha Cliath. Níor tosaíodh éisteacht an achomhairc sin fós.

13.	2016/4809P	<b>DPC v. Facebook Ireland Limited &amp; Schrems</b>	Gníomh iomlánach ag iarraidh réamhatreoraithe don CJEU An Ardchúirt	28 Deireadh Fómhair 2020 (Rialú scríofa)
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**Toradh:**

Tar éis aighneachtaí scríofa agus béis ag na páirtithe, rinne an Ardchúirt rialú ar 28 Deireadh Fómhair 2020, ag tabhaint treorach don DPC costais an Uas. Schrems a íoc do na himeachaí san Ardchúirt agus sa CJEU.

Dhiúltaigh an Ard-Chúirt iarratas an Choimisiúin Cosanta Sonraí ar ordú chun a ordú ar Facebook costais an Choimisiúin Cosanta Sonraí a íoc agus an fhreagracht a ghlacadh as an costais sin faoi mar gur ordaíodh don Choimisiúin Cosanta Sonraí an tUasal Schrems a íoc.

14.	2020/02845	<b>An Coimisiún Cosanta Sonraí i leith Tusla/an Ghníomhaireacht um Leanaí agus an Teaghlach</b>	iarratas reachtúil Cúirt Chuarda Bhaile Átha Cliath	4 Samhain 2020 (Ordú Deiridh)
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**Toradh:**

Ar iarratas an Choimisiúin Cosanta Sonraí, rinne an Chúirt Chuarda ordú de bhun alt 143(2) den Acht um Chosaint Sonraí 2018, inar dearbháodh fineáil riarrachán a thobhaigh an Coimisiún Cosanta Sonraí ar Tusla (suim €75,000) de bhun chinneadh an Choimisiúin Cosanta Sonraí arna dhátú an 7 Aibreán 2020 i ndiaidh fiosrúchán a rinneadh faoin Acht um Chosaint Sonraí 2018. Dámhadh costais don Choimisiún Cosanta Sonraí chomh maith.

**Stádas Reatha an Cháis:**

Imeachtaí tugtha chun críche.

**Stádas Reatha an Cháis:**

Níor tugadh an t-ordú deiridh chun críocha fós agus mar sin ní dheachaigh an tréimhse ama chun an t-achomharc (más ann dó) a thionscnamh in éag.

**Stádas Reatha an Cháis:**

Iarratas curtha i gcrích.



# 8

# Maoirseacht

Le rannpháirtíocht le heagraíochtaí na earnála poiblí agus na hearnála príobháidí, lucht déanta beartas agus reachtóirí is féidir leis an gCoimisiún Cosanta Sonraí tuiscint a fháil ar na bealaí a ndéanann rialaitheoirí agus próiseálaithe sonraí pearsanta a phróiseáil, agus cuirtear ar chumas an Choimisiúin Cosanta Sonraí ábhair imní faoi chosaint sonraí pearsanta a shainaithint go réamhghníomhach agus, i gcás táirgí nó seirbhísí úra, a chinntíú go bhfuil na heagraíochtaí ar an eolas faoina n-oibleagáidí um chomhlíonadh agus fadhbanna a d'fhéadfadh teacht chun cinn sula dtosófar ag próiseáil na sonraí pearsanta.

Is é is aidhm leis an rannpháirtíocht mhaoirseachta treoir a sholáthar do pháirtithe leasmhara agus chun ceangal go réamhghníomhach mar rialtóir ag a bhfuil láithreacht infheicthe, ag cinntíú go seasfar le cearta um chosaint úsáideoirí seirbhíse. Ar an tsíl sin, tacáíonn an Coimisiún Cosanta Sonraí le cearta daoine aonair trí sháruithe féideartha a mhaolú sula dtarláíonn siad. Tá feidhm na Maoirseachta ina cuid thábhachtach den chreat rialála, mar trína chinntíú go gcuirfear an dea-chleachtas i bhfeidhm ag céimeanna pleánala tionscadail bainfear torthaí níos fearr amach d'ábhair shonraí agus ní bheidh a oiread gá ann le gníomhaíocht ex-post atá dian ó thaobh acmhainní de don Choimisiún Cosanta Sonraí.

Fuair an Coimisiún Cosanta Sonraí 724 iarratas ar chomhairliúchán le linn 2020. Is é seo a leanas miondealú earnála:

	#	%
An Earnáil Phríobháideach	413	57%
An Earnáil Phoiblí	191	26%
An Earnáil Sláinte	89	13%
An Earnáil Dheonach/Charthanachta	23	3%
An Earnáil um Fhorfheidhmiú Dlí	8	1%
<b>Iomlán</b>	<b>724</b>	

## An Earnáil Sláinte

Chuir an Coimisiún Cosanta Sonraí túis leis an m bliain trí fhreastal ar ócáidí i roinnt ospidéil mhóra, ag obair le hOifigh Cosanta Sonraí chun comhairle agus treoir phraigictíúil a thabhairt do bhaill foirne cúram sláinte ar an líne thosaigh. Cé gur cuireadh srian leis an obair fhór-rochtana sin mar gheall ar phaindéim Covid-19, tá sé beartaithe túis a chur leis an gclár an-rathúil seo a arís nuair is féidir in 2021.

### Covid-19

Bhí 2020 ina bhliain neamhghnách agus dhúshláinach mar gheall ar phaindéim Covid-19. Bhí an Coimisiún Cosanta Sonraí páirteach ó luathchém in obair chun cuidiú le heagraíochtaí tuiscint a fháil ar na himpleachtaí cosanta sonraí a bhaineann leis an gcuid mhór beart ar iarradh orthu tabhairt fúthu chun dul i ngleic le scaipeadh an víris. D'oibrigh an Coimisiún Cosanta Sonraí chomh maith le Ranna Rialtais lena chinntí go raibh cosaint sonraí á cur san áireamh go cuí i bhforbairt beartas poiblí agus reachtaíochta i gcomhthéacs na paindéime.

D'fhoilsigh an Coimisiún Cosanta Sonraí treoir agus blúirí blag ar réimse topaíci a raibh tionchar ag Covid-19 orthu, lena n-áirítear Sonraí Custaiméirí a Phróiseáil lena n-áirítear Rialú Teagmhálaíthe Covid-19, na hImpreachtaí Cosanta Sonraí maidir leis an bPrótacal um Fhilleadh go Sábháilte ar an Obair, agus Sonraí Pearsanta a Chosaint agus Cianobair á Déanamh.

Sna réimsí maidir le beartas agus reachtaíocht na sláinte poiblí, d'oibrigh an Coimisiún Cosanta Sonraí leis an Rialtas i ndáil le réimsí amhail Prótacal náisiúnta um Fhilleadh go Sábháilte ar an Obair agus Foirm um Aimsitheoir Paisinéirí Covid-19. D'oibrigh an Coimisiún Cosanta Sonraí leis an FSS chomh maith maidir leis na himpleachtaí cosanta sonraí a bhaineann le teagmhálaíthe a rianú.

I bhfianaise chineál domhanda phaindéim Covid-19, d'oibrigh an Coimisiún Cosanta Sonraí chomh maith le compháirtithe idirnáisiúnta chun cuidiú a thabhairt le dul i ngleic leis na himpleachtaí cosanta sonraí ar bhealach comhsheasmhach. Áiríodh leis sin rannpháirtíocht in obair an Bhoird Eorpaigh um Chosaint Sonraí, ag glacadh ballraíochta ar thascfhórsa Covid an Tionól Príobháideachta Dhomhanda, agus ag obair go díreach le comhghleacaithe ag Oifig Choimisinéir Faisnéise na Ríochta Aontaithe. Leanfaidh an Coimisiún Cosanta Sonraí ag obair le compháirtithe domhanda in 2021 lena chinntí go dtabharfaimid comhairle cruinn faoin dea-chleachtas d'eagraíochtaí in Éirinn, ag breathnú go háirithe ar phróiseáil sonraí pearsanta a bhaineann le vacsaíní agus cláir vacsaínithe.

### Aip Rianaithe Teagmhálaíthe Covid19

Ag céim luath i scaipeadh domhanda víreas Covid-19, aithníodh ar bhonn idirnáisiúnta go mb'fhéidir go bhféadfaí úsáid a bhaint as aipeanna fón poca chun cuidiú le hiarrachtaí rianaithe teagmhálaíthe. I mí an Mhárta 2020, chuir an Coimisiún Cosanta Sonraí túis le

rannpháirtíocht comhairleach le páirtithe leasmhara an Rialtais maidir leis an bhféidearthacht go bhforbrófaí aip náisiúnta rianaithe teagmhálaíthe. Chuir an Coimisiún Cosanta Sonraí béim ar na dúshláin shuntasacha maidir le cosaint sonraí a thiocfadh chun cinn ó aon úsáid as sonraí suímh, go háirithe, agus ar an ngá a bhí ann don Rialtas ábhair imní faoi chosaint sonraí a chorprú ag an gcéim is luaithe den tionscadal.

I gcomhthráth le plé le páirtithe leasmhara thionscadal náisiúnta na haípe, bhí an Coimisiún Cosanta Sonraí páirteach i dtaihgde agus i bplé le comhghleacaithe idirnáisiúnta chomh maith chun tuiscint níos ionláine a fháil ar impleachtaí cosanta sonraí an réitigh theicneolaíoch sin a bhí ag teacht chun cinn agus a bhí á fhorbairt go gasta. Áiríodh leis sin teagmháil a dhéanamh le Google agus le Apple, comhfhobrórí an Chórais Fógra Nochta Bluetooth-bhunaíthe ar a mbeadh aip na hÉireann bunaithe.

Chríochnaigh an chéad chéim den phróiseas comhairleach ar an aip le soláthar grinnthuarascála ón gCoimisiún Cosanta Sonraí maidir le Measúnú um Thionchar ar Chosaint Sonraí (DPIA) le haghaidh aip Rianaire Covid na hÉireann. Agus scrúdú á dhéanamh ar an DPIA sin, ba mhian leis an gCoimisiún Cosanta Sonraí a chinntí sula ndéanfaí aip a sheoladh lena húsáid ag pobal na hÉireann, go ndéanfaí measúnú imleor ar gach riosca ar chosaint sonraí agus go gcuirfi san áireamh iad. Rinneadh an DPIA a mheasúnú i bhfianaise threoir fhoilsithe an EDPB maidir le húsáid sonraí suímh agus uirlisí rianaithe teagmhálaíche. Ar mhaithle le tréadhearcacht, molann an Coimisiún Cosanta Sonraí go ndéanfaí an DPIA agus na doiciméid choimhdeacha ar fad a fhoilsíú chun mionscrúdú poiblí ionlán a éascú.

I ndiaidh sheoladh aip Rianaire Covid na hÉireann, lean an Coimisiún Cosanta Sonraí ag obair leis an Roinn Sláinte agus le páirtithe leasmhara eile maidir le hidir-in-oibritheachta aipe trastearann a chur chun feidhme agus maidir le monatóireacht ar chur i bhfeidhm na gcosaintí chun na sonraí pearsanta a bpróiseáiltear a chosaint.

### Géanómaíocht

In 2020, mar chuid dá chuid oibre le hearnáil an taighde sláinte, ghlac an Coimisiún Cosanta Sonraí páirt i gcleachtadh maoirseachta le Genuity Science (Ireland) Ltd, chun athbhreithniú a dhéanamh ar bhearta um chomhlíonadh cosanta sonraí na cuideachta agus nuair ba ghá a lorg go ndéanfaidh gníomh leighis. Áiríodh leis sin féachaint ar chórais le haghaidh bainistíocht toilithe agus astarraingt toilithe ag rannpháirtithe taighde, chomh maith leis na coinníollacha maidir le rochtain tríú páirtí ar shonraí taighde a shoileáirí. In 2021, leanfaidh an Coimisiún Cosanta Sonraí leis an rannpháirtíocht sin, ag lorg go gcuirfear moltaí a chuirfear ar aghaidh ina chéad chéim chun feidhme.

Sa réimse géanómaíocha atá ag fás, agus in eolaíocht na beatha i gcoitinne, glacann an Coimisiún Cosanta Sonraí ról réamhghníomhach ag obair leis an tionscal agus le taighdeoirí lena chinntí go soláthrófar torthaí cúram sláinte tábhachtacha ar bhealach a n-urramaítear cearta

um chosaint sonraí daoine aonair. Mar chuid den straitéis sin, d'oibrigh an Coimisiún Cosanta Sonraí chomh maith le grúpa tionscal sna réimsí maidir le feistí leighis, agus teiri pe ceall agus géinte, agus d'oibrigh sé lenár gcomhghleacaithe Eorpacha ar cheisteanna maidir le cur i bhfeidhm an RGCS ar thaghde eolaíochta.

## An Earnáil Phoiblí

Chomh maith le rannpháirtíocht leis an Rialtas agus le comhlacthaí poiblí ar chúrsaí maidir le Covid-19, sholáthair an Coimisiún Cosanta Sonraí treoir ar réimse de bhearta reachtacha agus beartais phoiblí in 2020. Ó tugadh isteach an RGCS agus an tAcht um Chosaint Sonraí 2018, d'oibrigh an Coimisiún Cosanta Sonraí chun caidreamh a chothú le príomhchinnteoír i gcomhlacthaí poiblí chun rannpháirtíocht luath ar thograí reachtacha agus ar thionscnamh bheartais a éascú agus leanadh leis sín in 2020. Agus an bhéim á cur ar bhuardhaí maidir le cosaint sonraí cinntítear go ndéanfar prionsabail na cosanta sonraí trí dheardadh a urramú agus go bhfuil sé ar mhaithe le seasamh le cearta um chosaint sonraí shaoránaigh na hÉireann.

Samplaí de chomhairliúchán reachtacha:

- Na Rialacháin fán an Acht Sláinte 1947 (Alt 31A — Ceanglais Shealadacha) (Foirm um Aimsitheoir Paisinéirí Covid-19) 2020.
- Na Rialacháin fán an Acht Sláinte 1947 (Alt 31A — Srianta Sealadacha) (Covid-19) (Uimh. 4) 2020.
- An Rialachán um Thrácht ar Bhóithre (Ceadúnú Tiománaithe) (Leasú) (Uimh. 8) 2020
- An tAcht Foraoiseachta (Forálacha Ilgħnēitheach) 2020
- Trasuómh Threoir (AE) 2019/770 maidir le gnéithe áirithe a bhaineann le conarthaí chun ábhar digiteach agus seirbhísí digiteacha a sholáthar
- Bille an Gharda Síochána (Taifeadadh Digiteach) — Scéim Ghinearálta
- An Bille um Chaomhnú agus Aistriú Taifead Sonraithe de chuid an Choiṁisiún Imscrúdúcháin (Árais Máithreacha agus Naónán agus Nithe Áirithe Gaolmhara)
- An Bille um Choiṁisiún Ardoideachais 2020
- Trasuómh ar an 5ú Treoir AML agus cruthú clár úinéireachta tairbhiúla le haghaidh (a) lontaobhais (b) Cuntais Bainc (c) Feithicí Infheistíochta agus comhair chreidmheasa
- An Bille Airgeadais — Bailiú idirbheart cártaí creidmheasa comhiomlána na gCoimisiún loncaim ó institiúidí Airgeadais maidir le bailiú CBL ó mhiondáoltóirí ar líne
- Trasuómh Threoir 2018/1972 in Éirinn lena mbunaítear an Cód um Chumarsáid Leictreonach Eorpach
- An Bille um Adhlacthaí Institiúideacha Áirithe (Idirghabhálacha Údaraithe)

Samplaí de Chomhairliúchán Neamhreachtacha

- Cuir i gcrích Ardteistiméireacht 2020 agus Cárais Grád Ríofa i gcomhthéacs Covid-19

- Tionscnaimh éagsúla maidir le sonraí seirbhísé poiblí faoi stiúir OGCIO lena n-áirítear Catalóg um Shonraí Seirbhísé Poiblí agus Bord Rialachais na Sonraí Seirbhísé Poiblí
- Soláthar ar líne na tástála náisiúnta teoirice tiománaí
- Comhroinnt sonraí idir an Comhad Náisiúnta Feithicí agus Tiománaithe (NVDF) agus an Garda Síochána
- Cuir i gcrích Dhaonáireamh 2021 ag CSO
- Tionscadal Voter.ie, arna riar ag Comhairle Cathrach Bhaile Átha Cliath thar ceann Chomhairle Cathrach Bhaile Átha Cliath agus Fhine Gall, Dhún Laoghaire-Ráth an Dúin, Chomhairle Contae Bhaile Átha Cliath Theas
- Forbairt bunachair sonraí náisiúnta maidir le Dliteanas Tríú Páirtithe
- Próiseáil sonraí comhionannais ag comhlacthaí na hearnála poiblí chun críocha staidrimh
- Cáras Bainistíochta tionóntachta an Bhoird um Thionóntachtaí Cónaithe
- Próiseáil sonraí pearsanta ag Cuideachtaí Bainistíochta Úinéirí ar Fhorbairt Ilaonad, leis an nGníomhaireacht Tithíochta
- Comhairliúchán ilgħeallsealbhóri ar mhéadru cliste leictreachais
- Úsáid drón i bhforfheidhmiú dramhaíola ag Údaráis Áitiúla

## Ardteistiméireacht 2020

Rinne an Coimisiún Cosanta Sonraí teagmháil go réamhghnionmhach leis an Roinn Oideachais agus Scileanna maidir lena phleananna le haghaidh Ardteistiméireacht athbhreithnithe do 2020 mar gheall ar phaindéim Covid-19. Ba é an fócas inár gcomhairliúchán leis an Roinn a chinntí go ndearnadh measúnú cuí ar an Ardteistiméireacht athbhreithnithe ó thaobh cosaint sonraí pearsanta de agus go raibh próiseáil na sonraí cóir, dleathach agus go ndearnadh í ar bhealach tréðhearcach i ngach céim den phróiseas. Chuir an Coimisiún Cosanta Sonraí béim faoi leith ar a chinntí go mbeadh tréðhearcacht iomlán ann do na daltaí agus do pháirtithe seachtracha maidir le ríomh na ngrád agus maidir leis an bpróiseas um caighdeánú, agus go ndeachaigh an Roinn i ngleic go sásúil le ceisteanna a bhain le rochtain dalta ar a rangú ranga. Cé go n-aithníonn an Coimisiún Cosanta Sonraí gur tháinig deacrachtáí chun cinn i dtaca le hearráid leis an algartam a úsáideadh chun measúnú a dhéanamh ar na gráid a ríomhadh, bhí sé sásta gur chomhlíon an Roinn a hoibleagáidí ó thaobh cosaint sonraí de. Mar gheall gur chuir an Roinn fainseis mhionsonraithe ar fáil i ndáil leis an bpróiseáil agus leis an dóigh a ndearnadh na gráid a ríomh, bhí daltaí, tuismitheoirí agus müinteoírí ábalta cruinneas na ngrád ríofa deiridh a mheasúnú agus a cheistiú. De dheasca fainseis dhóthanach agus mionscrúdaithe ina dhiaidh sin ag an bpróiseálaí ar deireadh sainaithníodh an earráid ar tugadh go leor poiblí di san algartam agus mar gheall air sin fuair os ciorn 6,000 daltaorthaí uasghrádaithe. Tugtar chun suntais leis sin an ról a d'fhéadfadh a bheith ag tréðhearcacht i gcomhthéacs prionsabail na cothroime

a chomhlónadh agus i gcomhthéacs bheith ábalta measúnú a dhéanamh ar chruinneas na próiseála.

## Earnáil Airgeadais agus Phríobháideach

### Ceanglais maidir le Frithsciúradh Airgid agus Maoiniú na Sceimhlitheoreachta

Is ceist dhúshláinach iad fós na ceanglais faoi na dlíthe maidir le frithsciúradh airgid agus maoiniú na sceimhlitheoreachta (AML) do rialaitheoirí maidir le sonraí pearsanta a gcustaiméirí a phróiseáil, trí chur chuige réasúnta bunaithe ar riosca, chun AML a bhrath nó a chosc. Le linn 2020, d'oibrigh an Coimisiún Cosanta Sonraí le OCSanna san earnáil airgeadais maidir le hábhair imní sna réimsí seo a leanas:

- Bailiú iomarcach sonraí custaiméirí i gcás nach ceanglas ábhartha nó riachtanach é faoi na dlíthe AML;
- Próiseáil iomarcach de shonraí airgeadais custaiméirí i gcás nach raibh amhras ar bith ann faoi ghníomhaíocht neamhdhleathach agus nach raibh gá le bearta feabhsaithe díchill chuí a dhéanamh; agus
- Próifíliú uathoibrithe iomarcach bunachar sonraí custaiméirí agus liostaí faire gníomhaireachtaí forfheidhmiúchán.

Cuideactaí a phróiseálann méideanna suntasacha sonraí custaiméirí le haghaidh comhlónadh AML ar chóir go mbeadh DPIA curtha i gcrích acu a ndearnadh measúnú ar na riosca do dhaoine aonair i ndáil leis na beartais agus na nösanna imeachta atá i bhfeidhm le haghaidh próiseáil AML.

Bunachair shonraí úra le haghaidh úinéireacht Thairbhiúil AML faoin 4ú agus 5ú Treoracha maidir le Frithsciúradh Airgid

Le linn 2020 ghlac an Coimisiún Cosanta Sonraí páirt i gcomhairliúchán fairsing maidir le bunú na mbunachar sonraí seo a leanas:

- An Cláraitheoir um Úinéireacht Thairbhiúil Cuideactaí agus Cumann Tionscail agus Coigiltis. Le hlonstraim Reachtúil Uimh. 110/2019 ceanglaítear ar gach eintiteas corporáideach agus dlíthiúil fainseán chruinn agus reatha maidir lena n-úinéir tairbhiúil (úinéir tairbhiúla) a chur isteach;
- Féachtar le Clár um Úinéireacht Thairbhiúil an Bhainc Cheannais Sciúradh Airgid agus Maoiniú Sceimhlitheoreachta a dhíspreagadh agus chun iad siúd a fhéachann lena n-úinéireacht agus rialú ar eintitís chorparáideacha nó dhlíthiúla a cheilt a shainainthint trína chinntíú go ndéanfar úinéir/rialaitheoirí ar deireadh ICAVanna, Comhair Chreidmheasa, lontao-bhas Aonad a shainainthint; agus
- An Clár um Úinéireacht Thairbhiúil lontaobhas. Tá an dréacht-reachtaíocht á hullmhú ag an Roinn Airgeadais.

## Méadrú Cliste

In 2020 lean an Coimisiún Cosanta Sonraí ag obair leis na páirtithe leasmhara a bhí páirteach i ndearadh agus i gcur i bhfeidhm chlár um Méadrú Cliste na hÉireann. Go sonrach, thacaigh an Coimisiún Cosanta Sonraí leis an ngá le níos mó tréadhearcachta don phobal agus do pháirtithe leasmhara ar an dóigh a bhfuiltear ag tabhairt aghaidh ar chosaint sonraí pearsanta agus na hiarrachtaí atá á ndéanamh chun deireadh a chur le riosca ar bith do shonraí pearsanta daoine aonair nó an riosca sin a laghdú. Cuireann an Coimisiún Cosanta Sonraí fáilte roimh na céimeanna chun feabhas a chur ar an tréadhearcacht lena n-áirítear foilsíú DPIAnna ag Lónraí BSL agus ábhair threoracha nuashonraithe ag an gCoimisiún um Rialáil Fóntas (CRU).

## Suirbhéireacht Fintech

Le linn na céad ráithe in 2020, d'iarr an Coimisiún Cosanta Sonraí ar chuideactaí san earnáil Fintech atá ag fás in Éirinn páirt a ghlacadh i suirbhé ar chosaint sonraí. Eisíodh ceisteanna chuig rialaitheoirí agus próiseálaithe inar clúdaíodh topaí amhail Bonn Dleathach, Cuntasáocht, Aistrithe Idirnáisiúnta agus Ceart um Chosaint Sonraí Daoine Aonair. Cé gur tugadh deis leis an suirbhé don Choimisiún Cosanta Sonraí tuiscint a fháil ar leibhéal na cosanta sonraí laistigh den tionscal, cuireadh na heagraíochtaí ar an eolas chomh maith leis faoi info- haighteacht an Choimisiúin Cosanta Sonraí chun cuidiú a thabhairt i gcáil chomhairleach ar cheann ar bith de na ceisteanna a cuireadh.

Áirítear ar chuid de na tortaí ón suirbhé:

- D'éisigh 95% de na freagróirí gur chuir siad oiliúint ar na fostaithe faoi na ceanglais um chosaint sonraí;
- Bhain 66% leas as seirbhís Oifigigh Cosanta Sonraí agus níor chláráigh ach 33% díobh Oifigeach Cosanta Sonraí leis an gCoimisiún Cosanta Sonraí;
- D'éisigh 33% de na freagróirí go ndearna siad Measúnú Tionchair um Chosaint Sonraí maidir lena bpróiseáil sonraí pearsanta agus d'éisigh na freagróirí ar fad gur smaoinigh siad ar aon chosaint sonraí trí dhearadh nó mar réamhshocrú ina bpróiseáil nó ina gcorraí teicneolaíochta;
- Aistríonn 40% díobh sonraí pearsanta lasmuigh den LEE; agus
- Bailíonn 66% de na rialaitheoirí sonraí pearsanta ó fhoinsí atá ar fáil go poiblí amhail an Oifig um Chlárú Cuideactaí nó Liostaí de Mhainnítheoirí Cánach agus ní úsáideann ach níos lú ná duine amháin acu as ceathrar foilseacháin na meán sóisialta nó nuachtáin chun sonraí pearsanta neamhanailíseacha a bhailíú.

## TikTok Ireland agus an Phríomháit Ghnó

Le linn 2020, rinneadh iniúchadh ar dhearbhú TikTok Ireland maidir lena phríomháit ghnó in Éirinn chun leas a bhaint as aonad ilfhreastail an RGCS. Agus measúnú á dhéanamh ar cibé acu ar chomhlíon TikTok Ireland critéir oibiachtúla maidir leis an bpríomháit ghnó, rinne an Coimisiún Cosanta Sonraí athbhreithniú ar na doiciméid mhionsonraithe agus na freagairtí a sholáthair TikTok inar leagadh amach na bearta dlíthiúla, riarrachán, rialachais agus bearta eile a cuireadh chun feidhme. Breithníodh ceist na príomháite gnó faoi lionsa Arteagal 4(16) den RGCS, Réamhaithris 36 den RGCS agus Treoirínté an EDPB maidir le príomhúdarás maoirseachta rialaitheora nó próiseálaí a shainaithe.

Is iad seo cuid de na príomhcheisteanna a breithníodh:

- Ar cuireadh "síniú" deiridh le cinntí faoi chuspóirí agus faoi mhodhanna na próiseála?
- An ndearnadh cinntí faoi ghníomhaíochtaí gnó a bhaineann le próiseáil sonraí?
- Cé aige a bhfuil an chumhacht chun cinntí a chur chun feidhme go héifeachtúil?
- Cá bhfuil an Stiúrthóir (nó na Stiúrthóirí) ag a bhfuil an fhreagracht bainistíochta fhioriomlán as an bpróiseáil trastearann lonnaithe?
- Cá bhfuil an rialaitheoir nó an próiseálaí cláraithe mar chuideachta, má tá sé i gcríoch amháin?

Bunaithe ar a mheasúnú ar na bearta a cuireadh chun feidhme chun na critéir maidir leis an bpríomháit ghnó a chomhlíonadh, bhí an Coimisiún Cosanta Sonraí sásta ar deireadh go raibh sé ar chumas TikTok fiorfheidhmiú éifeachtúil gníomhaíochtaí bainistíochta a léiriú lenar socráidh na príomhchinntí maidir le cuspóirí agus modhanna na próiseála trí shocruithe seasta.

# Case Studies

## Cás-staidéar 17:

### Lorgáíonn Vodafone sonraí fostáiochta ó chustaiméirí

Fuair an Coimisiún Cosanta Sonraí roinnt fiosruithe faoi gur iarr Vodafone ar chustaiméirí úra nó ar chustaiméirí reatha a sonraí fostáiochta agus a n-uimhir fón oibre a chur ar fáil mar cheanglas maidir le soláthar na seirbhíse ón gcuideachta sin.

Ba iad na buarthaí a tháinig chun cinn go raibh na hiarratais iomarcach agus ag teacht salach ar phrionsabal Airteagal 5 de bhailíú dleathach, cóir agus tréadhearach toisc nár bhain próiseáil na sonraí i ndáil lena stádas fostáiochta ar chor ar bith leis an táirge nó an tseirbhís a bhí siad ag fáil ón gcuideachta teileachumarsáide, a bhí faoi choinne a n-úsáid phearsanta nó bhaile amháin.

Sa dara háit, bhí buarthaí ann nach raibh an t-iarratas éigeantach le haghaidh ceird/át oibre/uimhir fón oibre custaiméara dóthanach, ábhartha nó riachtanach faoin gceanglas "íoslaghdú sonraí"

agus nár chomhlíonadh sé prionsabal an teorannaithe de réir cuspóra arna leagan amach in Airteagal 5 den RGCS.

Sa tríú háit, bhí buarthaí ann chomh maith i measc custaiméirí nár chomhlíon cosaint sonraí/fógra príobháideachta na cuideachta ceanglas tréadhearachta Airteagal 13(1) den RGCS.

I ndiaidh teagmhála leis an gCoimisiún Cosanta Sonraí, d'admhaigh Vodafone go ndearna sé earráid i mbailíú na faisnéise sin. Shonraigh an chuideachta gur tharla na fadhbanna mar gheall ar chóras oidhreachta TF nár nuashonraíodh chun an ceanglas sin a bhaint agus go raibh rochtain ar bith ar na sonraí sin thar a bheith teoranta agus nár bhain siadsan úsáid astu le haghaidh cuspóirí breise próiseála. Chuir Vodafone tú le plein láithreach chun na fadhbanna a tharla a leigheas agus, ar áitiú an Choiimisiún Cosanta Sonraí, d'fhoilsigh sé sonraí ar a shuíomh gréasáin faoi cad a tharla, ionas go mbeadh custaiméirí ar an eolas faoin bhfadhb.

## Cás-staidéar 18:

### Geandáil ar Facebook

I mí Facebook 2020, cuireadh an Coimisiún Cosanta Sonraí ar an eolas faoi sheoladh a bhí le teacht, 'Facebook Dating' san Aontas Eorpach. Ba é an t-ábhar imní an gearrfhógra a tugadh faoina sheoladh, mar aon le faisnéis an-teoranta faoi conas a chinntigh Facebook go gcloífeadh an gné Gheandála le ceanglais um chosaint sonraí. Mar thoradh air sin, rinne an Coimisiún Cosanta Sonraí cigireacht ar an láithreán ar oifigí Facebook i mBaile Átha

Cliath chun doiciméid agus faisnéis níos fairsinge a fháil. Cuireadh roinnt fiosruithe agus ábhair imní arna sainaithint ag an gCoimisiún Cosanta Sonraí os comhair Facebook maidir leis an táirge úr agus a ghnéithe. Mar thoradh air sin sholáthair Facebook soiléiriú mionsonraithe maidir le próiseáil sonraí pearsanta agus rinne sé roinnt athruithe ar an táirge sular seoladh é in AE i mí Dheireadh Fómhair 2020.

Áirítear iad seo a leanas ar na hathruithe sin:

- soiléiriú ar úsáid sonraí catagóire speisialta a bhí an-doiléir sa chéad togra. D'aontaigh Facebook nach mbeadh fógraíocht ar bith ann ag baint úsáid as sonraí catagóire speisialta agus nach mbainfidh príomhsheirbhís Facebook úsáid as sonraí catagóire speisialta;
- athruithe ar an gcomhéadan úsáideoirí thart ar rogha creidimh reiligiúnaigh Úsáideora ionas go gcuirfí an rogha "b'fhéarr liom gan é a lua" chuig barr liosta na roghanna;
- níos mó tréadhearcachta d'úsáideoirí trína dhéanamh soiléir sa sreabhadh cláraithe gur táirge Facebook é Geandáil agus go bhfuil sé clú-daithe i dtéarmaí seirbhís agus beartas sonraí Facebook agus Téarmaí Forlíontacha Geandála Facebook; agus
- athbhreithnithe ar an gceannteideal ar thoiliú le próiseáil na sonraí catagóire speisialta le bratach a chur go sonrach nach ndéanfar sonraí catagóire speisialta (sa chás seo rogha inscne agus creideamh reiligiúnach) chun críocha fógraíochta (spriocdhírithe nó eile).

Cás-staidéar 19:

## Gné Féinmharaithe agus Féinghortaithe Facebook

I dtús 2019, labhair Facebook ar dtús leis an gCoimisiún Cosanta Sonraí agus chuir siad a bpleannanna in iúl dó maidir lena nUirlis chun Féinmharú agus Féinghortú a Chosc (SSI) a leathnú, rud a bhain le hard-algartaí a úsáid chun monatóireacht a dhéanamh ar idirghníomhaíocht agus ar phostálacha ar líne úsáideoirí Facebook agus Instagram. Bhí sé beartaithe ag Facebook go gcuideoidh an uirlis le húsáideoirí a bhí i mbaol féinmharaithe nó féinghortaithe a shainainthint. Chuirfí sonraí faoi na húsáideoirí in iúl ansin do pháirtithe seachtracha (na gardaí agus eagraíochtaí deonacha) chun idirghabháil a dhéanamh leis na húsáideoirí sin. D'ardaigh an Coimisiún Cosanta Sonraí líon buarthaí le linn na rannpháirtíochta (2019 — 2020) lena n-áirítear bonn dleathach agus cosaintí dóthanacha i ndáil le próiseáil sonraí catagóire speisialta. Ghlac Facebook an seasamh go mbraithfeadh próiseáil sin na sonraí ar dhíolúine leasa phoiblí faoi Airteagal 9 den RGCS.

Mar chuid de mheasúnú an Choimisiún Cosanta Sonraí moladh gur cheart do Facebook dul i gcomhairle leis na húdaráis sláinte poiblí san Eoraip sula rachadh siad ar aghaidh. D'admhaigh Facebook go raibh tuilleadh oibre le déanamh acu agus go dtabharfadh siad faoi chomhairliúchán agus tuilleadh taighde leis na húdaráis sláinte poiblí ar fud na hEorpa maidir leis an uirlis SSI. Chuir Facebook in iúl go leanfar leis an rannpháirtíocht sin mar thionscnamh fadtéarmach i bhfianaise na ndúshláin atá ag Rialtais na mBallstát agus na húdaráis náisiúnta sláinte poiblí mar gheall ar phaindéim Covid-19. Tuigeann an Coimisiún Cosanta Sonraí go bhfuil an rannpháirtíocht sin fós ar siúl.

Ag deireadh 2020, labhair Facebook leis an gCoimisiún Cosanta Sonraí agus mholtiúd níos teoranta den uirlis seo chun ábhar a thagann salach ar Chaighdeáin Phobail Facebook agus ar Threoiríntí Pobail Instagram a bhaint amháin, ag feitheamh le réiteach ábhar imní a d'ardaigh an Coimisiún Cosanta Sonraí. Níor shainainthín an Coimisiún Cosanta Sonraí ábhair imní mhóra ar bith fad is gur bhain an phróiseáil le mionathrú ábhair amháin.

Cás-staidéar 20:

## Meabhrúchán Facebook do Lá an Toghcháin

**Roimh Olltoghchán na hÉireann i mír Feabhra 2020 chuir an Coimisiún Cosanta Sonraí in iúl do Facebook gur ardaigh Meabhrúchán Facebook do Lá an Toghcháin (EDR) buartháí faoi chosaint sonraí pearsanta go háirithe maidir le tréadhearcacht d'úsáideoirí faoin dóigh a mbailítear sonraí pearsanta agus idirghníomhaíocht á déanamh leis an ngné agus an dóigh a n-úsáideann Facebook ina dhiaidh sin iad.**

D'iarr an Coimisiún Cosanta Sonraí go gcuirfeadh Facebook sásra chun feidhme ag an bpointe a n-úsáideann (nó a n-úsáidfidh) úsáideoirí an fheidhm EDR lena chinntíú go gcuirfi an fhaisnéis dá dtagraítear in Airteagal 13 den RGCS, lena n-áirítear

faisnéis lena dtugtar aghaidh ar na cúinsí sonracha agus an comhthéacs ina ndéantar na hoibríochtaí próiseála, ar fáil d'úsáideoirí ar bhealach ar féidir teacht uirthi go héasca, sula gcinnfidh úsáideoir an fheidhm EDR a úsáid/idirghníomhú léi. Ábhar imní faoi leith a bhí ag an gCoimisiún Cosanta Sonraí ná an easpa soiléireachta ó Facebook ar cé acu an ndéanfaí sonraí ar bith a ghinfeadh úsáideoir agus é nó í ag idirghníomhú leis an ngné a úsáid le haghaidh fógraíocht spriocdhírithe agus pearsantú fotha nuacta nó nach ndéanfaí.

Toisc nár bh fhéidir athruithe a dhéanamh roimh thoghchán na hÉireann, d'fhreagair Facebook ar an gCoimisiún Cosanta Sonraí ag cur in iúl dó go raibh sé beartaithe aige cur i bhfeidhm na gné EDR a aistarraingt agus nach ndéanfaí an ghné a ghníomhachtú le linn aon toghcháin AE ag feitheamh le freagairt ón gCoimisiún Cosanta Sonraí lenar tugadh aghaidh ar na hábhair imní a ardaíodh.

Cás-staidéar 21:

## Teicneolaíocht Chúntóir Gutha Google

**Leanadh le rannpháirtíocht an Choimisiúin Cosanta Sonraí le Google ar tháirge cúntóra gutha na cuideachta in 2020. Thosaigh an rannpháirtíocht sin i ndiaidh chlúdach na meán i samhradh 2019. D'iarr an Coimisiún Cosanta Sonraí freagairt ar Google ar na bearta breise a d'fhéadfadh Google a dhéanamh chun maolú a dhéanamh i gcoinne na rioscaí do shonraí pearsanta úsáideoirí, go háirithe na cinn a thagann as míghníomhachtú chúntóir Google. Rinne Google roinnt athruithe chun dul i ngleic leis na hábhair imní a ardaíodh.**

Airítéar orthu sin:

- Sreabhadh úr tréadhearcach rannpháirtíochta agus toilithe chun faisnéis a chur san áireamh faoin tsraith cosaintí atá i bhfeidhm chun na rios-

caí do na hábhair shonraí a laghdú agus rialuithe úsáideoirí a dhéanamh níos inrochtana;

- Bearta chun míghníomhachtú a laghdú. Is féidir le húsáideoirí cé chomh íogair is atá gléasanna Chúntóir Google i leith nód amhail "Hé Google" a chur in oriúintanois, rud a thugann níos mó smachta d'úsáideoirí míghníomhachtú neamhheartaithe a laghdú, nó é a dhéanamh níos éasca d'úsáideoirí cúnamh a fháil i dtimpeallachtaí torannacha. Tá Google ag leanúint chomh maith le feabhas a chur ar bhearta gléasanna agus freastalaí chun gníomhachtú bréagach chúntóir Google a bhrath;
- Scriosadh trí ordú gutha ar Chúntóir. Tá úsáideoirí ábalta a n-idirghníomhaíocht le Cúntóir a scriosadh óna gcuntas anois trí rudaí a rá amhail "Hé Google, scrios an rud deireanach a dúirt mé" nó "Hé Google, scrios gach rud a dúirt mé leat an tseachtais a chuaign thart." Má iarrann úsáideoirí níos mó ná idirghníomhaíocht ar feadh seachtaire a scriosadh óna gcuntas, treoróidh an Cúntóir iad chuig an leathanach ina socruithe cuntais chun an scriosadh a chríochnú.

# 9

# Oifigigh Cosanta Sonraí

## Fógraí OCSanna chuig an gCoimisiún Cosanta Sonraí

Is é ceann de na cúramí atá ag an gCoimisiún Cosanta Sonraí Clár um Oifigigh Cosanta Sonraí (OCS) a choinneáil laistigh den Choimisiún Cosanta Sonraí, mar a fhógraíonn a eintitis rialálte ábhartha dó, arb é sin na heagraíochtaí sin a chomhlíonann an tairseach le haghaidh cheanglas OCS.<sup>5</sup>

Sonraítear in **Airteagal 37.7** den RGCS “go bhfoilseoidh an rialaitheoir nó an próiseálaí sonraí teaghmála an oifigigh cosanta sonraí agus go gcuirfidh siad in iúl don údarás maoirseachta iad.”

<sup>5</sup> Tá OCS éigeantach le haghaidh: Údarás phoiblí; Eagraíochtaí a mbaineann a bpriomhgníomhaiochtaí le hoibríochtaí próiseála óna dteastaíonn monatóireacht rialta agus chórasach ar ábhair shonraí ar mhórscála; nó Eagraíochtaí a mbaineann a bpriomhgníomhaiochtaí le próiseáil ar mhórscála de chatagóirí speisialta sonraí pearsanta nó sonraí pearsanta i ndáil le ciontuithe agus cionta coiriúla.

In 2020, fuair an Coimisiún Cosanta Sonraí 517 fógraí OCS tríd an bhfoirm ghréasáin ar líne ar shuíomh gréasáin an Choimisiún Cosanta Sonraí. Ar an iomlán, tá 2,166 taifead de OCSanna i mbunachar sonraí fógraí OCSanna an Choimisiún Cosanta Sonraí. Sa tábla thíos taispeántar na hearnálacha tionscail óna ndearnadh na fógraí in 2020.

### Fógraí OCSanna le haghaidh 2020

Príobháideach	417
Poiblí	109
Eagraíochtaí Seachbhrabúsacha	44
<b>Iomlán in 2020</b>	<b>570</b>
	(2,166 ar an iomlán)

## Comhlíonadh OCS na hEarnála Poiblí

Ordaítear in Airteagal **37.1** den RGCS, nach mór do gach eagraíocht a phróiseálann sonraí pearsanta, mar rialaitheoir sonraí nó mar phróiseálaí sonraí, OCS a ainmniú i gcás 'gurb é údarás nó comhlacht poiblí a dhéanamh an phróiseáil'.

Sonraítear in **Airteagal 37.7** den RGCS "go bhfoilseoidh an rialaitheoir nó an próiseálaí sonraí teagmhála an oifigigh cosanta sonraí agus go gcuirfidh siad in iúl don údarás maoirseachta iad."

In 2020, chuir an Coimisiún Cosanta Sonraí tú le tionscadal chun measúnú a dhéanamh ar chomhlíonadh comhlacthaí maidir le hoibleagáidí Airteagal 37. Ó 250 comhlacht poiblí san iomlán, ina gcuimsítear Ranna Rialtais agus gníomhaireachtaí rialtais, chomh maith le hÚdarás Áitiúla, sainaithníodh go bhféadfadhl sé nach raibh 77 comhlacht poiblí ag cloí leis na ceanglais. Mar thoradh ar rannpháirtíocht le gach ceann de na comhlacthaí poiblí sin thug 66 ceann dóibh iad féin chun comhréireachta le hAirteagal 37.7 den RGCS faoi dheireadh 2020, rud a fhágann gur ardaigh ráta um chomhlíonta na hearnála ó 69% go 96%.

Leanfaidh an Coimisiún Cosanta Sonraí ag obair leis comhlacthaí na hearnála poiblí faoi mar a cheanglaitear in 2021 chun comhlíonadh Airteagal 37(3) a bhaint amach.

Thug an Coimisiún Cosanta Sonraí faoi deara gur bhrath roinnt gníomhaireachtaí Ranna ar Airteagal 37(3) den RGCS ina sonraítear "*I gcás gur údarás nó comhlacht poiblí é an rialaitheoir nó an próiseála, féadfar oifigeach aonair cosanta sonraí a ainmniú le haghaidh roinnt údarás nó comhlacthaí dá leithéid, agus struchtúr agus méid a n-eagraíochta á gcur san áireamh*".

D'fhéadfaí OCS aonair a ainmniú le haghaidh roinnt údarás nó comhlacthaí dá leithéid; mar sin féin, níor cheart go mbainfeadh sin oibleagáid na gníomhaireachta nó an aonaid gnó sin faoi mháthair-roinn sonraí teagmhála a OCS a fhoilsíú ar leithligh nó na sonraí sin a chur in iúl ar leithligh don údarás maoirseachta fiú má bhíonn sé déanta ag an mháthair-roinn chomh maith.

Más mian le comhlacht sonraí OCS a chur in iúl, cé acu OCS a nuashonrú nó OCS úr a chlárú, ba cheart é sin a dhéanamh trí bhealaí oifigiúla ag baint úsáid as foirm ghréasáin nó ríomhphost an Choimisiún Cosanta Sonraí.

Méadóidh an Coimisiún Cosanta Sonraí a ghníomhaíochtaí comhlíonta agus monatóireachta sa réimse seo chun eagraíochtaí a chur san áireamh seachas comhlacthaí poiblí a gceanglaítear orthu chomh maith OCS a ainmniú agus cloí le hAirteagal 37.7 den RGCS le linn 2021. Déanfar é sin de réir cur chuige earnáil le hearnáil. Moltar d'eagraíochtaí nach bhfuil OCS acu smaoineamh ar an gceanglaítear orthu OCS a bheith acu — tá tuilleadh faisnéise ar fáil ar shuíomh gréasáin an Choimisiún Cosanta Sonraí.

## Rannpháirtíocht le OCSanna

Tá an Coimisiún Cosanta Sonraí fós tiomanta do thacaíocht a thabhairt do OSCanna agus dá bhfoirne, in aitheantas an ról thábhachtaigh atá ag OCSanna lena chinntí go n-aistreofar cláir RGCS go cultúr eagraíochtaí agus comhlíonadh a mhairfidh. Labhair foireann an Choimisiún Cosanta Sonraí ag a lán imeachtaí fíorúla do OCSanna le linn na bliana. Mar chuid d'íarrachtaí an Choimisiún Cosanta Sonraí OCSanna a chumhachtú i gcomhlíonadh a ndualgas, bhunaigh an Coimisiún Cosanta Sonraí Lónra OCSanna ag deireadh 2019. Ba é an cuspóir leis an Lónra rannpháirtíocht idir piaraí agus comhroinnt eolais a chothú idir OCSanna agus gairmithe cosanta sonraí.

Mar gheall ar Covid-19, b'éisgean Comhdháil Lónra OCSanna an Choimisiún Cosanta Sonraí a bhí le bheith ar siúl i mí an Mhárta a chur siar. Ina ionad sin chuir an Coimisiún Cosanta Sonraí na tacaíochtaí sin ar líne, agus roinn thiomnaithe do OCSanna ar a shuíomh gréasáin ina ndéantar na hacmhainní, lena n-áirítear podchraoltaí agus treoir, a láirú chun crócha rochtain éasca. Leanann an Coimisiún Cosanta Sonraí le bheith rannpháirteach le OCSanna ar bhonn leanúnach, lena n-áirítear nuachtltir ráithiúil, lena chinntí go gcuirfear bonn eolais faoi na hacmhainní a sholáthraíonn sé le riachtanais an chohóirt.

## Cód lompair

Le linn 2020 dhréacthaigh an Coimisiún Cosanta Sonraí ceanglais maidir le creidiúnú a bhí le comhlíonadh ag Comhlacthaí Monatóireacht féideartha le haghaidh Cód lompair. D'fhaomh an Bord Eorpach um Chosaint Sonraí 'Na Ceanglais um Chreidiúnú le haghaidh Comhlacthaí Monatóireacht Cód' agus ghlaic an Coimisiún Cosanta Sonraí iad. Ba é sin an céim dheireanach maidir lena chur ar chumas an Choimisiún Cosanta Sonraí bunú agus faomhadh Cód lompair a chur ar aghaidh in Éirinn i gcomhréir le hAirteagail 40 agus 41 den RGCS. Tá an Coimisiún Cosanta Sonraí ag obair cheana le roint úinéirí féideartha Cód agus tá sé ag dréim leis an gcéad dréacht-Chód oifigiúil a fháil i dtús 2021.

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# Gníomhaíochtaí Idirnáisiúnta

## Aistrithe Idirnáisiúnta — Rialacha Corparáideacha Ceangailteacha

Príomhfhócas sa réimse aistrithe idirnáisiúnta don Choimisiún Cosanta Sonraí is ea measúnú agus faomhadh iarratais ar Rialacha Corparáideacha Ceangailteacha ó chuideachtaí ilnáisiúnta.

Tugadh Rialacha Corparáideacha Ceangailteacha (RCC) isteach mar fhreagairt do riachtanais eagraíochtaí cur chuige domhanda a bheith acu maidir le cosaint sonraí i gcás go raibh roinnt fochuideachtaí ag a lán eagraíochtaí ar fud an domhain, ag aistriú sonraí ar mhórscála. Le linn 2020, lean nó thosaigh an Coimisiún Cosanta Sonraí ag gníomhú mar phríomh-athbhreithneoir i ndáil le 42 iarratas ar RCC ó 28 cuideachta éagsúil. Chuidigh an Coimisiún Cosanta Sonraí chomh maith le Gníomhaireachtaí Eorpacha um Chosaint Sonraí eile

trí fheidhmiú comh-athbhreithneoir nó ar fhoirne a dhréachtú le haghaidh Tuairimí Airteagal 64 ar 5 RCC sa tréimhse sin.

D'eisigh an Bord Eorpach um Chosaint Sonraí tuairimí Airteagal 64 ar naoi n-iarratas RCC in 2020, lena n-áirítear Tuairimí ar rialaitheoir RCC agus ar phróiseálaí RCC an Reinsurance Group of America, ar a raibh an Coimisiún Cosanta Sonraí ina phríomhúdarás.

Mar gheall ar imeacht na Ríochta Aontaithe ón Aontas Eorpach in 2020, bhí an Coimisiún Cosanta Sonraí i dteagmháil le roinnt cuideachtaí ag fiosrú faoina bpriomhúdarás a aistriú chuig an gCoimisiún Cosanta Sonraí chun críocha RCC. Cuireadh an próiseas sin i gcrích le haghaidh líon iarratasóirí, rud a mhéadaigh ualach oibre an Choimisiún Cosanta Sonraí go mór in 2020.

## Brexit

Sa chuid dheireanach de 2020 ag druidim le deireadh na hildirtréimhse ar an 31 Nollaig, bhí an-fhéidearthacht ann go bhfágfadh an Ríocht Aontaithe ar deireadh gan mhargadh leis an Aontas Eorpach agus dá réir sin go dtitfeadh sí amach as saorshreafaí sonraí AE. Cruthaíodh impleachtaí leis sin d'earnálacha móra ghnó na HÉireann agus don earnáil phoiblí, arbh éigean dóibh sásraí aistrithe a chur i bhfeidhm chun leanúint le haistrithe dlisteanacha chuig an Ríocht Aontaithe i gcás Brexit gan mhargadh a éascú.

Lean an Coimisiún Cosanta Sonraí le rannpháirtíocht leanúnach le páirtithe leasmhara a ndeachthas i gcion orthu, chun comhroinnt phras faisnéise ar fud fhorbairt an phróisis idirbheartaíochta a éascú.

Ar an 24 Nollaig 2020, síniódh an Comhaontú Trádála agus Comhair agus rinneadh soláthar sa chomhaontú sin d'aistrithe sonraí, ina gceadaítear tréimhse suas le sé mhí (an tréimhse idirlinne mar a thugtar air), lena bhféadfaí leanúint le haistrithe chuig an Ríocht Aontaithe amhail is go raibh an Ríocht Aontaithe fós ina cuid den LEE, agus táthar ag leanúint le hidirbheartaíocht ar chomhaontú dóthanach.

## Ceisteanna Eile maidir le hAistriú Idirnáisiúnta

I mí lúil 2020, neamhbhailíochtaigh Cúirt Breithiúnais an Aontais Eorpach an sásra um Sciath Phríobháideachais a d'éascaigh aistrithe áirithe ón LEE go dtí SAM agus, cé gur sheas sé le húsáid na gClásal Conarthaigh Caighdeánach, ní shoiléirigh sé má chialláonn na dlíthe agus na cleachtais i dtríú thír nach bhfuil an leibhéal cosanta do na sonraí a aistrítear cinntithe i gcás faoi leith, bheadh gá stop a chur le haistrithe mura féidir easnaimh ar bith sa chosaint a dhúnadh le bearta breise.

D'fhoilsigh an Bord Eorpach um Chosaint Sonraí dréacht-mholtaí maidir le Beart Breise agus tá aighneachtaí a fuarthas á measúnú anois ag an mBord Eorpach um Chosaint Sonraí. Tá nóta iomlán maidir leis an Dlíthíochta i ndáil le Clásail Chonartha Chaighdeánacha ar fáil in Aguisín 5 den tuarascáil seo.

## Údarás Maoirseachta Eorpacha um Chosaint Sonraí

Le linn 2020, lean an Coimisiún Cosanta Sonraí le páirt a ghlacadh i gcláir oibre na gComhlacthaí Eorpacha um Maoirseachta le haghaidh córais mhórscála TF AE amhail Europol, Eurojust, an Córas Faisnéise Custaim agus Córas Faisnéise an Mhargaidh Inmheánaigh (IMI). Rinne an Coimisiún Cosanta Sonraí roinnt iniúchtaí deisce le hAonad Náisiúnta Europol sa Gharda Síochána i ndáil le cearta ábhar sonraí agus próiseáil sonraí i gcórais Europol. Lena chois sin, lean an Coimisiún Cosanta Sonraí lena ról mar bhreathnóir ar mhaoirseachta chomhordaithé Chóras Schengen agus na gCóras Faisnéise Víosaí (CFS II agus VIS). Maidir le CFS II, leanfar in 2021 leis an gclár oibre chun rannpháirtíocht Éireann a chur chun cinn.

## Sásraí comhsheasmhachta agus Cúramí an Bhoird Eorpaigh um Chosaint Sonraí

Cosúil le gach údarás maoirseachta LEE um chosaint sonraí eile, ní mór don Choimisiún Cosanta Sonraí a chinntí go ndéanfaidh sé an RGCS a léirmhíniú, a mhaoisíú agus a fhorfheidhmiú ar bhealach lena mbainfear comhsheasmhacht amach. In 2020, ghlac an Coimisiún Cosanta Sonraí páirt in os cionn 180 cruinníú EDPB (a ndearnadh an chuid is mó dóibh ar bhonn fiorúil), lena n-áirítear na cruinnithe an 12 fhoghrúpa saineolaithe de chuid EDPB.

Chuir baill foirne an Choimisiúin Cosanta Sonraí cion fairsing le forbairt na dtreoirlínte agus na dtuairimí i measc fhoghrúpaí saineolaithe uile an EDPB le linn 2020. Gníomhaíonn an Coimisiún Cosanta Sonraí mar chomhordaitheoir ar fhoghrúpa saineolaithe na Meán Sóisialta chomh maith.

## BIIDPA 2020

Ar an 18 Meitheamh 2020, d'óstáil an Coimisiún Cosanta Sonraí cruinníú fiorúil de chuid Údarás Cosanta Sonraí na Breataine, na HÉireann agus na nOileán (BIIDPA) ag cur fáilte roimh ionadaithe ó údarás maoirseachta Bheirmiúda, Oileán Cayman, Ghiobráltar, Gheansaí, Oileán Mhanann, Gheirsí, Mhálta agus na Ríochta Aontaithe. Tá cúlra comhchoiteann dlí ag lucht freastail BIIDPA agus tagann siad le céile gach bliain chun plé a dhéanamh ar réimse éagsúil de thopaicí a bhaineann le cosaint sonraí. In 2020, mar gheall ar shrianta taistil a bhí i bhfeidhm mar thoradh ar Covid-19, d'óstáil an Coimisiún Cosanta Sonraí cruinníú fiorúil den chéad uair. Áiríodh ar na ceisteanna a pléadh Covid-19 agus Straitéis Chumarsáide an Choimisiúin Cosanta Sonraí.

Tionól Príobháideachta Domhanda, 13-15 Deireadh Fómhair

I mí Dheireadh Fómhair 2020, ghlac an Coimisiún Cosanta Sonraí párt sa Tionól Príobháideachta Domhanda (GPA); cruinníú bliantúil níos mó ná 130 údarás um chosaint sonraí agus príobháideachta ó gach cearn den domhan.



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# Príomhthionscadail an Choimisiúin Cosanta Sonraí

## Beartas Leanaí

### Gníomhaíochtaí le linn 2020

I ndiaidh chonclúid chomhairliúchán poiblí an Choimisiúin Cosanta Sonraí agus foilseachán dá thuarascáil ar staidreamh agus aiseolas ó shruthanna na ndaoine fásta agus na leanaí den chomhairliúchán in 2019, chuir an Choimisiúin Cosanta Sonraí túis le próiseas fairsing maidir le treoir a dhréachtú d'eagraíochtaí a phróiseálaíonn sonraí leanaí.

I gcomhthráth leis an obair sin, d'oirbhrigh an Choimisiúin Cosanta Sonraí le líon saineolaithe agus ionadaithe leanaí ó na hearnálacha poiblí, príobháideacha agus seach-bhrabúsacha chun tuilleadh dearcthaí a lorg i ndáil le ceisteanna teicniúla éagsúla a rabhthas le dul i ngleic leo sa treoir.

I rith 2020, lean an Choimisiúin Cosanta Sonraí lena rannpháirtíocht mar bhall den Chomhairle Náisiúnta Chomhairleach um Shábháilteacht ar Líne, i gcás gur chuidí sé le grinnscrúdú Scéim Ghinearálta an Bhille um Shábháilteacht ar Líne agus Rialú na Meán — arna thabhairt i gcrích ag an Roinn Turasóireachta, Ealaón, Cultúir, Gaeltachta, Spóirt agus na Meán i mí na Nollag 2020 — chun creat soiléir le haghaidh comhair idir an Choimisiúin Cosanta Sonraí agus rialtóirí eile a mbaineann a sainchúram le hábhair inní faoi shábháilteacht ar líne a chinntí.

### Na "Bunphrionsabail"

In mí na Nollag 2020, d'fhoilsigh an Choimisiúin Cosanta Sonraí a threoidhcoiciméad a rabhthas ag súil go mór leis dar teideal "Leanaí sa Tosach agus sa Lár: Bunphrionsabail le haghaidh Cur Chuige a Dhíríonn ar Leanaí maidir le Próiseáil Sonrai" (na "Bunphrionsabail" go gairid).

Tugadh aghaidh sna Bunphrionsabail ar phróiseas fhorbairt na straitéise in 2020 ba ea soláthar agus foilsíú Thuarascáil Gníomhaíochtaí Dhá Bhliain an Choimisiúin Cosanta Sonraí faoin RGCS, arbh dheis é chun machnamh a dhéanamh ar fhírinne na rialála ó mhí na Bealtaine 2018 i leith agus na ceisteanna téamacha agus staitisticí a chaithfear a chur san áireamh i bplean straitéiseach an Choimisiúin Cosanta Sonraí don todhchaí a shainathin. Bhain anailís rialála an Choimisiúin Cosanta Sonraí in 2020 le dhá thimthriall ceardlann chomh maith. Díríodh sa chéad cheann ar fhaire na fáistíne le haghaidh 2020 agus díríodh sa dara ceann ar mhodheolaíochtaí láimhseála gearán as seo amach.

Leagann an Choimisiúin Cosanta Sonraí amach sna Bunphrionsabail chomh maith bearta molta éagsúla lena gcuirfear feabhas ar an leibhéil cosanta a thugtar do leanaí ar na rioscaí um próiseáil sonraí a chuirtear rompu trína n-úsáid as/ rochtain ar sheirbhísí sa saol ar líne agus sa saol as líne araon. Tá comhairliúchán poiblí á dhéanamh ag an gChoimisiúin Cosanta Sonraí ar an dréacht-leagan de na Bunphrionsabail agus tá aigh-neachtaí ó na páirtithe uile ar suim leo an scéal á lorg aige go dtí an 31 Márta 2021.

Agus an t-aiseolas a fuarthas á chur san áireamh, foilseoidh an Choimisiúin Cosanta Sonraí an leagan deiridh de na Bunphrionsabail lena gcuirfear bonn eolais faoi ghníomhaíochtaí, maoirseacht agus rialála an Choimisiúin Cosanta Sonraí.

### Cód lompair

Le linn 2021, oibreoidh an Coimisiún Cosanta Sonraí le páirtithe leasmhara tionscail, rialtais agus na hearnála deonaí agus lena gcomhlacthaí ionadaíocha chun dréachtú Cód lompair a spreagadh i ndáil le próiseáil sonraí pearsanta leanaí agus daoine óga, i gcomhréir le hAlt 32 d'Acht um Chosaint Sonraí na hÉireann 2018. Beidh tionscadal na gCód lompair ina phríomhthionscnamh don Choimisiúin Cosanta Sonraí in 2021.

### Straitéis Rialála

Leanadh leis an obair ar Straitéis Rialála an Choimisiúin Cosanta Sonraí in 2020 — le rannpháirtíocht geallsealbhóirí inmheánacha agus seachtracha araon — agus tá forbairt na straitéise beagnach críochnaithe. Bhí forbairt Straitéis Rialála an Choimisiúin Cosanta Sonraí ina próiseas atriallach, ag forbairt mar fhreagairt do riachtanais na bpáirtithe leasmhara agus a n-aiseolas. Agus an straitéis á dréachtú, bhreithníogh an Choimisiúin Cosanta Sonraí go cúramach ar an dóigh is fearr le tortháí feabhsaithe a bhaint amach don líon is mó daoine, i dtírdhreach rialála atá ag teacht chun cinn i gconaí mar fhreagairt ar riachtanais dhlíthiúla agus shochafocha.

Cuid lárnach de phróiseas fhorbairt na straitéise in 2020 ba ea soláthar agus foilsíú Thuarascáil Gníomhaíochtaí Dhá Bhliain an Choimisiúin Cosanta Sonraí faoin RGCS, arbh dheis é chun machnamh a dhéanamh ar fhírinne na rialála ó mhí na Bealtaine 2018 i leith agus na ceisteanna téamacha agus staitisticí a chaithfear a chur san áireamh i bplean straitéiseach an Choimisiúin Cosanta Sonraí don todhchaí a shainathin. Bhain anailís rialála an Choimisiúin Cosanta Sonraí in 2020 le dhá thimthriall ceardlann chomh maith. Díríodh sa chéad cheann ar fhaire na fáistíne le haghaidh 2020 agus díríodh sa dara ceann ar mhodheolaíochtaí láimhseála gearán as seo amach.

### An Tionscadal ARC

Lean an Choimisiúin Cosanta Sonraí lena chompháirtíocht le hÚdarás Cosaint Sonraí na Cróite, AZOP, agus Ollscoil Vrije sa Bhruiséil ar thionscadal arna mhaoiníú ag AE (Tionscadal ARC) — a dhírigí go sonrach ar FBManna — chun comhlíonadh ar fud earnáil na FB Manna a mhéadú. Cuireadh tú le hobair ar an tionscadal i R1 de 2020 agus beidh sé ar siúl ar feadh dhá bhliain eile. Tríd an rannpháirtíocht sin — lena n-áirítear suirbhéanna, seónna bóthair agus comhdhálacha — tá sé beartaithe leis an tionscadal tuiscint níos mionsonraithe a chothú ar an timpeallacht ina bhfeidhmíonn FB Manna agus acmhainní praiticiúla a chur ar fáil chun tacú leo ina n-iarrachtaí um comhlíonadh.



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## Cumarsáid

## Rannpháirtíocht leis na meáin

Lean próifíl an Choimisiúin Cosanta Sonraí, agus suim na meán ann ag fás ar bhonn náisiúnta agus idirnáisiúnta araon le linn 2020. Tháinig a lán de rannpháirtíocht na meán as fiosrúchán agus obair dhilíthíochta an Choimisiúin Cosanta Sonraí, lena n-áirítear aird shuntasach idirnáisiúnta na meán thart ar dhréachtinchinnéadh an Choimisiúin Cosanta Sonraí i bhfiosrúchán Chuideachta Idirnáisiúnta Twitter.

## Rannpháirtíocht Dhíreach

Lean an Coimisiún Cosanta Sonraí le bheith páirteach go díreach le páirtithe leasmhara éagsúla le linn 2020, ag coigeartaigh na srianta de dheasca Covid-19. Ó mhí an Mhárta ar aghaidh, bhí gach comhdháil agus gach imeacht inar ghilc an Choimisiún Cosanta Sonraí páirt ina gcinn fhíorúla. Ghlac an Choimisiún Cosanta Sonraí páirt i mbreise agus 100 imeacht in 2020.

## Treoir, blaganna agus podchraolta

Lean an Coimisiún Cosanta Sonraí le treoir chuimsitheach ar réimse leathan topaí do dhaoine aonair agus d'eagraíochtaí araon a sholáthar, a nuashonrú agus a scapeadh. Soláthraíodh thart ar 40 mír threorach in 2020, inar clúdaíodh réimse leathan ceisteanna idir fhíschomhdháil agus rianú teagmhálaithe.

## Tuarascáil gníomhaíochtaí

In mhí an Mheithimh, d'fhoilsigh an Coimisiún Cosanta Sonraí DPC Ireland 2018-2020: Regulatory Activity Under GDPR' — tuarascáil gníomhaíochtaí rialála dhá bhliain ina soláthraítear lionsa leathanuilleach chun measúnú a dhéanamh ar obair an Choimisiúin Cosanta Sonraí trí ó cuireadh an RGCS i bhfeidhm. Beidh tionchar ag na treocheataí agus na patrúin arna sainaithint ar chúrsaí rialála an Choimisiúin Cosanta Sonraí as seo amach.

## Na meáin shóisialta

In 2020, lean an Coimisiún Cosanta Sonraí lena láithreacht ar na meáin shóisialta a mhéadú ar Twitter, Instagram agus LinkedIn, mar thaca lena ghníomhaíochtaí ardaithe feasacha agus cumarsáide. Tháinig méadú os cionn 8,000 le linn 2020, ar na leantóirí le chéile ar na trí ardán, go dtí beagnach 29,000. Sroicheadh beagnach 2.8 milliún duine de réir a chéile, agus bhí rannpháirtíocht láidir ann i ngach cás.

## Suíomh gréasáin an Choimisiúin Cosanta Sonraí

Bhí suíomh gréasáin an Choimisiúin Cosanta Sonraí ([www.dataprotection.ie](http://www.dataprotection.ie)) ina acmhainn thar a bheith tábhachtach do dhaoine aonair agus d'eagraíochtaí le linn 2020. I mí na Samhna, sheol an Choimisiún Cosanta Sonraí athdhearadh den suíomh gréasáin, á dhéanamh níos fusa dúsáideoirí faisnéis a aimsiú agus a nascleanúint. Tá roinн thiomnaithe sa suíomh athdhearthá chomh maith d'Oifigigh Cosanta Sonraí.

The collage consists of four distinct promotional graphics for the Data Protection Commission (DPC).  
1. Top Left: A green rectangular graphic with white text. It features the title 'Recommendations for the Use of Portable Storage Devices' in a bold, sans-serif font. Below the text is a 3D rendering of a green USB flash drive with a silver connector.  
2. Top Right: A blue rectangular graphic with white text. It features the title 'Data protection and community-based CCTV schemes' in a bold, sans-serif font. Below the text are three dark blue silhouettes of houses, each with a small circular camera icon on its roofline.  
3. Bottom Left: A light blue rectangular graphic with white text. It features the title 'Direct Marketing Blog' in a large, bold, red sans-serif font. To the right of the title is a grid of colorful icons representing various digital communication and marketing concepts, such as phones, envelopes, and computer monitors.  
4. Bottom Right: A dark blue rectangular graphic with white text. It features the title 'A Data Protection Commission Podcast A Deep Dive into the DPC's Cookie Sweep' in a bold, sans-serif font. Below the title are two small, square profile photographs of women, likely hosts or guests of the podcast.  
Each graphic includes the DPC logo (a stylized 'SC' monogram) and the full name 'An Chomisiún um Chosaint Sonrai Data Protection Commission' at the bottom.

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# Rialachas Corparáideach

## Maoiniú agus Soláthar Foirne an Choimisiúin Cosanta Sonraí

Tháinig méadú ar mhaoliniú an Choimisiúin Cosanta Sonraí ón ríaltas bliain ar bhliain ó €1.7 milliún in 2013 go €16.9 milliún in 2020 (a chuimsíonn €10.5 milliún i leithdháileadh pá agus €6.4 milliún i leithdháileadh neamhphá).

Lean an Coimisiún Cosanta Sonraí ag obair leis an tSeirbhís um Cheapachán Phoiblí chun foireann a earcú le linn 2020. Chuir Covid-19 isteach ar an bpróiseas earcaíochta. Bhí líon baill foirne de 145 ag an gCoimisiún Cosanta Sonraí ag deireadh na bliana, agus bhí dhá chomórtas earcaíochta fós ar siúl ar an 31 Nollaig 2020. Beidh tuilleadh earcú ball foirne, chomh maith leo siúd ar éirigh leo sa dá chomórtas sin, ina thosaíocht don Choimisiún Cosanta Sonraí in 2021.

## Seirbhísí Corparáideacha agus Saoráidí

Cé go raibh oifig an Choimisiúin Cosanta Sonraí dúnta den chuid ba mhó — go fisiciúil — mar gheall ar shrianta Covid-19, lean an Coimisiún Cosanta Sonraí le creatfoireann a choinneáil chun comhfhreagras poist isteach agus

amach a phróiseáil agus chun an tacaíocht lóistíochta ba ghá chun cianobair éifeachtúil foireann na Choimisiúin Cosanta Sonraí a sholáthar.

## Rialachas Corparáideach

Rinneadh a Oifigeach Cuntasáiochta féin den Choimisiún Cosanta Sonraí ar an 1 Eanáir 2020. Dá réir sin, rinneadh-monatóireacht ar rialuithe inmheánacha DPC i gcomhréir leis an gCód Cleachtais chun Comhlacthaí Stáit a Rialú. Déanfar Ráiteas bliantúil maidir le Rialú Inmheánach an Choimisiúin Cosanta Sonraí do 2020 atá riachtanach a fhoilsíú ar shuíomh gréasán an Choimisiúin Cosanta Sonraí lena Ráiteas Airgeadais níos déanaí sa bhliain.

## Iniúchóireachta agus Riosca an Choimisiúin Cosanta Sonraí

In 2020 bhunaigh an Coimisiún Cosanta Sonraí Coiste Iniúchóireachta agus Riosca, ar aon dul leis an gCaighdeán um Rialachas Corparáideach don Státseirbhís (2015), agus leis an gCód Cleachtais chun Comhlacthaí Stáit a Rialú (2016).

Is iad seo a leanas comhaltaí an choiste:

- Conan McKenna (cathaoirleach);
- Bride Rosney;
- Karen Kehily;
- Michael Horgan; agus
- Graham Doyle (an Coimisiún Cosanta Sonrai).

Tionóladh seacht gcruiinní de chuid an Choiste Iniúchóireachta agus Riosca in 2020.

## Acht na dTeangacha Oifigiúla 2003

Le linn 2020, d'ullmhaigh an Coimisiún Cosanta Sonrai a chuígiú Scéime Teanga faoi Acht na dTeangacha Oifigiúla 2003. Rinne an tAire Turasóireachta, Cultúir, Oidhreachta, Ealaón, Gaeltachta, Spóirt agus na Meán a scéim dheiridh a dhearbhú ina dhiadh sin, agus cuireadh faoi bhráid oifig an Choimisinéara Teanga í, agus foilsíodh í ar shuíomh gréasáin an Choimisiúin Cosanta Sonrai. Cuireadh túis leis an gcúigiú Scéim ar an 21 Nollaig 2020 agus beidh sí i bhfeidhm ar feadh tréimhse trí bliana.

## Saoráil Faisnéise (SF)

In 2020, fuair an Coimisiún Cosanta Sonrai 65 iarratas SF ar an iomlán. Deonaíodh ocht gcinn díobh, rinneadh trí cinn díobh a dheonú i bpáirt agus measadh go raibh 38 ceann díobh lasmuigh den raon feidhme. Tá gníomhaíocht rialála an Choimisiúin Cosanta Sonrai díolmhaithe ó iarratais SF chun rúndacht á gníomhaíochtaí maoirseachta, imscrúdaitheacha agus forfheidhmiúcháin a chaomhnú. Mar sin féin, tá an Coimisiún Cosanta Sonrai tiomanta d'fhaisnéis thrédhearcach a chur ar fáil don phobal i ndáil le riarrachán a oifige agus úsáid acmhainní poiblí.

Deonaithe	8
Deonaithe i bpáirt	3
Diúltaithe (OOS)	38
SI Aistarraingthe/Láimhseáilte Lasmuigh	8
Beo	8
<b>Iomlán na n-iarratas</b>	<b>65</b>

## An tAcht um Eitic in Oifigí Poiblí 1995 agus an tAcht um Caighdeán in Oifigí Poiblí 2001

Bunaigh an Coimisiún Cosanta Sonrai faoin Acht um Chosaint Sonrai 2018 agus oibríonn sé i gcomhréir le forálacha an Acharta sin. Tá nósanna imeachta i bhfeidhm lena chinntí go gcomhlíonfaidh baill foirne an Choimisiúin Cosanta Sonrai, ag a bhfuil poist ainmnithe, forálacha an Acharta um Eitic in Oifigí Poiblí 1995 agus an Acharta um Caighdeán in Oifigí Poiblí 2001.

## An tAcht um Brústocaireacht a Rialáil 2015

Tá sé mar aidhm leis an Acht um Brústocaireacht a Rialáil 2015 a chinntí go ndéanfar gníomhaíochtaí brústocaireachta i gcomhréir le hionchais phoiblí na brústocaireachta. Tá an Coimisiún Cosanta Sonrai ina Oifigech Poiblí Ainmnithe (OPA) faoin Acht seo, faoi mar a shonraítéar ar shuíomh gréasáin an Choimisiúin Cosanta Sonrai. Ní mór do na brústocairí caidreamh idir comhlachtaí brústocaireachta agus OPAnna a thuarisciú. Chuir an Coimisiún um Chaighdeán in Oifigí Poiblí (SIPo) clár brústocaireachta ar líne ar bun ag [www.lobbying.ie](http://www.lobbying.ie) chun an ceanglas sin a éascú.

## In Alt 42 den Acht fá Choimisiún na hÉireann um Chearta an Duine agus Comhionannas 2014 — Dualgas na hEarnála Poiblí um Chomhionannas agus um Chearta an Duine (an Dualgas)

Chuir an Coimisiún Cosanta Sonrai bearta i bhfeidhm lena chinntí go gcuirfear cearta an duine agus comhionannas san áireamh i bhforbairt beartas, nósanna imeachta agus rannpháirtíocht le páirtithe leasmhara agus a shainordú maidir le ceart bunúsach AE chun cosaint sonrai á chomhlíonadh. Tá an Dualgas leabaithe sa Chreat um Rialachas Corparáideach agus sa Chairt Custaiméirí agus sa phlean Gníomhaíochta chomh maith. Tá suíomh gréasáin an Choimisiúin Cosanta Sonrai mar aon le faisnéis fhoilsithe eile ceaptha i ndáil le prionsabail an Bhéarla shimplí, agus d'fhoilsigh an Coimisiún Cosanta Sonrai clos-acmhainní chomh maith.

Le tacú lena chustaiméirí a dteastaíonn cúnamh uathu agus na seirbhísí a sholáthraíonn an Coimisiún Cosanta Sonrai á n-úsáid acu, is féidir teagmháil a dhéanamh le hOifigech Inrochtaineachta an Choimisiúin Cosanta Sonrai trí na bealaí atá liostaithe ar a shuíomh gréasáin.

## Cairt Custaiméirí

In 2020, rinne an Coimisiún Cosanta Sonrai a Chairt Custaiméirí a athbhreithniú. Beidh an Chairt athbhreithnithe agus an Plean Gníomhaíochta na Seirbhísé Ardchaighdeáin do Chustaiméirí i bhfeidhm don tréimhse 2021–2023.

In 2020, fuair agus réitigh an Coimisiún Cosanta Sonrai 37 gearán seirbhísé custaiméirí.

# Appendices

# Aguisín 1: Tuarascáil maidir le Nochtadh Cosanta a fuair an Coimisiún Cosanta Sonraí in 2020

Tá an beartas atá á fheidhmiú ag an gCoimisiún Cosanta Sonraí faoi théarmaí an Acharta um Chosaint Sonraí 2014 ceaptha chun gach oibrí a éascú agus a spreagadh le fíorbhuardhaí inmheánacha a ardú maidir le héagóir fhéideartha sa láthair oibre ionas go mbeifí ábalta na buarthaí sin a imscrídú ag leanúint phrionsabail an cheartais nádúrtha agus dul i ngleic leo ar bhealach a oirfidi do chuínsí an chás.

Le hAilt 22 den Acharta um Chosaint Sonraí 2014, cean-gláitear ar chomhlacthaí poiblí tuarascáil a ullmhú agus a fhoilsíú, faoin 30 Meitheamh gach bliain, i ndáil leis an mbláin roimhe sin i bhfoirm anaithnidithe.

De bhun an cheanglais sin, dearbhaíonn an Coimisiún Cosanta Sonraí maidir le 2020

- Ní bhfuarthas nochtadh cosanta ar bith (ó fhoireann an Choimisiúin Cosanta Sonrai).

- Fuarthas naoi nochtadh cosaint (arna leagan amach sa tábla thíos) ó dhaoine aonair taobh amuigh den Choimisiún Cosanta Sonraí i ndáil le ceisteanna a bhaineann le cosaint sonraí laistigh d'eintitis eile. Ardaíodh na cásanna sin leis an gCoimisiún Cosanta Sonraí ina ról mar an "duine forordaithe" faoi mar a fhoráltear faoi Alt 7 den Acharta um Nochtadh Cosanta (liostaithe in IR 339/2014 arna leasú le IR 448/2015, ar cuireadh IR 364/2020 ina ionad i Meán Fómhair 2020).

Uimhir Thagartha	Cineál	Dáta a Fuarthas	Stádas	Toradh
09/2020	Alt 7 (seachtrach, chuig 'duine forordaithe')	9 Nollaig 2020	Á mBreithniú	
08/2020	Alt 7 (seachtrach, chuig 'duine forordaithe')	16 Meán Fómhair 2020	Á mBreithniú	
07/2020	Alt 7 (seachtrach, chuig 'duine forordaithe')	9 Iúil 2020	Á mBreithniú	
06/2020	Alt 7 (seachtrach, chuig 'duine forordaithe')	26 Bealtaine 2020	Dúnta	Déanta gan ainm agus ní raibh sé ina nochtadh cosanta — atreoraithe chuig feidhm chomhairliúcháin lena
05/2020	Alt 7 (seachtrach, chuig 'duine forordaithe')	12 Bealtaine 2020	Dúnta	Ní raibh sé ina nochtadh cosanta — atreoraithe chuig gnáthláimhseáil gearán
04/2020	Alt 7 (seachtrach, chuig 'duine forordaithe')	28 Aibreán 2020	Dúnta	Ní raibh sé ina nochtadh cosanta — atreoraithe chuig gnáthláimhseáil gearán
03/2020	Alt 7 (seachtrach, chuig 'duine forordaithe')	22 Feabhra 2020	Dúnta	Ní raibh sé ina nochtadh cosanta — atreoraithe chuig gnáthláimhseáil gearán
02/2020	Alt 7 (seachtrach, chuig 'duine forordaithe')	3 Feabhra 2020	Dúnta	Níor lean an ngearánaí le cúrsaí.
01/2020	Alt 7 (seachtrach, chuig 'duine forordaithe')	6 Eanáir 2020	Dúnta	Níor lean an ngearánaí le cúrsaí.

# Aguisín 2: Tuarascáil maidir le hÚsáid Fuinnimh ag an gCoimisiún Cosanta Sonraí

## Forléargas ar an Úsáid Fuinnimh

### BAILE ÁTHA CLIATH

#### 21 Cearnóg Mhic Liam

Tá ceannoifig an Choimisiún Cosanta Sonraí lonnaithe ag 21 Cearnóg Mhic Liam, Baile Átha Cliath 2. Baineann an t-ídiú fuinnimh don oifig le leictreachas amháin, a úsáidtear i gcomhair téimh, soilsithe agus úsáid trealaimh.

Is foirgneamh faoi chosaint é 21 Cearnóg Mhic Liam agus mar sin tá sé síoltaíte ón gcóras rátala fuinnimh.

### Oifig shatailíte

Coimeádann an Coimisiún Cosanta Sonraí spás breise oifige i mBaile Átha Cliath faoi láthair chun freastail ar an méadú ar líon na mball forne. Is é Oifig na nOibreacha Poiblí a fuair an oifig seo agus d'áitigh an Coimisiún Cosanta Sonraí i mí Dheireadh Fómhair 2018. Tá an Oifig 828 méadar cearnóg ar meid.

Baineann an t-ídiú fuinnimh don oifig le leictreachas amháin, a úsáidtear i gcomhair téimh, soilsithe agus úsáid trealaimh.

Is é C2 an rátail fuinnimh don fhoirgneamh.

### CÚIL AN tSÚDAIRE

Tá achar 444 méadar cearnóg in oifig an Choimisiúin Cosanta Sonraí i gCúil an tSúdaire agus tá sí lonnaithe ar an urlár uachtarach i bhfoirgneamh dhá stór a tóghadh in 2006.

Baineann an t-ídiú fuinnimh don oifig le leictreachas i gcomhair soilsithe, úsáid trealaimh agus gás nádúrtha don téamh.

Is é C1 an rátail fuinnimh don fhoirgneamh.

### Gníomhaíochtaí a rinneadh

Glacann an Coimisiún Cosanta Sonraí páirt i gcóras ar líne ÚIFÉ chun a úsáid fuinnimh a thuairisciú i gcomhréir le Rialachán na gComhphobal Eorpach (Éifeachtacht Fuinnimh na Críochnúsaide agus le Seirbhísí Fuinnimh) 2009 (I.R. Uimh. 542 de 2009).

Is é seo a leanas an úsáid fuinnimh don oifig in 2019 (figíúirí bailíochtaithe ÚIFÉ is déanaí atá ar fáil):

Leictreach Gás Nádúrtha

### Baile Átha Cliath

Cearnóg Mhic Liam	93,878KwH	
Oifig Shatailíte	89,279KwH	
Cúil an tSúdaire	40,651KwH	49,379

### Forléargas ar bheartas/ráiteas um Chomhshaol don eagraíocht

Tá an Coimisiún Cosanta Sonraí tiomanta d'fheidhmiú i gcomhréir le beartais um chomhshaol agus inbhuanaitheacht Rialtas na hÉireann.

### Breac-chuntas ar thionscnaimh maidir le inbhuanaitheacht an chomhshaoil

- Tháinig deireadh le ceannach plaisteach aon úsáide ó Eanáir 2019 i leith
- Soilsíú LED a chur in ionad soilsíú fluaraiseach in oifig Chúil an tSúdaire toisc gur theip ar aonaid nó theastaigh na bolgáin a athrú
- Soilsíú braiteora in úsáid in oifig amháin (Satailít)
- Athbhreithniú ar an gcóras téimh in oifig amháin ar siúl (Cearnóg Mhic Liam)
- Cuireadh comórtas tairisceana úr i gcrích le haghaidh seirbhísí bailithe araidí chun seirbhís araidí múirín a chur san áireamh do Chúil an tSúdaire agus don Chearnóg Mhic Liam.

### Laghdú ar an Dramhaíl a Ghintear

- Úsáideann an Coimisiún Cosanta Sonraí socrú réamhshhocraithe printéara chun doiciméid dhéthaobhacha a phrontáil.
- Thug an Coimisiún Cosanta Sonraí démhonatóirí isteach chomh maith don fhoireann chun an gá atá le doiciméid a phrontáil lena n-athbhreithniú / cur i gcomparáid le doiciméid eile le linn cásoibre a laghdú.
- Soláthraíonn an Coimisiún Cosanta Sonraí araidí do Dhramhaíl Ghinearálta agus d'Athchúrsáil ag stáisiúin ar fud na n-oifigí.

### Athchúrsáil a Uasmhéadú

Is é beartas an Choimisiúin Cosanta Sonraí an páipéar dramhaíola ar fad a stíalladh go sábháilte. Tá consóil curtha ar fáil ag a lán suíomhanna ar fud na n-oifigí. Déantar an páipéar stíallta a athchúrsáil.

### Soláthar Inbhuanaithe

Comhlíonn soláthairtí agus próisis uile an Choimisiúin Cosanta Sonraí an Soláthar Inbhuanaithe.

Forordáitear i gconarthaí lónadóireachta eisiamh plaisteach aon úsáide.

# Aguisín 3: Ionchúisimh i ndáil le gearán faoi margaíocht dhíreach leictreonach

D'ionchúisigh an Coimisiún Cosanta Sonraí 6 chuideachta le linn 2020 as teachtaireachtaí téacs nó ríomhphoist gan iarraidh a sheoladh chuir custaiméirí nó iarchustaiméirí nó custaiméirí ionchasacha gan a gcead agus i gcás amháin gan seoladh bailí óna bhféadfaí an faughteoir iarratas a chur chun deireadh a chur le cumarsáid dá leithéid. Áiríodh leis na cuideachtaí sin Three Ireland Services (Hutchison) Limited, Mizzoni's Pizza & Pasta Company Limited, AA Ireland Limited, Ryanair DAC, Three Ireland (Hutchison) Limited agus Windsor Motors Unlimited Company.

## Ionchúiseamh Three Ireland Services (Hutchison) Limited

In mhí an Mheithimh agus mí Lúnasa 2019, fuair an Coimisiún Cosanta Sonraí dhá ghearán ó dhaoine aonair i ndáil le teachtaireachtaí téacs margaíochta gan iarraidh a fuair siad ón gcuideachta teileachumarsáide Three Ireland Services (Hutchison) Limited. Mar fhreagairt d'imscrúdú an Choimisiún Cosanta Sonraí ar an gcéad ghearán, mhínigh Three cé gur iarr an custaimér tarraingt amach as an margaíocht dhíreach leictreonach, mar gheall ar earráid theicniúil níor nuashonraíodh a rogha ar chórais na cuideachta. Maidir leis an dara gearán, léirigh Three gur cuireadh moill ar chur i bhfeidhm iarratas an chustaiméara chun tarraingt amach mar gheall ar locht a d'fhorbair ina gcóras bainistíochta cásanna mar thoradh ar athruithe inmhéanacha TF.

D'eisigh an Coimisiún Cosanta Sonraí litir um rabhadh foirmiúil chuir custaiméir Three in mí Eanáir 2016 i ndáil le gearán roimhe sin. Dá réir sin, chinn an Coimisiún Cosanta Sonraí dul ar aghaidh le hionchúiseamh a tháinig as an dá chás gearán sin.

Ag Cúirt Dúiche Chathair Bhaile Átha Cliath ar an 2 Mártá 2020, phléadáil Three ciontach as dhá chiontú faoi Rialachán 13(1) agus 13(13)(a)(i) de na Rialacháin maidir le Ríomhphríobháideachas. Chuir an Chúirt Dúiche Probation of Offenders Act 1907 i bhfeidhm, ag ordú go ndéanfaí an cheist a chaitheamh amach ar bhonn tabhartas carthanachta €200 le Little Flower Penny Dinners. D'aontaigh Mizzoni go n-íocfad sé costais dhlíthiúla an Choimisiún Cosanta Sonraí.

## Ionchúiseamh Mizzoni's Pizza & Pasta Company Limited

I mí an Mhárta agus mí Aibreáin 2019, fuair an Coimisiún Cosanta Sonraí ceithre ghearán ó dhaoine aonair i ndáil le teachtaireachtaí téacs margaíochta gan iarraidh a fuair siad ó Mizzoni's Pizza & Pasta Company Limited. Go sonrach, cuireadh béis sna gearán ar an mbuairt go bhféadfad sé gur coinníodh uimhreacha fón na gcuastaiméirí ar feadh tréimhse shuntasach ama i ndiaidh dháta a n-ordaithe dheireanaigh. I ndiaidh imscrúdú ar na gearán, bhí an Coimisiún Cosanta Sonraí sásta nár chloígh Mizzoni leis na rialacha maidir le toiliú bailí le haghaidh margaíocht dhíreach leictreonach faoi na Rialacháin maidir le Ríomhphríobháideachas.

D'eisigh an Coimisiún Cosanta Sonraí litir um rabhadh foirmiúil chuir custaiméir Three in mí na Samhna 2013 i ndáil le gearán roimhe sin. Dá réir sin, chinn an Coimisiún Cosanta Sonraí gníomh ionchúisimh a thionscnamh ar bhonn na ngearán úr sin.

Ag Cúirt Dúiche Chathair Bhaile Átha Cliath ar an 2 Mártá 2020, phléadáil Mizzoni ciontach as ciontú amháin faoi Rialachán 13(1) agus 13(13)(a)(i) de na Rialacháin maidir le Ríomhphríobháideachas. Chuir an Chúirt Dúiche Probation of Offenders Act 1907 i bhfeidhm, ag ordú go ndéanfaí an cheist a chaitheamh amach ar bhonn tabhartas carthanachta €200 le Little Flower Penny Dinners. D'aontaigh Mizzoni go n-íocfad sé costais dhlíthiúla an Choimisiún Cosanta Sonraí.

## Ionchúiseamh Three Ireland (Hutchison) Limited

In mhí an Mhárta, Aibreáin agus an Mheithimh 2020, fuair an Coimisiún Cosanta Sonraí trí ghearán ó dhaoine aonair

i ndáil le teachtaireachtaí téacs margáiochta gan iarraidh a fuair siad ó chuideachta teileachumarsáide Three Ireland (Hutchison) Limited. Mar fhreagairt d'imscrídú an Choimisiúin Cosanta Sonraí ar an gcéad ghearán, mhínigh Three cé gur iarr an custaiméir tarraingt amach as an margáiocht dhíreach leictreonach, mar gheall ar fhrídín uaineach ina gcóras, fuarthas teachtaireachtaí amhail tarraingt amach ach níor spreag siad an beart a theastaigh. Mar thoradh air sin níor nuashonraíodh a rogha ar chóras na cuideachta. Maidir leis an dara gearán, léirigh Three nár ionchuireadh iarratais an chustaiméara chun tarraingt amach sa chóras mar gheall ar fhadhb chumraíochta a tháinig as athruithe immheánacha TF. Maidir leis an tríú gearán, shonraigh Three gur tharraing an custaiméir amach as an margáiocht dhíreach leictreonach agus go bhfuair sé deimhniú ina leith sin. Mar gheall ar earráid dhaonna, áfach, i gcás gur úsáideadh sraith ceadanna mhícheart, cuireadh margáiocht dhíreach leictreonach eile chuici.

Rinne an Coimisiún Cosanta Sonraí Three a ionchúiseamh roimhe sin in 2012 as Rialachán 13 de na Rialacháin maidir le Ríomhphríobháideachas a shárú maidir le trí ghearán roimhe sin. Dá réir sin, chinn an Coimisiún Cosanta Sonraí dul ar aghaidh go dtí ionchúiseamh eile a tháinig as an trí chás gearán sin.

Ag Cúirt Dúiche Chathair Bhaile Átha Cliath ar an 17 Nollaig 2020, phléadál Three ciontach as ceithre chiontú faoi Rialachán 13(1) agus 13(13)(a)(i) de na Rialacháin maidir le Ríomhphríobháideachas. Chuir an Chúirt Dúiche Probation of Offenders Act 1907 i bhfeidhm, ag ordú go ndéanfaí an cheist a chaitheamh amach ar bhonn tabhartas carthanachta €2,000 le Little Flower Penny Dinners. D'aontaigh Three go n-iocfadh sé costais dhlíthiúla an Choimisiúin Cosanta Sonraí.

## Ionchúiseamh AA Ireland Limited

In mhí lúil agus Dheireadh Fómhair 2019, fuair an Coimisiún Cosanta Sonraí trí ghearán ó dhaoine aonair i ndáil le teachtaireachtaí téacs agus ríomhphoist margáiochta gan iarraidh a fuair siad ó AA Ireland Limited. Mar fhreagairt d'imscrídú an Choimisiúin Cosanta Sonraí ar an gcéad ghearán, mhínigh AA gur iarr an custaiméir tarraingt amach as an margáiocht dhíreach leictreonach in 2017 agus gur cuireadh an tarraingt amach sin i bhfeidhm ag an am. Mar gheall ar 'fhadhb sa chóras', áfach, taifeadadh roinnt blianta ina dhiaidh sin gur roghnaigh sé páirt a ghlaicadh agus go bhfuair sé tuilleadh margáiocht díreach leictreonach ar an ríomhphost. Maidir leis an dara gearán, léirigh AA go bhfuair sé iarratais an chustaiméara chun tarraingt amach ach toisc gur chuir an custaiméir cúig luachan éagsúla i grích agus go gcaithfí an tarraingt amach a chur i bhfeidhm ar gach ceann, mar thoradh air sin tharla moill agus cuireadh naión déag teachtaireacht téacs margáiochta eile chuici tar thréimhse ocht lá i ndiaidh di tarraingt amach ar dtús. Maidir leis an tríú gearán, shonraigh AA nár roghnaigh an custaiméir margáiocht dhíreach leictreonach a fháil riamh. Mhaigh sé chomh maith gur meabhrúcháin a bhí sna teachtaireachtaí téacs a cuireadh chuir an gcustaiméir go raibh an dáta le haghaidh athnuachan a n-árachais ag druidim linn agus mheas sé gur teachtaireachtaí idirbhírt

a bhí sna teachtaireachtaí sin seachas teachtaireachtaí margáiochta. Mar gheall ar ábhar na dteachtaireachtaí téacs, áfach, mheas an Coimisiún Cosanta Sonraí gur teachtaireachtaí téacs margáiochta gan iarraidh a bhí iontu.

Rinne an Coimisiún Cosanta Sonraí AA a ionchúiseamh roimhe sin in 2018 as Rialachán 13 de na Rialacháin maidir le Ríomhphríobháideachas a shárú maidir le gearán amháin roimhe sin. Dá réir sin, chinn an Coimisiún Cosanta Sonraí dul ar aghaidh go dtí ionchúiseamh eile a tháinig as an trí chás gearán sin.

Ag Cúirt Dúiche Chathair Bhaile Átha Cliath ar an 17 Nollaig 2020, phléadál AA ciontach as trí chiontú faoi Rialachán 13(1) agus 13(13)(a)(i) de na Rialacháin maidir le Ríomhphríobháideachas. Chuir an Chúirt Dúiche Probation of Offenders Act 1907 i bhfeidhm, ag ordú go ndéanfaí an cheist a chaitheamh amach ar bhonn tabhartas carthanachta €2,500 le Little Flower Penny Dinners. D'aontaigh AA go n-iocfadh sé costais dhlíthiúla an Choimisiúin Cosanta Sonraí.

## Ionchúiseamh Ryanair DAC

I mí na Bealtaine 2019, fuair an Coimisiún Cosanta Sonraí gearán ó dhuine aonair maidir le ríomhphost margáiochta a fuair siad ó Ryanair DAC nach raibh siad ábalta díliostáil as. Léirigh an gearánaí nuair a úsáid siad an cnaipe chun díliostáil ón ríomhphost a fuair siad ó Ryanair fuair siad teachtaireacht earráide. Lean siad ar aghaidh ag fáil tuilleadh ríomhphoist mhargaíochta ina dhiaidh sin. Mar fhreagairt ar imscrídú an Choimisiúin Cosanta Sonraí ar an ngearán, mhínigh Ryanair go bhfuair custaiméirí an 'teachtaireacht earráide' dá dtagraíodh sa ghearán mar gheall ar fhadhb theicniúil laistigh de Adobe Campaign (a úsáideann Ryanair lena bhfeachtas ríomhphoist a reáchtáil) a chuaigh i gcion ar iarratais ar dhíliostáil / tarraingt amach.

D'eisigh an Coimisiún Cosanta Sonraí litir um rabhadh foirmíúil chuit Ryanair in mí Aibreán 2013 i ndáil le dhá ghearán roimhe sin. Dá réir sin, chinn an Coimisiún Cosanta Sonraí gníomh ionchúisimh a thionscnamh ar bhonn an ghéaráin úir sin.

Ag Cúirt Dúiche Chathair Bhaile Átha Cliath ar an 17 Nollaig 2020, phléadál Ryanair ciontach as dhá chiontú faoi Rialachán 13(1), 13(12)(c) agus 13(13)(a)(i) de na Rialacháin maidir le Ríomhphríobháideachas. Chuir an Chúirt Dúiche Probation of Offenders Act 1907 i bhfeidhm, ag ordú go ndéanfaí an cheist a chaitheamh amach ar bhonn tabhartas carthanachta €5,000 le Little Flower Penny Dinners. D'aontaigh Ryanair go n-iocfadh sé costais dhlíthiúla an Choimisiúin Cosanta Sonraí.

## Ionchúiseamh Windsor Motors Unlimited Company

I mí Mheán Fómhair 2019, fuair an Coimisiún Cosanta Sonraí trí ghearán ó dhaoine aonair i ndáil le teachtaireachtaí téacs margáiochta gan iarraidh a fuair siad ó Windsor Motors Unlimited Company. Mar fhreagairt ar imscrídú an Choimisiúin Cosanta Sonraí ar an gcéad agus

ar an dara gearán, mhínígh Windsor Motors gur sholáthair na hiarchustaiméirí a sonraí teagmhála don chuideachta in 2008 nuair a rinneadh obair sheirbhíse ar a bhfeithicí. D'admhaigh gurbh é i mí Mheán Fómhair 2019 an chéad uair a díríodh ar uimhreacha fón phóca na n-iarchus-taiméirí sin le teachtaireachtaí margaíochta — aon bhliain déag ina dhiaidh sin. Ghlac sé dearcadh an Choimisiún Cosanta Sonraí nár choinnigh sé toiliú margaíochta ar bith a d'fhéadfadh go bhfuair sé in 2008 cothrom le dáta i gcomhréir leis an rial dhá mhí dhéag atá leagtha amach i Rialachán 13(11)(d) de na Rialacháin maidir le Ríomhphríobháideachas. Maidir leis an tríú gearán, léirigh Windsor Motors go bhfuair sé iarratas an iarchustaiméara ionchasaigh maidir le tarraingt amach in 2017 agus gur cuireadh déileáladh leis an iarratas sin ar tharraingt amach. Mar sin féin, bhí sé beagnach bliain ina dhiaidh sin mar gheall ar earráid agus córas úr TF á thabhairt isteach gur cuireadh an rogha páirt a ghlacadh sa mhargaíocht arís gan chuimhneamh i sonraí an duine aonair.

D'eisigh an Coimisiún Cosanta Sonraí litir um rabhadh foirmíúil chuig Windsor Motors i mí Iúil 2017 i ndáil le gearán roimhe sin a fuarthas ón gcustaiméir ionchasach dá dtagraítear thuas. Dá réir sin, chinn an Coimisiún Cosanta Sonraí gníomh ionchúisimh a thionscnamh ar bhonn na ngearán úr sin.

Ag Cúirt Dúiche Chathair Bhaile Átha Cliath ar an 17 Nollaig 2020, phléadáil Windsor Motors ciontach as ciontú amháin faoi Rialachán 13(1) agus 13(13)(a)(i) de na Rialacháin maidir le Ríomhphríobháideachas. Chuir an Chúirt Dúiche Probation of Offenders Act 1907 i bhfeidhm, ag ordú go ndéanfaí an cheist a chaitheamh amach ar bhonn tabhartas carthanachta €1,000 le Little Flower Penny Dinners. D'aontaigh Windsor Motors go n-íocfadh sé costais dhlíthiúla an Choimisiún Cosanta Sonraí.

## Aguisín 4: Cuideachta Idirnáisiúnta Twitter — Fiosrúchán (IN-19-1-1) faoi Alt 110 den Acht um Chosaint Sonraí 2018

### Cuideachta Idirnáisiúnta Twitter — Fiosrúchán (IN-19-1-1) faoi Alt 110 den Acht um Chosaint Sonraí 2018

San Fiosrúchán sin, a thionscain an Coimisiún Cosanta Sonraí ('an Coimisiún') ar an 22 Eanáir 2019, rinneadh scrúdú ar cé acu ar chloígh nó nár cloígh Cuideachta Idirnáisiúnta Twitter ('TIC') lena oibleagáidí faoin RGCS i ndáil lena fhógra, ar an 8 Eanáir 2019, maidir le sárú ('an Sárú') ar shonraí pearsanta don Choimisiún. Bhain an Sárú, a tharla ag próiseálaí TIC, Twitter Inc., le frídín i gcás nuair a dhéanfadh úsáideoir Twitter ag a raibh cuntas cosanta, ag úsáid Twitter for Android, a seoladh ríomhphoist a athrú, nach raibh a gcuntas cosanta a thuilleadh.

Ba é an aidhm leis an bhFiosrúchán scrúdú a dhéanamh ar cheisteanna áirithe thart ar fhógra TIC maidir leis an Sárú, seachas scrúdú a dhéanamh ar na ceisteanna suntasacha a bhain leis an Sárú féin. Maidir leis sin, rinneadh scrúdú san Fiosrúcháin ar cé acu ar chloígh nó nár chloígh TIC le hAirteagal 33(1) den RGCS i gcomhthéacs uainiuá a fhógra maidir leis an Sárú don Choimisiún, agus cé acu ar chloígh nó nár chloígh sé le hAirteagal 33(5) den RGCS, i ndáil lena dhoiciméadú maidir leis an Sárú.

### Fíricí as ar tháinig an Fiosrúchán

Rinneadh fógra TIC mar leis an Sárú don Choimisiún, a raibh an Fiosrúchán mar thoradh air, ar an 8 Eanáir 2019 trí Fhoirm chomhláinthe um FHógra maidir le Sárú Trasteorann. San Fhoirm, léirigh an TIC go bhfuair sé tuairisc maidir le frídín trína 'Bug Bounty Program' ina ndúradh go bunúsach "...I gcás go ndéanfadh úsáideoir Twitter ag a raibh cuntas cosanta, ag úsáid Twitter for Android, a seoladh ríomhphoist a athrú bheadh sé mar thoradh ar an bhfrídín nach raibh a gcuntas cosanta a thuilleadh." San Fhoirm um FHógra maidir le Sárú a bhfuil tuilleadh eolais tugtha air, i ndáil le cúiseanna nár tugadh fógra don Choimisiún laistigh den tréimhse 72 uair an chloig arna cheangal le hAirteagal 33(1),

"Níor tuigeadh déine na ceiste — agus go raibh sé intuiríscithe — go dtí an 3 Eanáir 2018 agus ag an bpointe sin cuireadh próiseas freagartha teagmhas Twitter i bhfeidhm."

Sainaithníodh leis an bhFoirm um FHógra maidir le Sárú go bhféadfadh an tionchar féideartha ar dhaoine a ndeachthas i bhfeidhm orthu, faoi mar a mheasúnaigh TIC, a bheith "suntasach". I bhfoirm iarmheasúnaithe um fhógra a chuir TIC faoi bhráid an Choimisiún ar an 16 Eanáir 2019, dheimhnigh TIC gurbh é 88,726 líon na n-úsáideoirí AE agus LEE a ndeachthas i bhfeidhm orthu. Dheimhnigh

sé chomh maith gur tugadh isteach an frídín a raibh an Sárú mar thoradh air “ar an 4 Samhain 2014 agus go raibh sé leigheasta go hiomlán faoin 14 Eanáir 2019” agus gur chreid sé, toisc nach bhféadfaí gach duine a ndeachtas i bhfeidhm orthu a shainaithint (mar gheall ar theorainneacha coinneála ar logaí a bhí ar fáil), gur cuireadh isteach ar thuilleadh daoine le linn na tréimhse sin.

## Fiosrúchán faoi Alt 110, an tAcht um Chosaint Sonraí 2018

De réir mar a dhealraigh sé ón bhFoirm um Fhógra maidir le Sárú a chuir TIC isteach d’imigh tréimhse níos mó ná 72 uair an chloig thart ó nuair a tháinig TIC (mar rialaitheoir) ar an eolas faoin Sárú, agus ag féachaint do lón na n-ábhar sonraí a ndeachtas i bhfeidhm orthu, chuir an Coimisiún túis leis an bhFiosrúchán, faoi Alt 110(1) den Acht um Chosaint Sonraí 2018 (‘Acht 2018’) chun scrúdú a dhéanamh ar cé acu ar chloígh nó nár chloígh TIC lena oibleagáidí faoi Airteagal 33, agus níos sonraí arís, lena oibleagáidí faoi Airteagal 33(1) agus Airteagal 33(5).

## Comhlíonadh Airteagal 33(1)

Agus measúnú á dhéanamh ar chomhlíonadh TIC maidir le hAirteagal 33(1), scrúdaigh an Coimisiún an amlíne i ndáil le fógra TIC faoin Sárú don Choimisiún. Maidir leis sin, dheimhnigh TIC don Choimisiún le linn an Fhiosrúchán go bhfuarthas fógra faoin bhfrídín ar dtús ar an 26 Nollaig 2018 ó chonraitheoir seachtrach a bhí fostaithe ag Twitter chun frídíní a chuardach agus a mheasúnú tríd an gClár Big Bounty, clár trína féidir le duine ar bith tuairisc ar fhridín a chur isteach. Dheimhnigh TIC chomh maith go ndearna an conraitheoir seachtrach, ar an 29 Nollaig 2018, agus measúnú déanta aige ar an tuairisc ar fhridíní, toradh a mheasúnaithe a chur in iúl do Twitter Inc. Dheimhnigh TIC ansin gur chuir Twitter Inc. túis ansin lena athbhreithniú inmheánach ar an tSlándál Faisnéise maidir leis an gceist ar an 2 Eanáir 2019, agus ina dhiaidh sin, ar an 3 Eanáir 2019, gur mheasúnaigh Twitter Inc. an teagmhas mar a bheith ina shárú féideartha ar shonraí pearsanta faoin RGCS agus chinn sé gur chóir an plein freagartha teagmhas a thionscnamh. Dheimhnigh TIC chomh maith, ina dhiaidh sin (ar an 4 Eanáir 2019), gur osclaíodh ticéad Bainistíochta Teagmhas (IM) ach, mar gheall gur theip ar (fhoireann Twitter Inc.) céim faoi leith a ghlacadh sa phróiseas bainistíochta teagmhas faoi mar a bhí sé ordaithe, níor cuireadh an Oifigeach Cosanta Sonraí (OCS) do TIC leis an ticéad IM, rud a raibh moill ar fhógra a chur chuig an OCS (agus, dá réir sin TIC mar rialaitheoir) faoin gceist mar thoradh air.

Dheimhnigh TIC don Choimisiún gurbh é a phróiseálaí, Twitter Inc. a chuir an Sárú in iúl dó ar dtús, ar an 7 Eanáir 2019. D’admhaigh sé gur cloígh sé, i gcúinsí gur thug sé fógra don Choimisiún faoin Sárú ar an 8 Eanáir 2019, leis an gceanglas maidir le fógra a thabhairt faoi Airteagal 33(1).

Agus an amlíne i ndáil le fógra TIC den Sárú á cur san áireamh, tháinig an Coimisiún ar an tuairim, in ainneoin fhíorfeasacht TIC ar an Sárú ar an 7 Eanáir 2019, gur cheart go raibh TIC ar an eolas faoin Sárú níos luaithe agus, sa chás faoi leith sin, faoin 3 Eanáir 2019 ar a dhéanaí. Ag teacht ar an tuairim sin di, chuir an Coimisiún san áireamh gurbh é an 3 Eanáir 2019 an dáta ar a mheas Twitter Inc an teagmhas ar túis mar bheith ina shárú féideartha ar

shonraí pearsanta ach, ar chuíseanna neamhfeachtúlacht an phróisis sna cúinsí sonracha a thit amach agus/nó mainneachtain Twitter Inc. cloí lena phróiseas bainistíochta teagmhas féin, tharla moill ar an sárú féideartha sonraí a chur in iúl don OCS agus, dá réir sin, níor cuireadh TIC (mar rialaitheoir) ar an eolas faoin Sárú go dtí an 7 Eanáir 2019.

Ag teacht ar an toradh sin di, chuir an Coimisiún moill níos luaithe san áireamh chomh maith a tháinig chun cinn sa tréimhse ó chuir an conraitheoir seachtrach an teagmhas in iúl do Twitter Inc ar dtús ar an 29 Nollaig 2018 go dtí gur thosaigh Twitter Inc. a athbhreithniú ar Shlándál Faisnéise ar an gceist ar an 2 Eanáir 2019. Le linn an Fhiosrúchán, dheimhnigh TIC don Choimisiún gur tharla an mhoill sin “mar gheall ar sceideal laethanta saoire an gheimhrídh” (i gcúinsí go raibh trí lá den cheithre lá a bhí i gceist ina laethanta saoire — deireadh seachtaire agus Lá na Blíana Úire), agus mar gheall air sin níor sainaithníodh agus níor formhéasaíodh an cheist mar ba chóir. Mar sin féin, níor ghlac an Coimisiún leis go raibh an mhoill sin réasúnta, go háirithe i gcúinsí nach féidir failí a dhéanamh i gcás go bhféadfadh rioscaí a bheith i gceist do chearta cosanta sonraí agus príobháideachais ábhar sonraí, fiú ar feadh tréimhse theoranta laethanta, mar gheall gur lá/tréimhse saoire oifigiúil a bhí ann díreach agus á chur san áireamh nach gcuirtear stop le seirbhís Twitter ag amanna mar sin.

Faoi mar atá léirithe sa Chinneadh, bhainfeadh cur i bhfeidhm malartach Airteagal 33(1), agus é sin a mhol TIC le linn an Fhiosrúchán, go mbraitheann feidhmiú rialaitheora dá oibleagáid fógra a thabhairt, go bunúsach, ar chomhlíonadh a phróiseálaí maidir lena oibleagáidí faoi Airteagal 33(2), an bhonn ó éifeachtúlacht oibleagáidí Airteagal 33 ar rialaitheoir. Thiocfadh cur chuige dá leithéid salach ar chuspóir foriomlán an RGCS agus rún reachtóir AE.

## Comhlíonadh Airteagal 33(5)

Agus measúnú á dhéanamh ar chomhlíonadh TIC maidir le hAirteagal 33(5), rinne an Coimisiún athbhreithniú ar na doiciméad a chuir TIC isteach le linn an Fhiosrúchán, agus inar maígh sé gur thaifead sé an Sárú.

Agus amhlaidh á dhéanamh, fuair an Coimisiún nár chloígh TIC le hAirteagal 33(5). Bhí sé sin sna cúinsí i gcás na ndoiciméad a bhí á gcoinneáil ag TIC — ina n-aonar nó le chéile — nach raibh taifead, nó doiciméad iontu, maidir le, go sonrach, ‘sárú ar shonraí pearsanta’ laistigh de théarmaí Airteagal 33(5), ach seachas sin ba doiciméid ghinearálta a bhí iontu, lena n-áirítear tuarascálacha agus teachtaireachteáin inmheánacha, a cruthaíodh le linn bhainistíocht TIC ar an teagmhas.

Lena chois sin, fuair an Coimisiún nach raibh go leor faisnéise sna doiciméid a bhí á gcoinneáil ag TIC i ndáil leis an Sárú chun go mbeifi ábalta ceist um chomhlíonadh TIC maidir le ceanglais Airteagal 33 a dheimhníu, faoi mar a cheanglaítear le hAirteagal 33(5). Go sonrach, fuair an Coimisiún go raibh na doiciméid, ar chuir TIC in iúl gur iad an phríomhthaifead ina raibh na fíricí, éifeachtaí agus gníomh leigheasta a rinneadh maidir leis an Sárú taifeadta aige, easnamhach maidir le cúinsí i gcás raibh na fíricí ábhartha ar fud iontu i ndáil leis an bhfógra faoin Sárú don Choimisiún. Go sonrach, ní raibh tagairt ar bith sna doiciméid do na ceisteanna as ar tháinig an mhoill ar fhógra óna phróiseálaí faoin Sárú do TIC, níor tugadh aghaidh iontu ar an dóigh a ndearna TIC measúnú ar an riosca mar gheall ar an Sárú do na húsáideoirí

lena mbaineann. Fuair an Coimisiún chomh maith gur léiríodh easnaimh ar na doiciméid a chur TIC ar fáil mar thaifead den Sárú tuilleadh mar gheall gurbh éigean don Choimisiún, le linn an Phiosrúcháin, fiosrúcháin iomadúla a ardú chun soiléireacht a fháil maidir leis na firicí i ndáil le fógra faoin Sárú.

## Próiseas faoi Airteagal 60 agus Airteagal 65 den RGCS

Ar an 22 Bealtaine 2020, d'eisigh an Coimisiún dréacht dá Chinneadh ('an Dréachtchinneadh') chuig údarás mhaoirseachta eile lena mbaineann ('CSAnna') dá dtuairim i gcomhréir leis an bpróiseas faoi Airteagal 60 den RGCS. Leagan amach sa Dréachtchinneadh toradh beartaithe an Choimisiún maidir le sáruithe faoi Airteagail 33(1) agus 33(5) agus a thogra maidir le fineáil riarrachán a fhorchur. Faoi Airteagal 60(4), tugtar tréimhse ceithre seachtaine do CSAnna chun agóid ábhartha agus réasúnaithe i gcoinne dréachtchinnidh a chur in iúl.

Chuir líon CSAnna agóidí in iúl i ndáil le gnéithe den Dréachtchinneadh, lena n-áirítear agóidí ar an mbonn gurbh cheart don Choimisiún, mar chuid dá Phiosrúchán, forálacha den RGCS a bhreithniú; agóidí i ndáil le cúrsáí neamhshubstaunteacha, amhail ainmniú ról an fhreagróra a bhí faoi imscrúdú (TIC) agus inniúlacht an Choimisiún, mar Phríomhúdarás Maoirseachta, chun déileáil leis an gceist; agus agóidí i ndáil leis an bhfíneáil riarrachán a mhol an Coimisiún.

I ndiaidh na hagóidí a ardaíodh a chur san áireamh, agus iarrachtaí a dhéanamh chun teacht ar chomhaontú leis na CSAnna, níorbh fhéidir leis an gCoimisiún na hagóidí a leanúint i nDréachtchinneadh leasaithe. Ar an mbonn sin, d'atreoraigh an Coimisiún an cheist chuig an mBord Eorpach um Chosaint Sonrai ('EDPB') lena chinneadh de bhun shásra réitigh díospóidi Airteagal 65. Chuir an Bord Eorpach um Chosaint Sonrai tú le nós imeachta Airteagal 65 ar an 8 Meán Fómhair 2020. Agus a chinneadh ceangailteach faoi Airteagal 65(1)(a) ('an EDPB) glactha aige ar an 9 Samhain 2020, thug an EDPB fógra faoi sin don Choimisiún ar an 17 Samhain 2020. As sin amach, de bhun Airteagal 65(6), ceangláodh ar an gCoimisiún a chinneadh deiridh a ghlacadh ar bhonn Chinneadh an EDPB "gan moill mhíchuí agus faoi mhí amháin ar a dhéanaí i ndiaidh don Bhord a chinneadh a chur in iúl."

Foráltear in Airteagal 65(1)(a) maidir le cinneadh ceangailteach an EDPB faoi Airteagal 65, "...go mbainfidh sé le gach ceist ar ábhar in agóid ábhartha agus réasúnaithe iad, go háirithe cé acu an bhfuil sárú a dhéanamh ar [an RGCS]". Maidir leis sin, i gcomhthéacs mheasúnú an EDPB ar na hagóidí a d'ardaigh na CSAnna sa chás sin, fuarthas i gCinneadh an EDPD nach raibh roinnt de na hagóidí a ardaíodh 'ábhartha agus réasúnaithe' laistigh de bhrí Airteagal 4(24) ar an mbonn nár sholáthair siad léiriú soiléir ar shuntasacht na rioscaí a bhain leis an Dréachtchinneadh i ndáil le cearta agus saoirsí bunúsacha na n-ábhar sonraí agus, nuair is infheidhme, saorshreabhadh sonraí pearsanta laistigh den Aontas Eorpach (faoi mar a cheanglaítear le hAirteagal 4(24)).

Maidir le líon agóidí eile a ardaíodh, agus a rinneadh ar an mbonn gurbh cheart go ndearna an Coimisiún sáruithe eile faoi fhorálacha eile den RGCS a bhreithniú (go sonrach, Airteagail 5(1)(f), 5(2), 24 agus 32), agus cé go bhfuair an EDPB go raibh na hagóidí sin ábhartha agus

réasúnaithe faoin Airteagal 4(24), chinn sé nach féidir leis, ar bhonn na gngéithe firiciúla sa Dréachtchinneadh nó sna hagóidí féin, a dhearbhú go raibh sáruithe eile dá leithéid (nó a malairt) ann.

Ar deireadh, agus i ndáil leis na hagóidí a d'ardaigh na CSAnna i ndáil leis an bhfíneáil riarrachán a fhorchuireadh, fuair an EDPB go raibh cuid áirithe de na hagóidí sin ábhartha agus réasúnaithe faoi Airteagal 4(24). Dá réir sin, d'eisigh an EDPB treoir cheangailteach chuig an gCoimisiún chun athmheasúnú a dhéanamh ar na gnéithe ar a raibh sé ag brath chun méid na fineála (faoi Airteagal 83(2) den RGCS) a ríomh agus chun a Dréachtchinneadh a leasú trí leibhéal na fineála a mhéadú. (*Le haghaidh tuilleadh eolais maidir le Cinneadh an EDPB, féach ar shuíomh gréasáin an EDPB san áit ina bhfuil Cinneadh an EDPB foilsithe*).

## Cinneadh faoi Alt 111 d'Acht 2018

Ghlac an Coimisiún a Cinneadh deiridh ('an Cinneadh') ar bhonn Chinneadh an EDPB de bhun Airteagal 60(7) i gcomhar le hAirteagal 65(6), ar an 9 Nollaig 2020. Ar a fháil amach gur sháraigh TIC Airteagal 33(1) agus Airteagal 33(5) araoen, d'fhorchuir an Coimisiún fineáil riarrachán \$500,000 (a mheastar chun na críche seo ag €450,000) a léirigh méadú ar leibhéal na fineála riarrachán beartaithe arna leagan amach sa Dréachtchinneadh, i gcomhréir le treoir an EDPB. Agus an fhíneáil sin á socrú, chinnigh an Coimisiún, faoi mar a cheanglaítear air a dhéanamh faoi Airteagal 83(1) den RGCS, go raibh an fhíneáil a forchuireadh éifeachtach, comhréireach agus athchomhairleach. Maidir leis sin, agus cinneadh á dhéanamh i ndáil le fineáil a fhorchur agus méid na fineála sin a shocrú, breithnígh an Coimisiún an réimse iomlán tosca faoi Airteagal 83(2) den RGCS i gcomhthéacs chúinsí an chás faoi leith. Agus amhlaidh á dhéanamh, thug an Coimisiún aird faoi leith ar chineál, ar dhéine agus ar fhad na sáruithe lena mbaineann, ag cur san áireamh cineál, raon agus cuspóir na próiseála agus líon na n-ábhar sonraí lenar bhain. Thug an Coimisiún aird chomh maith ar chineál faillitheach na sáruithe. Agus an fhíneáil á socrú, chuir an Coimisiún tosca eile san áireamh, lena n-áirítear na céimeanna a rinne Twitter Inc. chun an frídín a cheartú.

Ag teacht ar a chinneadh di sa chás sin, chuir an Coimisiún béim chomh maith go mbaineann tábhacht faoi leith le comhlíonadh an rialaitheora maidir leis na hoibleagáidí faoi Airteagal 33(1) agus Airteagal 33(5) maidir le feidhmiú foriomlán an chórais maoirseachta agus forfheidh-miúcháin a dhéanann údarás um chosaint sonraí.

## Dearbhú ag an gCúirt Chuarda maidir le cinneadh chun fineáil riarrachán a fhorchur

Faoi Alt 143 d'Acht 2018, ceanglaítear ar an gCoimisiún iarratas a chur faoi bhráid na Cúirte Cuarda ar dhearbhú ar a chinneadh fineáil riarrachán a fhorchur. Ní féidir iarratas dá leithéid a dhéanamh ach nuair a éagfaidh an t-achar ama (28 lá), arna leagan síos le hAlt 142(1) d'Acht 2018, i gcomhair achomhairc ar an gcinneadh a rinne an rialaitheoir nó an próiseálaí lena mbaineann. Ag tráth an fhoileacháin, agus an t-achar ama don achomharc imithe in éag, tá an Coimisiún ag déanamh réidh le hiarratas a chur faoi bhráid na Cúirte Cuarda, faoi Alt 143 d'Acht 2018, ar dhearbhú ar a cinneadh i ndáil leis an bhfíneáil riarrachán.

# Aguisín 5: Dlíthíocht maidir le Clásail Conarthacha Chaighdeánacha

**Coimisinéir Cosanta Sonraí i leith  
Facebook na hÉireann Teoranta agus  
Maximilian Schrems [Uimh. Thaifid.  
2016/ 4809 P]**

Ar an 31 Bealtaine 2016, thionscain DPC (an Coimisinéir Cosanta Sonraí ag an am) imeachtaí in Ard-Chúirt na hÉireann ag lorg tagartha do Chúirt Breithiúnais an Aontais Eorpáigh maidir le bailíochtú "clásal conarthach caighdeánach" (**CCCan**) Sásra is ea CCCanna, arna mbunú le líon cinní ó Choimisiún AE, faoinar féidir sonraí pearsanta a aistriú ón Aontas Eorpach go dtí na Stáit Aontaithe faoi láthair. Thionscain an Coimisiún Cosanta Sonraí na himeachtaí sin i gcomhréir leis na nós imeachta atá leagtha amach ag Cúirt Breithiúnais an Aontais Eorpáigh ina breithiúnas ar an 6 Deireadh Fómhair 2015 (lenar cealaíodh an córas Tearmainn maidir le haistriú sonraí pearsanta ó AE go SAM). Rialaigh CBAE go gcaithfeadh údarás um chosaint sonraí AE an nós imeachta sin (a bhaineann le tagairt don CBAE a lorg) i gcás go measann údarás um chosaint sonraí AE go bhfuil údar maith le gearán arna dhéanamh ag ábhar sonraí i ndáil le hionstraim AE, amhail cinneadh ó Choimisiún AE.

## (1) Cúlra

Tá bunús na n-imeachtaí a rinne an Coimisiún Cosanta Sonraí sa bhunghearán a rinne an tUasal Maximillian Schrems i mí an Mheithimh 2013 leis an gCoimisiún Cosanta Sonraí maidir le haistriú sonraí pearsanta ag Facebook Ireland chuig a mháthairchuideachta Facebook Inc. i SAM. Bhí imní ar an Uasal Schrems, mar go raibh a shonraí pearsanta á n-aistriú ó Facebook Ireland go Facebook Inc., go raibh na sonraí pearsanta á rochtain go neamhdhleathach (nó go raibh an baol ann go mbeadh rochtain orthu) ag gníomhaireachtaí slándála stáit na Stát Aontaithe. Tháinig buartháil an Uasal Schrems chun cinn i bhfianaise noctadh Edward Snowden i ndáil le cláir áirithe ar maíodh go raibh siad á n-oibriú ag Gníomhaireacht Slándála Náisiúnta SA, go sonrach clár ar a dtugtar "PRISM". Dhiúltaigh an Coimisiún Cosanta Sonraí imscrídú a dhéanamh ar an ngearán sin ar an bhforas gur bhain sé le cinneadh ó Choimisiún AE (lenar bunaíodh an córas Tearmainn le haghaidh sonraí a aistriú ó AE go SAM) agus ar an mbonn sin bhí sí faoi cheangal faoin dlí náisiúnta agus AE a bhí ann ceana an cinneadh sin ó Choimisiún AE a chur i bhfeidhm. Thionscain an tUasal Schrems caingean athbhreithnithe bhreithiúnach i gcoinne an chinnidh gan imscrídú a dhéanamh

ar a ghearán agus mar gheall ar an gcaingean sin rinne Ard-Chúirt na hÉireann tagairt don CBAE, a sholáthair a chinneadh ar an 6 Deireadh Fómhair 2015.

## (2) Nós imeacht CBAE i ndáil le gearáin a bhaineann le cinntí ó Choimisiún AE

Le rialú an CBAE an 6 Deireadh Fómhair 2015 soiléiríodh nuair a dhéantar gearán le húdarás um chosaint sonraí AE a bhaineann le héileamh nach bhfuil cinneadh ó Choimisiún AE comhoiriúnach le príobháideacht agus cearta agus saoirsí bunúsacha a chosaint, nach mór don údarás ábhartha um chosaint sonraí scrúdú a dhéanamh ar an ngearán sin fiú mura mbeidh an t-údarás um chosaint sonraí sin é féin ábalta an cinneadh sin a chur i leataobh nó déileáil leis mar a bheith neamhbhainteach. Rialaigh an CBAE má mheasann an t-údarás um chosaint sonraí go bhfuil údar maith leis an ngearán, mar sin ní mór dul i mbun imeachtaí dlíthiúla os comhair na Cúirte náisiúnta agus, má bhíonn an t-amhras céanna ar an gCúirt náisiúnta maidir le bailíocht an chinnidh ó Choimisiún AE, ní mór don Chúirt náisiúnta ansin tagairt a dhéanamh don CBAE le haghaidh réamhrialú maidir le bailíocht an Chinnidh ó Choimisiún AE lena mbaineann. Faoi mar a luaitear thusa, chealaigh Cúirt Breithiúnais an Aontais Eorpáigh ina breithiúnas ar an 6 Deireadh Fómhair 2015 an cinneadh ó Choimisiún AE chomh maith lenar cuireadh taca faoin gcorás Tearmainn maidir le haistriú sonraí AE go SAM.

## (3) Dréachtchinneadh an Choimisiúin Cosanta Sonraí

I ndiaidh chealú an chórais Tearmainn maidir le haistriú sonraí pearsanta, rinne an tUasal Schrems a ghearán a athcheapadh agus a chur isteach arís lena chuntas féin maidir leis an imeacht sin agus d'aontaigh an Coimisiún Cosanta Sonraí dul ar aghaidh ar bhonn an ghearán athcheaptha sin. Scrúdaigh an Coimisiún Cosanta Sonraí gearán an Uasail Schrems i bhfianaise airteagail áirithe de Chairt um Chearta Bunúsacha an AE (an Chairt), lena n-áirítear Airteagal 47 (an ceart chun leigheas eífeachtúil i gcás go ndéantar sárú ar na cearta agus saoirsí arna ráthú ag dlí AE). Le linn di imscrídú a dhéanamh ar ghearán athcheaptha an Uasail Schrems, shocraigh an Coimisiún Cosanta Sonraí gur lean Facebook Ireland le sonraí pearsanta a aistriú chuig Facebook Inc. sna Stáit Aontaithe ar iontaoibh úsáid na CCCanna den chuid ba mhó. Ag teacht óna himscrídú ar ghearán athcheaptha

an Uasail Schrems tháinig an Coimisiún Cosanta Sonraí ar an réamhthuarim (faoi mar a cuireadh in iúl i ndréachtchinneadh an 24 Bealtaine 2016 agus faoi réir tuilleadh aighneachtaí a fháil ó na páirtithe) go raibh údar maith le gearán an Uasail Schrems. Bhí sé sin bunaithe ar dhréacht-toradh an Choimisiún Cosanta Sonraí nach bhfuil leigheas dlíthiúil atá comhoiriúnach le hAireagal 47 den Chaiti ar fáil i SAM do shaoránaigh AE a n-aistrítear a sonraí chuig SAM i gcás go bhféadfad sé go mbeadh siad i mbaol go ndéanfadh gníomhaireachtaí Stát SAM iad a rochtain agus a phróiseáil chun críocha slándáil náisiúnta ar mhodh nach bhfuil comhoiriúnach le hAireagail 7 agus 8 den Chaiti. Tháinig an Coimisiún Cosanta Sonraí ar an réamhthuarim nach dtéann CCCanna i ngleic leis an easpa sin de leigheas éifeachtach atá comhoiriúnach le hAireagal 47 agus dá réir sin gur dóigh go mbeidh CCCanna féin ina shárú ar Aireagal 47 a mhéid is a bhaineann siad le haistriú sonraí pearsanta shaoránaigh AE go SAM a dhilsteanú.

#### (4) Na himeachtaí agus an Éisteacht

Dá réir sin thionscain an Coimisiún Cosanta Sonraí imeachaí in Ard-Chúirt na hÉireann ag lorg dearbhú maidir le bailíocht an chinnidh ó Choimisiún AE i ndáil le CCCanna agus réamhthagartha don CBAE ar an gceist sin. Níor lorg an Coimisiún Cosanta Sonraí faoiseamh sonrach sna himeachtaí i gcoinne Facebook Ireland nó an Uasail Schrems. Mar sin féin, rinneadh an bheirt acu a ainmniú mar pháirtithe sna himeachtaí chun deis a thabhairt dóibh (ach ní oibleagáid) páirt iomlán a ghlacadh toisc go mbeadh tionchar ag toradh na n-imeachtaí ar bhrefthiniú an Choimisiún Cosanta Sonraí maidir le gearán an Uasail Schrems i gcoinne Facebook Ireland. Roghnaigh an dá pháirtí go nglacfadh siad páirt iomlán sna himeachtaí. Rinne deich tríu páirtí ar suim leo cursáil iarratas chun páirt a ghlacadh mar amicus curiae ("cairde na círte") sna himeachtaí agus rialaithe an Chúirt go bhféadfad ceithre pháirtí de na deich bpáirtí sin (Rialtas SAM, BSA, an Comhaontas Bogearraí, an Eoraip Dhigiteach agus EPIC (An Ionad um Fhaisnéis Ríomhphríobháideachais)) mar amici.

Tionóladh éisteacht na n-imeachtaí os comhair an Bhrefthimh Uasail Costello in Ard-Chúirt na hÉireann (Rannóg Tráchtála) thar 21 lá i mí Feabhra agus i mí an Mhárta 2017 agus rinneadh an breithiúnas a fhórchoimeád ag conclúid na héisteachta. Go hachomair, rinneadh aighneachtaí dlíthiúla thar ceann: (i) gach páirtí, arbh iad sin an Coimisiún Cosanta Sonraí, Facebook Ireland agus an tUasail Schrems; agus (ii) gach duine de "cairde na Círte", faoi mar atá sonraithe thus. D'éis an Chúirt fianaise ó bhéal chomh maith ó 5 shainfhinné ar an iomlán maidir le dlí SAM, faoi mar a leanas:

- Ashley Gorski, Uasail, sainfhinné thar ceann an Uasail Schrems;
- An tOllamh Neil Richards, sainfhinné thar ceann an Choimisiún Cosanta Sonraí;
- An tUasail Andrew Serwin, sainfhinné thar ceann an Choimisiún Cosanta Sonraí;
- An tOllamh Peter Swire, sainfhinné thar ceann Facebook; agus

- An tOllamh Stephen Vladeck, sainfhinné thar ceann Facebook.

San idirthrímhse idir conclúid na trialach agus soláthar an bhreithiúnais ar an 3 Deireadh Fómhair 2017 (féach thíos), sholáthair na páirtithe sa Chúirt líon nuashonruithe ar an gcás-dlí agus ar fhorbairt eile.

#### (5) Breithiúnas na hArd-Chúirte

Rinne an Breitheamh Uasal Costello an breithiúnas a sholáthar ar an 3 Deireadh Fómhair 2017 trí bhíthin breithiúnas scríofa 152 leathanach. Sholáthair an Chúirt achoimre feidhmiúcháin den breithiúnas chomh maith.

Sa brefthiúnas, chinn an Breitheamh Uasal Costello go raibh údar maith leis na buarthaí a chuir an Coimisiún Cosanta Sonraí in iúl ina dréachtchinneadh an 24 Bealtaine 2016, agus gur cheart cuid áirithe de na ceisteanna a ardaíodh sna himeachtaí sin a atreorú chuig an CBAE ionas go bhféadfad an CBAE rialú a dhéanamh maidir le bailíocht na gcinntí ó Choimisiún AE lenar bunaíodh CCCanna mar mhodh chun aistríthe sonraí pearsanta a dhéanamh. Go sonrach dhearbhagh an Chúirt go raibh údar maith le dréacht-torthaí an Choimisiún Cosanta Sonraí arna leagan amach ina dréachtchinneadh an 24 Bealtaine 2016 nár chloígh dlíthe agus cleachtais SAM le ceart shaoránach AE faoi Aireagal 47 den Chaiti chun leigheas éifeachtach os comhair binse neamhspleách (a bhfuil feidhm aige, faoi mar a luaigh an Chúirt, maidir le sonraí ábhair shonraí uile AE a n-aistríodh a sonraí chuig SAM).

Ina breithiúnas an 3 Deireadh Fómhair 2017, chinn an Breitheamh Uasal Costello chomh maith, mar gheall gur chuir na páirtithe in iúl gur mhaith leo an deis a ghlacadh go n-éistí leo i ndáil leis na ceisteanna a bhí le hatreorú chuig CBAE, go ndéanfadh sí an cheist a liostú le haghaidh aighneachtaí ó na páirtithe agus ansin go ndéanfadh sí na ceisteanna bhí le hatreorú chuig CBAE a chinneadh. Chuir na páirtithe sa chás, mar aon leis an amicus curiae aighneachtaí faoi bhráid na Círte, i measc nithe eile, maidir leis na ceisteanna a bhí le hatreorú, ar an 1 Nollaig 2017 agus ar an 16, 17 agus 18 Eanáir 2018. Le linn na n-éisteachaí sin, rinneadh aighneachtaí thar ceann Facebook agus Rialtas SAM maidir le "hearráidí" ar líomhnaigh siad go ndearnadh iad i mbreithiúnas an 3 Deireadh Fómhair 2017. D'fhorchoimeád an Chúirt a breithiúnas maidir leis na cursáil sin.

#### (6) Ceisteanna a bhí le hatreorú chuig an CBAE

Air an 12 Aibreán 2018, chuir an Breitheamh Uasal Costello a hlarratas ar Réamhrialú ón CBAE de bhun Aireagal 267 den CFAE in iúl do na páirtithe. Sa doiciméad leagtar amach na 11 cheist faoi leith a bhí le hatreorú chuig an CBAE, mar aon le cúlra leis na himeachtaí.

Air an dáta céanna, léirigh an Breitheamh Uasal Costello go ndearnadh sí roinnt mionathruithe ar a breithiúnas an 3 Deireadh Fómhair 2017, go sonrach ar mhíreanna 175, 176, 191, 192, 207, 213, 215, 216, 220, 221 agus 239. Le linn na héisteachta sin, léirigh Facebook gur mhaith

leis smaoineamh ar an ndéanfad sé cinneadh na hArd-Chúirte tagairt a dhéanamh don CBAE a achomharc nó nach ndéanfad agus dá ndéanfad, bac ar an tagairt arna déanamh ag an Ard-Chúirt don CBAE a lorg. Ar an mbonn sin, liostaigh an Ard-Chúirt an cheist le haghaidh an 30 Aibreán 2018.

Nuair a cuireadh na himeachtaí os comhair na hArd-Chúirte ar an 30 Aibreán 2018, rinne Facebook iarratas ar bhac ar thagairt na hArd-Chúirte don CBAE ag feitheamh le hachomharc uaidh i gcoinne dhéanamh na tagartha. Rinne na páirtithe aighneachtaí i ndáil le hiarratas Facebook ar bhac.

Ar an 2 Bealtaine 2018, sholáthair an Breitheamh Uasal Costello a breithiúnas maidir le hiarratas Facebook ar bhac ar thagairt na hArd-Chúirte don CBAE. Ina breithiúnas, dhiúltaigh an Breitheamh Uasal Costello an t-iarratas ó Facebook ar bhac, ag dearbhú go ndéanfadh an éagóir is lú de bharr dhiúltú na hArd-Chúirte do bhac ar bith agus an tagairt a sholáthar láithreach don CBAE.

## (7) Achomharc chun na Cúirte Uachtaraí

Ar an 11 Bealtaine 2018, lóisteáil Facebook achomharc, agus rinne sé iarratas ar chead chun achomharc a dhéanamh chun na Cúirte Uachtaraí, i gcoinne bhréithiúnais an 3 Deireadh Fómhair 2017, bhréithiúnas leasaithe an 12 Aibreán 2018 agus bhréithiúnas an 2 Bealtaine 2018 lena diúltaíodh bac. Éisteadh iarratas Facebook ar chead chun achomharc a dhéanamh chun na Cúirte Uachtaraí ar an 17 Iúil 2018. I mbreithiúnas a soláthraíodh ar an 31 Iúil 2018, dheonaigh an Chúirt Uachtarach cead do Facebook ag tabhairt cead dó a achomharc a thionscnamh sa Chúirt Uachtarach ach d'fhág sí an cheist maidir le cineál an achomhairc a mbeadh cead é a thabhairt os comhair na Cúirte Uachtaraí oscailte. Le linn dheireadh 2018, bhí roinnt éisteacht nós imeachta sa Chúirt Uachtarach le hullmhú don éisteacht shubstainteach. Tionóladh an éisteacht shubstainteach den achomharc thar an 21, 22 agus 23 Eanáir 2018 os comhair painéal 5 bhréitheamh de chuid na Cúirte Uachtaraí — An Breitheamh Uasal Clarke, an Breitheamh Uasal Charleton, an Breitheamh Uasal Dunne, an Breitheamh Uasal Finlay Geoghegan agus an Breitheamh Uasal O'Donnell. Rinneadh argóintí ó bhéal thar ceann Facebook, an Choi misiúin Cosanta Sonrai, Rialtas SAM agus an Uasail Schrems. Bhain na ceisteanna lárnacha a tháinig as an achomharc le cé acu an bhféadfadh, mar ábhar dlí, an Chúirt Uachtarach athbhreithniú a dhéanamh ar na fíricí a rinne an Ard-Chúirt i ndáil le dlí SAM. Tháinig sé sin as líomhaintí a rinne Facebook agus Rialtas SAM go raibh earráidí fíricíúla i mbreithiúnas na hArd-Chúirte, lenar cuireadh taca faoin tagairt a rinneadh don CBAE.

Ar an 31 Bealtaine 2019, sholáthair an Chúirt Uachtarach a príomhbhreithiúnas, ina bhfuil 77 leathanach. Go hachomair, chaith an Chúirt Uachtarach achomharc Facebook amach go hiomlán. Agus amhlaidh á dhéanamh, chinn an Chúirt Uachtarach an méid seo a leanas:

- Ní raibh sí sásta, mar ábhar dhlí na hÉireann nó AE, smaoineamh ar achomharc ar bith i gcoinne cinnidh ón Ard-Chúirt maidir le tagairt a dhéanamh don CBAE. Níor ghlac sí ach an oiread leis an gCúirt Uachtarach bheith ag smaoineamh ar achomharc ar bith i ndáil le téarma tagartha dá leithéid (i.e. na ceisteanna sonracha a d'atreoraigh an Ard-Chúirt chuig an CBAE). Chinn an Chúirt Uachtarach gur ábhar d'Ard-Chúirt na hÉireann amháin é cé acu tagairt a dhéanamh ná gan tagairt a dhéanamh don CBAE. Dá réir sin ní raibh sé cuí don Chúirt Uachtarach, i gcomhthéacs achomharc Facebook, analís na hArd-Chúirte a bhreithniú a raibh an cinneadh mar thoradh air go raibh na buarthaí céanna aici is a bhí ag an gCoimisiún Cosanta Sonrai i ndáil le bailfacht an Cinnidh CCC. Bhí sé sin mar gheall ar an gceist a bhí dlúth-naschta le cinneadh na hArd-Chúirte tagairt a dhéanamh don CBAE agus níor ghlac sé le Facebook bheith ag féachaint do sin mar phointe achomhairc.

- Ghlac sí leis go mbreithneodh an Chúirt Uachtarach an raibh na fíricí a fuair an Ard-Chúirt (i.e. na fíricí sin lenar cuireadh taca faoin tagairt a rinneadh don CBAE) inbhuanaithe faoi threoir na fianaise a cuireadh os comhair na hArd-Chúirte, nó ar cheart na fíricí sin a chealú.
- A mhéid is gur cheistigh Facebook príomhcheistean-na áirithe den fhíric a fuair an Ard-Chúirt maidir le dlí SAM, ar bhonn na sainfhianaise a cuireadh os comhair na hArd-Chúirte, níor shainaithin an Chúirt Uachtarach tortaí fírice ar bith a bhí neamh-inbhuanaithe. Dá réir sin, níor chealaigh an Chúirt Uachtarach ceann ar bith de na fíricí a fuair an Ard-Chúirt. Ina ionad sin, bhí sé de thuairim na Cúirte Uachtaraí gur bhain na cáintí a rinne Facebook faoi bhréithiúnas na hArd-Chúirte le tréithriú cuí na mbunfhírcí seachas na fiorfhírcí.

## (8) Éisteacht os comhair an CBAE

Thionól an CBAE (an Mór-Dhlísheomra) éisteacht ó bhéal i ndáil leis an tagairt a rinne Ard-Chúirt na hÉireann dó ar an 9 Iúil 2019. Shuigh an CBAE le comhdhéanamh de 15 bhréitheamh, lena n-áirítear Uachtarán an CBAE, an Breitheamh Koen Lenaerts. Ba é an Breitheamh Thomas von Danwitz an Rapóirtéir Breithimh Ceaptha. Ba é Henrik Saugmandsgaard Óe an tArd-Abhcóide a sannadh don chás.

Ag an éisteacht, rinne an Coimisiún Cosanta Sonrai, an tUasal Schrems agus Facebook aighneachtaí ó bhéal os comhair an CBAE. Tugadh cead do na 4 pháirtí a ghlac páirt mar amicus curiae ("cairde na cúirte") sa chás roimh Chúirt na hÉireann (SAM, EPIC, BSA Business Software Alliance Inc. agus an Eoraip Dhigiteach) aighneachtaí ó bhéal a dhéanamh chomh maith. Lena chois sin, rinne Parlaimint na hEorpa, Coimisiún AE agus Iónan Ballstát (an Ostair, an Fhrainc, an Ghearmáin, Éire, an Ísiltír, agus an Ríocht Aontaithe) a rinne gach ceann acu idirghabháil sna himeachtaí aighneachtaí ó bhéal chomh maith ag an éisteacht os comhair an CBAE. Lena chois sin, ar chuireadh ón CBAE, chuaigh an Bord Eorpach um Chosaint Sonrai (EDPB) os comhair an CBAE maidir le ceisteanna faoi leith.

## (9) Tuairim an Ard-Abhcóide

Soláthraíodh Tuairim Ard-Abhcóide Saugmandsgaard Øe (an AA) ar an 19 Nollaig 2019.

Sa Tuairim sin, mar réamhchúrsaí, luaigh an AA gur thionscain an Coimisiún Cosanta Sonraí imeachtaí i ndáil le gearán an Uasail Schrems os comhair na Cúirte náisiúnta atreoraithe i gcomhréir le mír 65 de bhreithiúnas an CBAE an 6 Deireadh Fómhair 2015 (faoi mar a thuiriscítear tuilleadh thuas). Fuair an AA chomh maith go raibh an t-iarratas ar réamhrialú ingleactha.

I ndáil leis na ceisteanna a d'atreoraidh Ard-Chúirt na hÉireann chuig an CBAE, chuir an AA srian go sonrach lena bhreithniú maidir le bailíocht an Chinnidh ó Choimisiún AE is bonn leis na CCCanna (Cinneadh CCCanna). Ón dtús, luaigh an tArd-Abhcóide go raibh an anailís sa Tuairim, dar leis, treoraithe ag an mian cothro-maíocht a fháil idir an gá le méid réasúnta réadúlachta a thaispeáint chun caidreamh leis an gcuid eile den domhan a éascú agus an gá leis na luachanna bunaidh arna n-aithint in orduithe dlíthiúla AE, a Bhallstát agus na Caire um Chearta Bunúsacha a dearbhú. Bhí sé den tuairim chomh maith nach mór an Cinneadh CCCanna a scrúdú faoi threoir fhorálacha an RGCS (i gcomparáid leis an Treoir maidir le Cosaint Sonraí (Treoir 95/46)) ar aon dul le hAirteagal 94(2) agus luaigh an AA chomh maith go ndéantar forálacha comhfheagrach na Treorach maidir le Cosaint Sonraí a atáirgeadh go bunúsach le forálacha ábhartha an RGCS.

Mheas an AA go bhfuil feidhm ag dlí AE maidir le haistriú sonraí pearsanta ó Bhallstát chuig tríú thír i gcás go bhfuil an t-aistriú sin ina chuid de ghníomháiocht tráchtala. Maidir leis sin, ba í tuairim an AA go bhfuil feidhm ag dlí AE maidir le haistriú den chineál sin beag beann ar cé acu an bhféadfadh údarás phoiblí an tríú thír sin na sonraí pearsanta a aistríodh chun críocha shlándáil náisiúnta na tíre sin a chosaint. Maidir le cineál na CCCanna, ba í tuairim an AA go léiríonn na CCCanna sásra ginearálta is infheidhme maidir leis na haistrithe beag beann ar an tríú thír cinn scriibe agus an leibhéal cosanta a chinntítear ansin.

Maidir leis an tástáil i gcomhair an leibhéal chosanta a theastaíonn i ndáil le cosaintí (a d'fheadfadh na CCCanna a sholáthar) atá scrúdaithe le hAirteagal 46 den RGCS i gcás go bhfuil sonraí pearsanta á n-aistriú amach as AE go tríú thír nach bhfuil toradh dóthanach aici, ba í tuairim an AA go gcaithfeadh an leibhéal cosanta arna chur ar fáil ag na cosaintí sin a bheith comhionann go bunúsach leis an leibhéal cosanta a chuirtear ar fáil d'ábhair shonraí in AE leis an RGCS agus leis an gCairt um Chearta Bunúsacha. Mar sin, ní athraíonn ceanglais na cosanta le haghaidh cearta bunúsacha arna gcinntí leis an gCairt de réir an bhoinn dhílíthiúil don aistriú sonraí.

Indiaidh scrúdú mionsonraithe ar chineál agus ábhair an CCCanna, chinn an AA nach raibh an Cinneadh CCCanna neamhbhailí faoi threoir na Caire. Ina thuairim, toisc gurbh é an cuspóir leis na CCCanna easnaimh ar bith i gcosaint na sonraí pearsanta arna cur ar fáil ag an tríú thír a chúiteamh, níorbh fhéidir bailíocht an Chinnidh CCCanna brath ar an leibhéal cosanta sa tríú thír. Seachas sin ní mór ceist na bailíochta a mheas faoi threoir shláine

na gcosaintí arna gcur ar fáil ag na CCCanna chun easnaimh ar an gcosaint sa tríú thír a leigheas. Ní mór na cosaintí ina bhfuil cumhactaí na n-údarás maoirseachta faoin RGCS a chur san áireamh sa mheastóireacht sin chomh maith. Toisc go gcuireann an CCCanna an fhreagrácht ar an rialitheoir (an t-easpórtálaí), agus na húdaráis maoirseachta mar mhalaire air sin, ciallaíonn sé sin nach mór don rialitheoir, agus na húdaráis maoirseachta mar mhalaire air sin, measúnú a dhéanamh ar aistrithe de réir an cháis, chun measúnú a dhéanamh ar cé acu an bhfuil na dlíthe sa tríú thír ina mbacainn ar leibhéal dóthanach cosanta a fháil do na sonraí aistrithe, a mhéid is go gcaithfear na haistrithe sonraí sin a thoirmeasc nó a chur ar fionraí.

Bhreithníogh an AA cineál na n-oibleagáidí atá ar an rialitheoir a dhéanann easpórtáil na sonraí pearsanta ansin, lena n-áiríodh, de réir an AA, oibleagáid éigeantach maidir le haistriú sonraí a chur ar fionraí nó conradh leis an iompórtálaí a fhoirceannadh mura bhféadfadh an iompórtálaí cloí le forálacha na CCCanna. Bhreithníogh an AA na hoibleagáidí ar an iompórtálaí chomh maith maidir leis sin agus rinne sé breathnuithe áirithe faoi chineál an scrúdaithe ar dhlíthe an tríú thír ba cheart don easpórtálaí agus don iompórtálaí a dhéanamh.

Rinne an AA tagairt do chearta na n-ábhar sonraí chomh maith a chreideann sé go ndearnadh sárú ar na clásail CCC chomh maith maidir le gearán a dhéanamh leis na húdaráis maoirseachta, agus bhreithníogh ansin cad é ról a mheas sé a bheith ag na húdaráis maoirseachta sa chomhthéacs sin ansin. Go bunúsach, bhreithníogh an AA i gcás, i ndiaidh scrúdú a dhéanamh, go measann údarás maoirseachta nach mbaineann sonraí a aistrítear go tríú thír tairbhe as cosaint chuí toisc nach gcloítear leis na CCCanna, gur cheart don údarás bearta imleora a dhéanamh chun an neamhdhleathacht sin a leigheas, más cuí, trína ordú go gcuirfí an t-aistriú ar fionraí. Luaigh an AA aighneachtaí an Choimisiún Cosanta Sonraí nach bhféadfai an chumhacht chun aistrithe a chur ar fionraí a fheidhmiú ach de réir an cháis agus nach rachadh sé i ngleic le ceisteanna córasacha a thagann as easpa dhóthanach cosanta i dtríú thír. Ag an bpointe sin, léirigh an AA na deacrachtaí praiticiúla atá nasctha le rogha reachtach an fhreagrácht a chur ar na húdaráis maoirseachta as a chinntí go gcloítear le cearta ábhar sonraí i gcomhthéacs na n-aistrithe nó na sreafaí sonraí chuig faigheoir sonrach ach dúirt sé faoi na deacrachtaí sin nach bhfuil an chuma air nach bhfuil na CCCanna neamhbhailí mar gheall orthu.

Cé gur shonraigh sé nach ndearna Ard-Chúirt na hÉireann an cheist maidir le bailíocht na Scéithe Príobháideachais a atreoraidh go soiléir chuig an CBAE, mheas an AA gur ardaigh cuid de na ceisteanna a d'ardaigh Ard-Chúirt na hÉireann bailíocht an toraidh maidir le bailíocht a rinne Coimisiún AE i ndáil leis an Sciath Phríobháideachais. Mheas an AA go mbeadh sé róluath don Chúirt rialú a dhéanamh maidir le bailíocht na Scéithe Príobháideachais i gcomhthéacs na tagartha sin cé gur luaigh sé go bhféadfadh na freagraí ar na ceisteanna a d'ardaigh Ard-Chúirt na hÉireann i ndáil leis an Sciath Phríobháideachais a bheith úsáideach ar deireadh don Choimisiún Cosanta Sonraí níos déanaí agus cinneadh á dhéanamh

aci ar cé acu an gcuirfí nó nach gcuirfí na haistrithe lena mbaineann ar fionraí i ndáiríre mar gheall ar neamhláithreacht líomhnaithe na gcosaintí cuí. Rinne an AA tagairt chomh maith, áfach, don fhéidearthacht go bhféadfadh an Coimisiún Cosanta Sonraí sa scrúdú ina dhiaidh sin ar ghearán an Uasail Schrems, i ndiaidh sholáthar bheitriúnas na Cúirte, a chinneadh nach bhféadfadh sé an gearán a shocrú mura ndéanfadh an CBAE rialú ar dtús ar cé acu an raibh an Sciath Phríobháideachas féin ina bacáinn ar fheidhmiú chumhacht an Choimisiúin Cosanta Sonraí na haistrithe lena mbaineann a chur ar fionraí. Luagh an AA i gcás go mbeadh amhras ar an gCoimisiún Cosanta Sonraí faoi bhaillóocht na Scéithe Príobháideachais, go mbeadh sé sásta má thugann an Coimisiún Cosanta Sonraí an cheist os comhair Chúirt na HÉireann arís lena lorg go ndéanfaí tagairt ar an bpointe sin arís don CBAE.

In ainneoin gur ghlac an AA an seasamh go bhféadfadh an Chúirt, i gcomhthéacs na tagartha sin, staonadh ón rialú sin maidir le bailíocht na Scéithe Príobháideachais ina breithiúnas, chuir sé in iúl ansin, mar mhalaire, roinnt “breathnuithe neamh-uileghabhálacha” ar éifeachtaí agus ar bhaillóocht an chinnidh maidir leis an Sciath Phríobháideachais. Leagadh amach na breathnuithe sin than thart ar 40 leathanach d’analís mhionsonraithe, lena n-áirítear analís ar an raon de cad a bhí i gceist le “coibhéiseach riachtanach” cosanta i stát tríú páirtí, an cur isteach féideartha maidir le ceart ábhar sonraí i ndáil le sonraí a aistriú go SAM mar gheall ar ghníomhaireachtaí náisiúnta faisnéise, gá agus comhréireacht an chur isteach sin agus dlíthe agus cleachtais na Stát Aontaithe, lena n-áirítear na cinn a bhaineann leis an gceist ar cé acu an bhfuil leigheas breithiúnach éifeachtúil i SAM do dhaoine a n-aistríodh a sonraí go SAM agus ar gur chuir gníomhaireachtaí faisnéise SAM isteach ar a gcearta cosanta sonraí. Agus an analís sin curtha i gcrích aige, chríochnáigh an AA ar deireadh trí amhras a chur in iúl faoi chomhréireacht na Scéithe Príobháideachais maidir le forálacha dhlí AE.

## (10) Breithiúnas an CBAE

Sholáthair an CBAE a bhrefthiúnas ar an 16 Iúil 2020.

Go hachomair:

- Pléadh roinnt pointí sa brefthiúnas a bhaineann le haistrithe go ginearálta; i measc nithe eile, dhearbháigh an chúirt, mar phríomhphrionsabal de dhlí AE, an moladh i gcás go n-aistrítear sonraí pearsanta shaoránach AE go tríú thír, nach mór leibhéal cosanta a thabhairt dó nó di i ndáil lena sonraí pearsanta a bheidh coibhéiseach go bunúsach leis an leibhéal a chinntítear san Aontas Eorpach; go tábhachtach, shoiléirigh an Chúirt chomh maith gur fíor an moladh beag beann ar an sásra dlíthiúil a úsáidtear chun údar a thabhairt le haistríú faoi leith.
- Dhearbháigh an CBAE bailíocht Chinneadh 2010/87/AE ón gCoimisiún, arb cinneadh é lenar ghlac Coimisiún AE na CCCanna. Fágann sé sin go bhfuil na CCCanna ar fáil lena n-úsáid fós ag rialaitheoirí agus ag próiseálaithe i ndáil le haistrithe chuig tríú tíortha, faoi réir go gcomhlíonfaidh siad príomhphointí áirithe

prionsabail arna gcur i iúl ag an gCúirt le linn a breithiúnais.

- Maidir leis sin, shoiléirigh an CBAE go bhfuil cineál agus méid na n-oibleagáidí a bhfuil easpórtálaithe sonraí — agus údarás mhaoirseachta náisiúnta agus cosanta sonraí — faoina réir i gcás ar bith ina mbraith-fear ar CCCanna chun údar a thabhairt le aistrithe sonraí chuig tríú thír.
- Go sonrach, léirigh na Chúirt na céimeanna atá le déanamh ag rialaitheoirí, sula rachaidh siad i mbun aistrithe sonraí faoi na CCCanna, lena dheimhniú, de réir an chás agus, nuair is cuí, i gcomhair leis an iompórtálaí sonraí, cé acu an gcinntítear nó nach gcinntítear le dlí an tríú thír chuig a mbeidh na sonraí á n-aistriú cosaint dhóthanach faoi dhlí AE.
- Mar an gcéanna, dhearbháigh an Chúirt má chinneann údarás náisiúnta maoirseachta, i ndiaidh imscrúdú a dhéanamh, nár tugadh leibhéal dóthanach cosanta d’ábhar sonraí a n-aistríodh a sonraí pearsanta chuig tríú thír sa thír sin, ní mór don údarás náisiúnta maoirseachta, mar ábhar dhlí AE, beart cuí a dhéanamh chun torthaí ar neamhdhóthanachta ar bith a leigheas agus, chuige sin, ceann amháin nó níos mó de na bearta ceartaitheacha a sainaithníodh in 58(2) den RGCS a fheidhmiú.
- Rinneadh cuid mhór d’analís na Cúirte a threorú chuig measúnú ar na cosaintí a thugtar do shaoránaigh AE i gcomhthéacs aistrithe AE-SAM. Maidir leis sin, fuair an Chúirt, cé go gcuirtear teorainneacha áirithe le dlíthe intíre SAM ar cheart údarás phoiblí SAM maidir le rochtain ar shonraí aistrithe nó úsáid sonraí aistrithe i gcomhthéacs faoi leith, nach gcuirtear leibhéal cosanta atá coibhéiseach go bunúsach leis an leibhéal a cheanglaítear le dlí AE ar fáil leis na teorainneacha sin.
- Sa chomhthéacs sin, dhearbháigh an Chúirt go raibh an cinneadh lenar ghlac Coimisiún AE na socruithe maidir leis an “Sciath Phríobháideachais” le haghaidh aistrithe AE-SAM neamhbhailí. Go ginearálta, d’fhéadfaí an breithiúnas a léamh chomh maith, ar a laghad ar bith, mar chomhartha láidir rabhaidh a chur in iúl i ndáil le húsáid CCCanna le haghaidh aistrithe sonraí chuig SAM,

## Pointí a bhaineann le haistrithe go ginearálta

Rochtain údarás phoiblí ar shonraí aistrithe chun críocha slándáil phoiblí, cosanta agus slándáil Stáit.

Maidir leis an gcéad gceist shubstainteach lenar phléigh an Chúirt dhiúltaigh sí an moladh go raibh rochtain údarás phoiblí ar shonraí aistrithe chun críocha slándáil phoiblí, cosanta agus slándáil Stáit lasmuigh den raon feidhme an RGCS. I dtaca leis sin, bhí an Chúirt tuisceanach i gcomhthéacs an dearbhaithe a tugadh (ag mír 89 den brefthiúnas) maidir leis an RGCS “go bhfuil feidhm aige maidir le haistríú sonraí pearsanta chun críocha tráchtála ag oibreoir eacnamaíoch atá bunaithe i mBallstát chuig oibreoir eacnamaíoch atá bunaithe i dtríú thír, beag beann ar cé acu, ag tráth an aistrithe nó ina dhiaidh sin, an ndéanfaidh údarás an tríú thír lena mbaineann na sonraí sin a phróiseáil chun críocha slándáil phoiblí, cosanta agus slándáil Stáit.”

## An leibhéal cosanta a theastaíonn

Ag mír 95 den bhreithiúnas, luaigh an Chúirt go sonraítear i Réamhaithris 107 den RGCS, i gcás “nach dtugann tríú thír, nó críoch nó earnáil shonraithe laistigh de thírú thír... leibhéal dóthanach cosanta sonraí a thuilleadh... gur cheart aistriú na sonraí pearsanta chuig an tríú thír sin.... a thoirmseasc mura ndéanfar ceanglais [an RGCS] maidir le haistrithe atá faoi réir cosaintí cui.... a chomhlíonadh”.

Maidir leis an leibhéal cosanta a cheanglaítear leis an RGCS i gcomhthéacs aistrithe chuig tríú thíortha, fuair an Chúirt, ag mír 91 den bhreithiúnas, agus faoi threoir Airteagal 46(1) agus Airteagal 46(2)(c) den RGCS, go bhféadfaidh rialaitheoir nó próiseálaí, ceal cinneadh leordhóthanachta, sonraí pearsanta a aistriú chuig tríú thíre, agus amháin má:

(i) sholáthair an rialaitheoir nó na próiseálaí ‘cosaintí cui’ (a bhféadfadh na CCCanna a bheith ina measc); agus,

(ii) ar an gcoinníoll go bhfuil cearta infheidhmithe ábhar sonraí agus leigheasanna dlíthiúla éifeachtúla ar fáil do na hábhair shonraí.

Ag luaigh nach sainaithnítear in Airteagal 46, le sainiúlacht, cad is brí leis na téarmaí “cosaintí cui”. “cearta infheidhmithe” agus “leigheasanna dlíthiúla éifeachta-cha”, dhearbháigh an Chúirt, i gcúinsí ina bhforáiltear in Airteagal 44 “go gcuirfear gach foráil [sa chaibidil sin] i bhfeidhm lena chinntíú nach mbainfear an bonn de leibhéal cosanta daoine aonair arna ráthú [leis an rialachán sin], go bhfágann sé go gcaithfear an leibhéal céanna cosanta a choimeád i gcás go n-aistrítear sonraí pearsanta chuig tríú thír, beag beann ar an sásra dlíthiúil trína ndéantar an t-aistriú (mír 92 den bhreithiúnas).

Ag tagairt do Réamhaithris 108, luaigh an Chúirt chomh maith (ag mír 95 den bhreithiúnas), ceal cinneadh leordhóthanachta, nach foláir nó go ndéanfadh na ‘cosaintí cui’ atá le cur i bhfeidhm ag an rialaitheoir nó ag an bpróiseáil i gcomhréir hAirteagal 46(1) ‘an easpa cosaint sonraí sa tríú thír a chúiteamh’ d’fhonn “comhlíonadh a chinntíú maidir le ceanglais um chosaint sonraí agus cearta na n-ábhar sonraí is cui i ndáil le próiseáil laistigh den Aontas”.

Dá réir sin, ag baint úsáid as an teanga a d’úsáideadh roimhe sin ina breithiúnas sa chás níos luaithe Schrems i leith an Choimisiún Cosanta Sonraí, (Cás C-362/14, EU:C:2015:650, 6 Deireadh Fómhair 2015), luaigh an Chúirt, ag mír 96, i gcúinsí lena bhfuil sé beartaithe le Caibidil V den RGCS a chinntíú go gcoimeádtar leibhéal céanna cosanta a thugtar d’ábhair shonraí laistigh de AE agus nuair a aistrítear a sonraí chuig tríú thír, fágann sé, i gcás ar bith ina ndéantar sonraí pearsanta a aistriú chuig tríú thír, gurb é an leibhéal cosanta a theastaíonn ceann atá “coibhéiseach go bunúsach” leis an leibhéal a ráthaítear laistigh den Aontas Eorpach”.

## Láimhseáil na CCCanna ag an gCúirt

### Cur i bhfeidhm na CCCanna i ngníomh

Ag mír 126 dá breithiúnas, thug an Chúirt faoi deara, cé go bhféadfadh sé go n-éascaíonn na cosaintí sna CCCanna an leibhéal cosanta a chomhlíonann táistíl na “coibhéiseachta riachtana” i gcás aistriú chuig roinnt tríú thíortha, d’fhéadfadh sé go nach mbeifí ábalta an leibhéal sin cosanta a bhaint amach leis an CCCanna mar gheall ar dhlíthe agus ar chleachtas i dtríú thíortha eile. Chuir an Chúirt an pointe sin in iúl sna téarmaí seo a leanas:

*“Dá réir sin, cé go bhfuil cásanna ann, ag brath ar an dlí agus na cleachtais atá i bhfeidhm sa tríú thír lena mbaineann, ina bhfuil sé ar chumas faighteora cosaint riachtanach na sonraí a ráthú ar bhonn na gclásal caighdeánach um chosaint sonraí amháin, go bhfuil cásanna eile ann ina bhféadfadh sé nach mbeadh modh dóthanach in ábhar na gclásal caighdeánach sin chun cosaint éifeachtach na sonraí pearsanta a aistrítear chuig an tríú thír lena mbaineann a chinntíú i ngníomh. Is amhlaidh sin go sonrach, i gcás go gceadaíonn dlí an tríú thír sin dá n-údarás phoiblí cur isteach ar chearta ábhar sonraí lena mbaineann na sonraí sin.”*

I ndiaidh di a léiriú ag mír 128 den bhreithiúnas nach bhfuil sé riachtanach go mbeadh tionscnamh na gcosaintí atá le tabhairt chun suntais ag an rialaitheoir ó chinneadh faoi leith arna ghlacadh ag Coimisiún AE, luaigh an Chúirt, ag mír 132, i gcás ar bith nach féidir an leibhéal cosanta a theastaíonn mar ábhar dhí AE a bhaint amach leis na CCCanna féin nó iontu, féadfaidh an rialaitheoir clásail eile a chur leis nó na cosaintí a thabhairt chun suntais chun na CCCanna a fhorlónadh.

Ag dul níos faide leis sin, luaigh an Chúirt, ag mír 133, go bhfuil CCCanna, go bunúsach, ina bhforáil bhonn líne, ina gcuimsítear sraith ráthaíochtaí conarthacha a bhfuil sé beartaithe iad a chur i bhfeidhm go haonfhoirmeach i ngach tríú thír. Mura féidir agus a mhéid nach féidir an leibhéal cosanta a theastaíonn faoi dhí AE a bhaint amach leis an CCCanna i gcomhthéacs aistrithe chuig tríú thír faoi leith, fágann sé nach féidir dul ar aghaidh leis an haistrithe sin ach má ghlacann an rialaitheoir bearta forlíontacha.

Pléadh cur i bhfeidhm praiticiúil na bpointí prionsabail sin i míreanna 134, 135, 141 agus 142 den bhreithiúnas. Go hachomair, léirigh an Chúirt, i gcásanna nach féidir na CCCanna a úsáid mar réiteach a “oireann do chách”, atá ábalta an caighdeán riachtanach cosanta a bhaint amach i gcás gach aistrithe go tríú thíortha, is gá go bhfágann sé sin go gcaithfear measúnú a dhéanamh lena fháil amach (agus lena dheimhniú) an féidir le dlíthe an tríú thír cinn scriibe a chinntíú go bhfuil cosaint dhóthanach ann ar an gcaighdeán a cheanglaítear le dlí AE i gcás go ndéantar sonraí pearsanta a aistriú faoi na CCCanna, agus, mura bhfuil, ar féidir leis an rialaitheoir cosaintí breise a chur ar fáil chun easnamh ar bith a chúiteamh.

Shoiléirigh an Chúirt, sa chéad dul síos, nach móir go ndéanfadh an rialaitheoir nó an próiseáil measúnú dá leithéid, le hionchur fhaighteoir beartaithe na sonraí, más

cuí. Go tábhachtach, is ionann an measúnú dá dtagair an Chúirt agus ceann nach mór a dhéanamh de réir an cháis, sula dtosóidh an rialaitheoir/próiseálaí lena mbaineann aistrithe chuig an tríú tís sin.

Agus a lárnacht d'anailís na Cúirte á cur san áireamh, leagtar amach an méid seo a leanas go hiomlán i míreanna 134 agus 135:

*"134. Maidir leis sin, faoi mar a shonraigh an tArd-Abhcóide i bpointe 126 dá Thuairim, tá an sásra conarthatch dá bhforáiltear in Airteagal 46(2)(c) den RGCS bunaithe ar fhreagracht an rialaitheora nó a fhochonraitheora nó a fochoinraitheora atá bunaithe san Aontas Eorpach agus, mar mhalaire, an t-údarás inniúil maoirseachta. Dá réir sin, thar gach uile ní, is faoin rialaitheoir nó faoin bpróiseálaí sin atá sé a dheimhniú, de réir an cháis agus, nuair is cuí, i gcomhar le faighteoir na sonraí, cé acu an gcinntítear le dlí an tríú tís cinn scribe cosaint dhóthanach, faoi dhlí AE, do shonraí pearsanta a aistrítear de bhun na gclásal caighdeánach um chosaint sonraí, trí chosaintí breise a chur leis na cinn a sholáthraithear sna clásail nuair is cuí.*

*135. I gcás nach féidir leis an rialaitheoir nó leis an bpróiseálaí atá bunaithe san Aontas Eorpach bearta breise dóthanacha a dhéanamh chun cosaint dá leithéid a ráthú, ceanglaítear ar an rialaitheoir nó ar an bpróiseálaí nó, seachas sin, ar an údarás inniúil maoirseachta, aistriú na sonraí pearsanta chuig an tríú tís lena mbaineann a chur ar fionraí nó a chríochnú. Is amhlaíd an cás, go sonrach, i gcás go gcurtpear oibleagáidí faoi dhlí an tríú tís sin ar fhaighteoir na sonraí pearsanta ón Aontas Eorpach a thagann salach ar na clásail sin agus a bheidh, dá réir sin, ábalta sárú a dhéanamh ar ráthú conarthatch leibhéal cosanta dhóthanaigh i gcoinne rochtain údarás phoiblí an tríú tís sin ar na sonraí sin."*

Tabharfar faoi deara, ag mír 135, gur chuir an Chúirt rabhadh in iúl go sainiúil go bhféadfadh sé gurb é an cás é, i roinnt tríú tíortha, nach mbeidh méid ar bith de chosaintí forlíontacha nó breise ábalta dul i ngleic leis na heasnaimh sa leibhéal cosanta atá ar fáil. I gcás dá leithéid, bhí seasamh na Cúirte an-soiléir: ní cheadaítear aistrithe dá leithéid; má théann an rialaitheoir/próiseálaí ar aghaidh in ainneoin sin, beidh sé faoin údarás maoirseachta ábhartha um chosaint sonraí idirghabháil a dhéanamh chun aistriú na sonraí pearsanta chuig tríú tís dá leithéid a chur ar fionraí nó deireadh a chur leis ar shlá eile.

## Ról na n-údarás maoirseachta um chosaint sonraí

Ag míreanna 111 go 113 den bhrefthiúnas (agus arís ag mír 146), chuir an Chúirt bém ar an ról lárnach a bheidh ag údarás náisiúnta mhaoirseachta um chosaint sonraí i ndáil le rialú aistrithe sonraí chuig tríú tíortha a dhéantar faoi na CCCanna. Maidir leis sin, luaigh an Chúirt, cé gur faoin rialaitheoir/bpróiseálaí ábhartha atá sé, ar an gcéad dul síos, an measúnú a tuairiscíodh thuas a dhéanamh, ní mór do na húdarás náisiúnta mhaoirseachta um chosaint sonraí idirghabháil a dhéanamh i gcás ar bith (i) nach

féidir leis na CCCanna cloí leis an tríú tís lena mbaineann, ionas nach féidir an leibhéal cosanta a cheanglaítear le dlí AE a chinntíú; agus (ii) nár chuir an rialaitheoir nó an próiseálaí féin an t-aistriú ar fionraí nó níor chríochnaigh siad é.

Chuir an Chúirt an cheist sna téarmaí seo a leanas:

*"111. Má cheapann údarás maoirseachta, i ndiaidh imscríodú a dhéanamh, nár dtugtar leibhéal dóthanach cosanta d'ábhar sonraí a n-aistríodh a sonraí pearsanta chuig tríú tís lena mbaineann a chur san áireamh, beart cuí a dhéanamh chun tortaí ar neamhdhóthanacht ar bith a leigheas, beag beann ar an gcúis leis an neamhdhóthanacht sin, nó ar chineál na neamhdhóthanachta sin. Chuige sin, liostaítear in Airteagal 58(2) den rialachán sin na cumhactaí ceartaitheacha éagsúla a fhéadfaidh an t-údarás maoirseachta a ghlacadh.*

*112. Cé go gcaithfidh an t-údarás maoirseachta an beart is cuí agus is gá a chinneadh agus cúinsí uile aistriú na sonraí pearsanta lena mbaineann a chur san áireamh sa chinneadh sin, ceanglaítear ar an údarás maoirseachta mar sin féin a fhreagracht a chomhlíonadh maidir lena chinntí go ndéanfar an RGCS a fhorfheidhmiú go hiomlán agus le dícheall cuí.*

*113. Maidir leis sin, faoi mar a shonraigh an tArd-Abhcóide i bpointe 148 dá Thuairim, ceanglaítear ar an údarás maoirseachta, faoi Airteagal 58(2)(f) agus (j) den Rialachán sin, go ndéanfar aistriú sonraí pearsanta chuig tríú tís a chur ar fionraí nó a thoirmeasc má cheapann sé, i bhfianaise chuínsí uile an aistrithe sin, nach bhfuiltear ag cloí leis na clásail chaighdeánacha um chosaint sonraí nó nach féidir cloí leo sa tríú tís sin agus nach féidir cosaint na sonraí aistrithe a cheanglaítear le dlí AE a chinntí ar bhealach eile, i gcás nach ndearna na rialaitheoir nó an bpróiseálaí an t-aistriú a chur ar fionraí nó deireadh a chur leis."*

## Conclúid maidir le: bailíocht na CCCanna

Agus anailís ar na CCCanna agus a gcur i bhfeidhm curtha i gcrích i gníomh aici, agus é tugtha faoi deara, i bprionsabal, gur féidir iad a úsáid (le cosaintí breise, nuair is gá) chun an leibhéal cosanta a cheanglaítear le dlí AE a bhaint amach (le sásraí cuí ar fáil chun aistrithe a chur ar fionraí i gcás go mbeadh na cosaintí sin i mbaol), chinn an Chúirt an méid seo a leanas:

*"Fágann sé go bhforáiltear sa Chinneadh CCCanna i leith sásraí eífeachtacha lena chinntítear, i gníomh, go ndéanfar aistriú sonraí pearsanta chuig tríú tís de bhun na gclásal caighdeánach um chosaint sonraí san iarscríbhinn a ghabhann leis an gcinneadh sin a chur ar fionraí nó a thoirmeasc i gcás nach gcloíonn faighteoir an aistrithe leis na clásail sin nó nach féidir leis nó léi cloí leo" (mír 148).*

Dá réir sin, ar bhonn na hanailíse atá leagtha amach ina brefthiúnas, bhí an Chúirt sásta a dhearbhú go raibh an Cinneadh CCCanna bailí.

## **Sciath Phríobháideachais agus an seasamh i ndáil leis na Stát Aontaithe**

Chuir an Chúirt túis lena hanailís trína mheabhrú, i bprionsabal, gurb ionann rochtain údarás phoiblí ar shonraí pearsanta duine aonair ag féachaint dá gcoinneáil nó dá n-úsáid agus cur isteach ar na cearta bunúsacha atá cuimsithe in Airteagail 7 agus 8 den Chairt (féach míreanna 170 agus 171 den bhreithiúnas).

Cé go luann sé nach bhfuil na cearta sin ina gcearta absalóideacha, rinne an CBAE athbhreithniú (ag mír 174 agus míreanna ina dhiaidh sin) ar phrionsabal a bhí ann cheana de bhun nach mór foráil a dhéanamh leis an dlí maidir le teorainn ar bith ar fheidhmiú na gceart agus na saoirsí a ithnítear sa Chairt cloí le bunús na gceart agus na saoirsí sin. Rinneadh tagairt chomh maith sa chomhthéacs sin do na cúrsáid seo a leanas:

- faoi réir phrionsabal na comhréireachta, nach féidir teorainneacha a chur leis na cearta agus leis na saoirsí sin ach más gá agus má chomhlíonnán siad i ndáiríre cuspóirí an leasa ghinearálta a ithníonn an tAontas nó an gá atá le cearta agus saoirsí daoine eile a chosaint;
- nach mór raon feidhme na teorann ar fheidhm an chirt lena mbaineann a shainiu sa bhonn dlíthiúil féin lena gceadaítear an cur isteach ar na cearta sin an raon (mír 175); agus,
- chun ceanglas na comhréireachta a chomhlíonadh, ní mór rialacha soiléire agus beachta lena rialáitear raon feidhme agus cur i bhfeidhm an bhirt lena mbaineann agus fóschosaintí a fhorchur sa reacchtáiocht lena ndéantar foráil i leith cur isteach dá leithéid, ionas (i gcomhthéacs na n-aistrithe sonrai) go mbeidh ráthaíochtaí dóthanacha ag na daoine a n-aistríodh a sonraí pearsanta lena sonraí pearsanta a chosaint go héifeachtúil ar an riosca um mí-úsáid (mír 176).

Uaidh sin, shainainn an Chúirt teipeanna sonracha áirithe a bhain le roinnt bearta aitheanta um dhlí SAM, lena n-áirítear Alt 702 FISA, EO 12333 agus PPD-28, roimh chinneadh a dhéanamh (ag mír 185),

*"... nach gcurtear teorainn leis na teorainneacha maidir le cosaint sonraí pearsanta a thagann as dlí intíre na Stát Aontaithe maidir le rochtain údarás phoiblí SAM ar sonraí a aistrítear ón Aontas Eorpach chuig na Stát Aontaithe agus a n-úsáid astu, ar a ndearna an Coimisiún measúnú sa Chinneadh maidir leis an Sciath Príobháideachais, ar bhealach lena gcomhlíontar na ceanglaítear, faoi dhlí AE, leis an dara abairt in Airteagal 52(1) den Chairt."*

Ar leithigh, luaigh an Chúirt gur ceistíodh toradh Choimisiún AE sa Chinneadh maidir leis an Sciath Phríobháideachais — go gcinntíonn na Stát Aontaithe cosaint atá coibhéiseach go bunúsach leis an gcosaint a ráthaítear le hAirteagal 47 den Chairt — ar na forais, inter alia, nach féidir le Ombudsman na Scéithe Príobháideachais na heasnaimh a fuair Coimisiún AE féin i ndáil le cosaint bhreithiúnach na ndaoine a bhfuil a sonraí pearsanta a n-aistriú go SAM a leigheas. I ndiaidh anailís a dhéanamh ar ghnéithe ábhartha de shocruithe

an Ombudsman faoi threoir phrionsabail dhlí AE is infheidhme, chinn an Chúirt ar deireadh (ag mír 197) *"nach soláthraíonn sásra an Ombudsman... cúis ar bith le caingean os comhair comhlachta a thairgeann ráthaíochtaí do na daoine a bhfuil a sonraí á n-aistriú go dtí na Stát Aontaithe atá coibhéiseach go bunúsach leis na cinn a cheanglaítear faoi Airteagal 47 den Chairt."*

I ndáil leis sin, luaigh an Chúirt (ag mír 191 dá breithiúnas) go bhfuair Coimisiún AE i réamhaithris 115 den Chinneadh maidir leis an Sciath Phríobháideachais *"cé go bhfuil lín bealaí cúitimh ag daoine aonair, lena n-áirítear ábhair shonraí AE....nuair a bhí siad ina n-ábhair i bhfaireachas (leictreonach) neamhdhleathach chun críocha slándáil náisiúnta, tá sé chomh soiléir céanna nach bhfuil roinnt boinn dhlíthiúla ar féidir le údarás faisnéise SAM a úsáid (e.g. E.O. 12333) clúdaithe".* Mheas an Chúirt toisc go bhfuil a leithéid de "lacuna" sa chosaint bhreithiúnach i ndáil le cur isteach le cláir faisnéis bunaithe ar [PPD-28] *"nach féidir a chinneadh, faoi mar a rinne an Coimisiún sa Chinneadh maidir leis an Sciath Phríobháideachais, go gcinntíonn dlí na Stát Aontaithe leibhéal cosaint atá coibhéiseach go bunúsach leis an leibhéal a ráthaítear le hAirteagal 47 den Chairt."*

Luaigh an Chúirt chomh maith (ag mír 192) *"nach dtugann PPD-28 ná E.O. 12333 cearta ábhar sonraí atá inchaingne sna cúirteanna i gcoinne údarás na Stát Aontaithe óna bhfágann sé nach bhfuil ceart ar bith ag ábhair shonraí chun leigheas éifeachtach."*

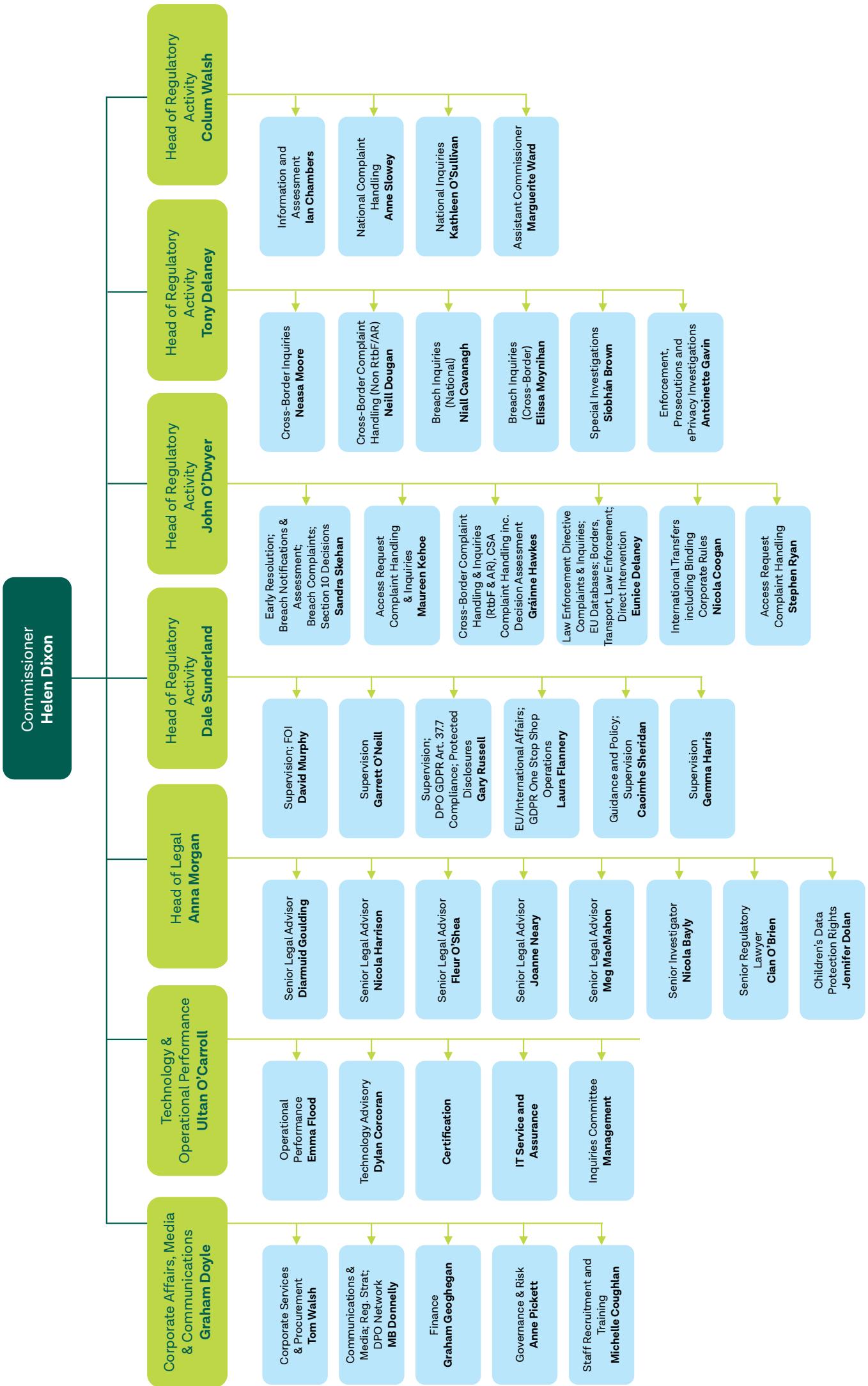
Sa chomhthéacs sin, dhearbhaigh an Chúirt (ag mír 198), ag teacht di ar a toradh in Airteagal 1(1) den Chinneadh maidir leis an Sciath Phríobháideachais, go gcinntíonn na Stát Aontaithe leibhéal dóthanach cosanta chun sonraí pearsanta a aistríú ón Aontas chuig eagraíochtaí sa tríú thír sin faoi Sciath Phríobháideachais AE-SAM, gur thug Coimisiún AE *"neamhaird ar cheanglaí Airteagal 45(1) den RGCS, arna léamh i bhfíanaise Airteagail 7, 8 agus 47 den Chairt."* Uaidh sin, chinn an Chúirt (ag mír 199), *"go bhfágann sé nach bhfuil Airteagal 1 den Chinneadh maidir leis an Sciath Phríobháideachais, comhoiriúnach le hAirteagal 45(1) den RGCS, arna léamh i bhfíanaise Airteagail 7, 8 agus 47 den Chairt, dá réir sin."*

Ar an mbonn go raibh Airteagal 1 den Chinneadh maidir le Sciath Phríobháideachais *"doscartha ó Airteagal 2 agus 6 den chinneadh sin, agus de na hiarscríbhinní leis an gcinneadh sin"*, cheap an Chúirt maidir le neamhbhailíocht Airteagal 1 *"go dtéann sé i gcion ar bhaillíocht an chinnidh ina iomláine."* Dá réir sin, chinn an Chúirt (ag mír 201) go raibh an Chinneadh maidir leis an Sciath Phríobháideachais neamhbhailí ina iomláine.

## Aguisín 6:

# Ráitis Airgeadais don Bhliain go dtí an 1 Eanáir go 31 Nollaig 2020 agus Ráiteas maidir le Rialuithe Inmheánacha an Choimisiúin Cosanta Sonraí

Tá Cuntas Airgeadas an Choimisiúin Cosanta Sonraí don bhliain ón 1 Eanáir go dtí an 31 Nollaig 2020 agus an Ráiteas maidir le Rialuithe Inmheánacha don tréimhse chéanna á n-ullmhú ag an gCoimisiún Cosanta Sonraí agus ceanglófar den tuarascáil seo iad i ndiaidh don Ard-Reachtaire Cuntas agus Ciste iniúchadh a dhéanamh maidir le 2020.



**Data Protection Commission,**  
21 Fitzwilliam Square,  
Dublin 2.

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**An Coimisiún um  
Chosaint Sonraí**  
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Commission