

# Privacy & Data Protection

Volume 18, Issue 6

June 2018

## Headlines

- **Barnier: ‘You’re either in or you’re out’, p.17**
- **e-Privacy Regulation update, p.18**
- **National data strategy to be developed in the UK, p.20**

## Contents

<i>Expert comment</i>	2
<i>iConsent and pesky emails — why ‘do nothing’ is the sanest approach</i>	4
<i>The future of international data transfers</i>	7
<i>How much control makes a controller?</i>	10
<i>Ireland’s Data Protection Act 2018</i>	13
<i>News &amp; Views</i>	16

## EDPB gets down to business

The European Data Protection Board held its first plenary meeting on May 25th 2018 — the same day the GDPR came into force — and adopted guidelines on two topics as its first order of business.

The EDPB is an independent European body composed of representatives of the national supervisory authorities of each EU Member State and the European Data Protection Supervisor. It replaced the Article 29 Working Party.

The two guidelines adopted were final guidelines on derogations to transferring personal data out-

side of the EU under Article 49 of the GDPR, and draft guidelines addressing certification mechanisms, and data protection seals and marks used to demonstrate compliance with the GDPR, in accordance with Articles 42 and 43.

The guidelines on derogations confirm that organisations transferring personal data outside of the EU should first endeavour to rely on one of the mechanisms described in Articles 45 and 46 of the GDPR (Binding Corporate Rules or Standard Model Contractual Clauses) before relying upon the derogations in Article 49 of the GDPR (consent, con-

tractual necessity and public interest).

Consent requirements issued by the Article 29 Working Party are applicable when assessing the conditions of an ‘explicit consent’ in the context of derogations. The guidance states that all derogations should be interpreted restrictively.

According to the guidance, the ‘contract’ and ‘legal claims’ derogations can only be relied upon for ‘occasional’ transfers. The EDPB provides guidelines on the ‘occasional’ test, saying that data transfers taking

[\(Continued on page 16\)](#)

## Directors could be made personally liable for nuisance calls in UK

Business directors in the UK could be personally fined up to £500,000 if they fail to prevent nuisance calls, under a new government consultation.

The rationale for the proposed large change is that whilst there has been a big recent increase in the fines issued to companies — last year one was fined £400,000 for making almost 100 million automated calls in 18 months — there is concern this has

not been a sufficient deterrent. The Information Commissioner’s Office said that in several cases, directors had escaped fines by declaring their companies bankrupt and starting again under a different name.

The company fined £400,000 in 2017, Keurboom Communications, was placed in voluntary liquidation, leaving the ICO to recover the fine through liquida-

tors and insolvency practitioners.

According to figures, of the £17.8m in fines issued for nuisance calls since 2010, the regulator has recovered just 54% of this, as companies went into liquidation.

The plan for directors to be made liable was originally mooted by the government 18 months ago.

[\(Continued on page 16\)](#)