

## Europe

### Irish Minister Proposes Draft Data Retention Bill in Response to CJEU Decision

On 3 October 2017, the Minister for Justice and Equality, Charlie Flanagan, published the draft Communications (Retention of Data) Bill 2017. The draft bill, which would repeal the current Communications (Retention of Data) Act 2011, is intended to give effect to the Court of Justice of the European Union's ruling in *Tele2 Sverige AB v. Post-och telestyrelsen* (C-203/15) and *Secretary of State for Home Department v. Tom Watson and Others* (C-698/15).

The draft bill includes the following new requirements:

- Service providers must retain subscriber data for 12 months
- Retention of categories of traffic and location data for the purpose of the prevention, detection, investigation or prosecution of serious crime
- Data localisation and retention obligations, allowing disclosure without delay
- Safeguards in relation to security and destruction after the retention period expires

### EDPS Issues Further Recommendations on E-Privacy Regulation

The [European Data Protection Supervisor \(EDPS\)](#) has published recommendations on specific aspects of the E-Privacy Regulation (COM(2017) 10 final, 2017/0003 (COD)).

The recommendations focus on the need to ensure legal certainty and a high level of privacy and data protection, in particular that:

- Any processing of communications data must be based on a legal ground under the E-Privacy Regulation (Article 6, recital 5).
- Legal grounds under the E-Privacy Regulation must not include legitimate interest.
- Confidentiality of communications data shall be "at rest" and for machine-to-machine communications (Article 5).
- The protection of data related to terminal equipment deserve equally high protection.
- Appropriate definitions are crucial to implement the protection of fundamental rights (including "user", "end user" and "metadata") (Article 4).
- Consent must have the same meaning as in the General Data Protection Regulation ((EU) 2016/679) (GDPR) (Article 6, 8 and 9). Technical and privacy settings should support giving and withdrawing consent (Article 9 and 10).
- Restrictions on rights should be limited in scope (Article 11).

- Weakening of confidentiality and integrity of communications should be prohibited (Article 17).
- Supervision powers should be granted to Data Protection Authorities (Article 18).
- Protection against unsolicited communications should be comprehensive (Article 16).

## UK

### Fundraising Regulator Consults on Data Protection Changes to Fundraising Code

On 5 October 2017, [the Fundraising Regulator](#), who is responsible for setting and enforcing clear standards of conduct for charity fundraising in England, Wales and Northern Ireland, announced the opening of a Code Consultation on Data Protection in anticipation of the GDPR coming into force. This consultation will look to address issues identified by the ICO when levying penalty notices on charities for data protection breaches, and for other recent developments in the law and guidance on using individuals' personal data.

The consultation will run from October to December of this year and will enable charities, fundraisers and members of the public to provide feedback on proposed changes to the code regarding data protection.

### ICO Fines Vanquis Bank Ltd £75,000 for Sending Unsolicited Text and Email Messages

[The ICO has fined Vanquis Bank Ltd £75,000](#) for sending unsolicited text and email messages to recipients without their consent in 2015 and 2016. A total of 870,849 direct marketing text messages and 620,000 direct marketing emails were sent to recipients, which resulted in 140 complaints.

Vanquis Bank Ltd was issued with the monetary penalty under section 55A of the Data Protection Act 1998, in relation to a serious contravention of regulation 22 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426).

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