



# Overview of recent case law

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The EDPS Strategy

2015-2019

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*The following presentation represents the author's personal views and should not be regarded as the EDPS' official position.*



# Case Law for discussion

## Establishment and applicable law

- Case C-230/14, Weltimmo, 1 October 2015

## Requirements and Derogations

- Case C-201/14, Bara v CNAS, 1 October 2015
- C-362/14, Schrems, 6 October 2015

## Transparency and data protection

Article 4(1)(b) of Regulation 1049/2001

- C-615/13, ClientEarth v EFSA, 16 July 2015
- T-115/13, Dennekamp v EP (II), 15 July 2015



# Weltimmo v DPA HU

## Case C-230/14, 1 October 2015

- Weltimmo is registered in Slovakia but runs website for Hungarians selling HU properties
- Offered free month to advertisers, but ignored resiliations, charged fees and collected debts in HU
- Had a bank account for recovering debts, a letter box and a formal representative in HU
- Fined by HU DPA

### **CJEU – applicable law under 4(1)(a):**

- establishment: pursued a real and effective activity in HU, albeit minimal - one stable representative
- otherwise, if not established in HU, HU DPA can only request SK DPA to enforce against Weltimmo



# Bara *et al* v CNAS

Case C-201/14, 1 October 2015

- tax authority (ANAF) transferred B's income data to health insurance fund (CNAS), which required her to pay arrears
- RU law allows public bodies to transfer data to CNAS to determine whether individual qualifies as insured person; bilateral protocol refers to income data

## **CJEU:**

- art 10: B not informed of transfer
- art 13: income data not necessary for defined purpose, and protocol not published
- <sup>5</sup> art 11: CNAS did not inform B



# Schrems v DPC Irl

Case C-362/24

- Safe Harbor Decision adopted by COM in 2000 under art 25(6) of Dir 95/46 to permit transfers of personal data to the U.S. Includes provisions limiting power of national DPAs to suspend transfers and limiting derogations in US to what is necessary
- Snowden revealed that US companies such as Facebook transfer personal data to the NSA
- DPC Irl refused Schrems' request to suspend transfers under the SH, to stop Facebook transmitting personal data to the U.S.
- <sup>6</sup> Irl High Ct referred case to CJEU; indicated that would have been a violation of privacy under IRL law



# Schrems v DPC Irl

## Case C-362/24

### Points raised by EDPS at the hearing

- The Safe Harbor Decision was never perfect, but the reach and scale of mass surveillance in the US is now so serious it may constitute a failure to respect the essence of Articles 7 and 8
- Independence under Article 8(3) means the SH Decision cannot limit the power of DPAs to take action or limit their discretion as to what action to take
- DPAs are entitled to refrain from taking action and to encourage the Commission to negotiate a Europe-wide solution with the US



# Schrems v DPC Irl

Case C-362/14, 6 October 2015

- DPAs have a duty to examine a complaint (even where a binding EU decision); a decision under art 25(6) cannot restrict powers of DPAs under art 28
- Adequate level of protection = *essentially equivalent*
- The *Safe Harbor* decision is invalid *ab initio*
- “Essence” of fundamental right: *Legislation permitting the public authorities to have access on a generalised basis to the content of electronic communications must be regarded as compromising the essence of the fundamental right to respect for private life, as guaranteed by Article 7 of the Charter.*
- DPAs must examine complaints with due diligence



# Client Earth v EFSA

## C-615/13 P, AG 17 July 2014

- NGOs requested access to documents, EFSA released names of experts and comments made, but not the connection between them.

### CJEU, on appeal from dismissal by GC :

- **Personal data:** possibility to connect = identifiable, unaffected by professional nature, previous publication or objection
- **Necessity:** generic reference to transparency not sufficient, but litigation based on precise accusation
- **Legitimate interests :** general assertion of privacy of experts was insufficient, must be a specific factor
- Cf AG: lower level of *necessity* for professional data



# Dennekamp v EP (II)

T-115/13, 15 July 2015

- Journalist requested access to documents relating to affiliation of MEPs to additional pension scheme.
- Second attempt: in Case T-82/09 his application was refused because he had not provided a reason

**GC:** annulled decision refusing access to names of MEPs taking part in vote on the pension scheme:

- Not names of 65 MEPs published in previous rulings
- **Necessity:** not enough to rely on Charter arts 11 and 42, but a possible conflict of interest of MEPs who voted on the scheme (not those who did not vote)
- **Legitimate interests:** within MEPs' "public sphere"



# Cases Pending

- Big Brother Watch et al v UK, no 58170/13
- A-1/15, Canada-EU PNR Agreement
- C-192/15 Rease and Wullems: “making use of equipment” and discretion and scope of DPA powers
- C-203/15, Tele2 Sverige AB: compatibility of traffic data retention with ePrivacy Directive and Charter
- C-398/15, Manni: limits on disclosure of personal data through commercial registers



# Big Brother Watch et al v UK

application no. 58170/13, lodged 4/9/13

- Following the Snowden revelations about PRISM and UPSTREAM Ps claim that they have been the subject of surveillance by the US, passed to UK GCHQ, as well as direct surveillance by GCHQ under TEMPORA
- Ps claim violation of art 8 ECHR because such surveillance is not “in accordance with the law”, especially using broad general warrants where one party to a communication is outside the UK
- Nor is it “necessary in a democratic society”, being an inherently disproportionate interference with large numbers of people



# Canada-EU PNR Agreement

## Case A-1/15

- EP Resolution of 25/11/2014: following *DRI*, EP has asked CJEU for Opinion on legal basis and compatibility of EU-Canada PNR treaty with Charter
- Substance: disproportionate in violation of arts 7, 8 and 52(1) of EU Charter
- Legal basis: wrongly based on Articles 82(1)(d) and 87(2)(a) TFEU (police and judicial cooperation) rather than Article 16 TFEU (data protection)
- EDPS: no evidence to show necessity and proportionality – Opinion of 30 September 2013



# Thank you for your attention!

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