

In-House Counsel Masterclass Data Protection & NIS Regulations

Thursday 10 January 2019

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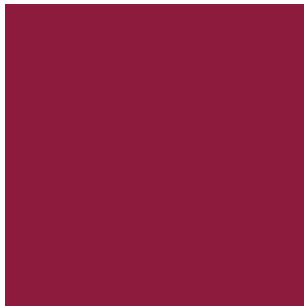
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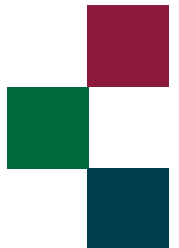
Welcome

Declan Black, Managing Partner



Our Experts

- **Philip Nolan**
- **Oisín Tobin**
- **Áine Cadogan**
- **Melanie Crowley**
- **Robert McDonagh**



GDPR: The story so far

Philip Nolan, Partner & Head of Privacy and Data Security
Oisín Tobin, Partner & Head of San Francisco Office



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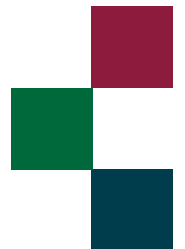
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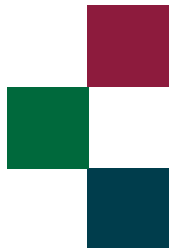
Overview

- Legal sources
- Contracts
- Security breach notification
- Data Protection Impact Assessments
- Data Protection Officers
- Enforcement



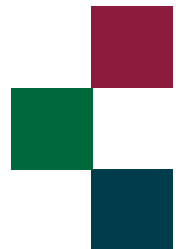
How do I research a GDPR issue?

What's happening with data protection contracts?



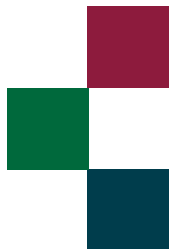
*Must I notify all data breaches to the
DPC?*

*How should organisations approach
Data Protection Impact Assessments?*



*How should my organisation deal with
the requirement for a Data Protection
Officer?*

What is the enforcement climate like at present?



Dealing with Subject Access Requests

Melanie Crowley, Partner & Head of Employment Law

Áine Cadogan, Senior Associate, Privacy & Data Security



The Network and Information Systems Regulations

Robert McDonagh, Partner, Privacy & Data Security



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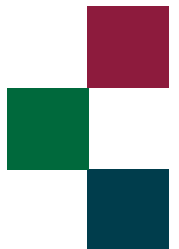
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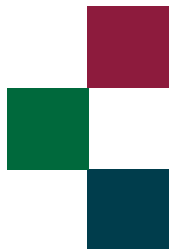
The context

- NIS Directive
 - boost EU cybersecurity
 - national strategy for each MS
 - sharing information across MS
- EU Implementing Regulation 2018/151
- EU (Measures for a High Common Level of Security of Network and Information Systems) Regulations 2018



Relevant bodies

- Competent authority: DCCAE and CBI
- Computer Security Incident Response Team ('**CSIRT**')
- Single point of contact: DCCAE



Who is subject to NIS?

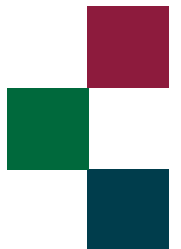
- Operators of essential services ('**OES**')
- Relevant digital service providers ('**RDSP**')
- Light touch ex post reactive supervision for RDSPs

What is an OES?

- Established in Ireland
- Service essential for maintenance of critical societal or economic activities
- Fall within scheduled sector and type
- Service depends on NIS
- Incident would have significant disruptive effects
- Can be OES in other Member States
- Businesses informed if classified as OES

Relevant sectors covered

- Energy: electricity, oil and gas
- Transport: air, rail, water and road
- Banking
- Financial market infrastructures
- Health sector
- Drinking water supply and distribution
- Digital infrastructure: IXPs, DNS and TLDs

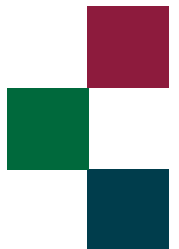


What is a RDSP?

- 3 criteria:
 1. must be either:
 - online marketplace;
 - online search engine; or
 - cloud computing service
 2. main establishment (e.g. head office) or designated representative in Ireland
 3. not a micro or small enterprise
- Regulated in other MS if main establishment outside Ireland
- Designate representative if no EU establishment

What is a RDSP?

- Self-determination (unlike with OES)
- Telecom and trust services out of scope

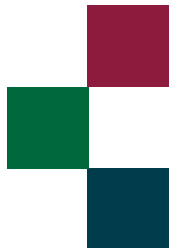


What is an online marketplace?

- B2B and B2C online marketplaces for conclusion of contract
- Includes app stores
- Excluded:
 - intermediaries, e.g. comparison sites and ad sites
 - sites selling own products/services

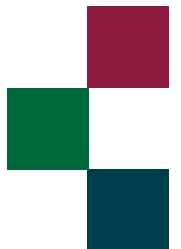
What is an online search engine?

- Performs searches of, in principle, all websites
- Excluded:
 - search functions limited to a specific website
 - comparison sites



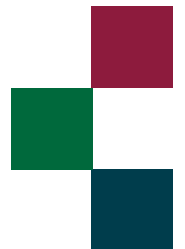
What is a cloud computing service?

- Service enabling *“access to a scalable and elastic pool of shareable computing resources”*



What is a micro / small enterprise?

- Small enterprise: < 50 personnel and turnover and/or annual balance \leq €10 million
- Micro enterprise: < 10 personnel and turnover and/or balance sheet total \leq €2 million



Security

- Risk:
 - appropriate and proportionate technical and organisational measures to manage risks, with regard to state of art
 - RDSP: regard to additional criteria (e.g. international standards, incident handling, continuity, auditing etc)
- Impact:
 - appropriate measures to prevent and minimise impact of incidents on service continuity
- Does not apply to banking / financial market infrastructure
- EU Implementing Regulation 2018/151 and guidance
- RDSP: documentation to enable verification

What are notification requirements?

- Incident must:
 - have actual adverse effect on security of NIS
 - concern RDSP or concern OES or DSP relied upon by OES for essential service
 - have a “significant impact” on service continuity (OES) / “substantial impact” on service provision (RDSP)
- Voluntary notification

Incident notification criteria

- “Significant impact” (OES):
 - number of users affected
 - duration
 - geographical spread
- “Substantial impact” (RDSP): 2 additional factors:
 - extent of disruption
 - extent of impact on economic and societal activities
- RDSP: must be in a position to estimate specific criteria

Incident notification thresholds

- OES: thresholds currently being defined
- RDSP: notify if one of following applies:
 - service unavailable for more than 5m user hours
 - risk to public safety, security or loss of life
 - material damage to a user exceeding €1m
 - resulted in loss of integrity, authenticity or confidentiality of stored, transmitted or processed data or related services offered by, or accessible via, NIS affecting more than 100,000 EU users
- Non-exhaustive thresholds

Timelines

- Notify CSIRT:
 - without delay and no later than 72 hours after aware
 - RDSP: n/a if don't have access to info
- Notify CSIRT when resolved:
 - as soon as practicable and no later than 72 hours after resolved
- Notification should not increase liability: NIS Directive
- Failure to notify is an offence

Competent authority: DCCAE

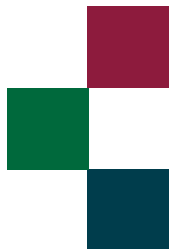
- Can:
 - carry out compliance assessment (e.g., audit)
 - request information
 - issue information notice
 - appoint authorised officers (warrant)
 - co-operate and share information with DPC / Gardai
- Authorised officers broad powers including:
 - declaration of truth
 - compliance notice
- Does not apply to banking / financial market infrastructure sectors

CSIRT

- Will, where possible, provide info to assist with incident
- Can inform the public about the incident if:
 - necessary to deal with it
 - necessary to prevent same or similar incident with other OES/RDSP
 - otherwise in the public interest (RDSPs only)
- Will forward notification, if appropriate, to SPOC in other Member State

Action points

- Determine if subject to NIS
- Check security meets requirements
- Maintain documentation
- Update security incident response plan and processes



Thank You

Questions?



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