

Article 60 submissions by the Irish Data Protection Commissioner

The Irish Data Protection Commissioner (the “DPC”) has recently submitted two draft decisions on the inquiry into potential violations of the General Data Protection Regulation (the “GDPR”) by two high profile technology companies, TikTok and Meta Platforms Ireland Limited (“Meta”). The decisions were submitted by the Irish Data Protection Commissioner as lead supervisory authority of Meta and TikTok to the other supervisory authorities concerned for their views on the draft decision. It was submitted pursuant to article 60 of the GDPR.

Background

Article 60 concerns the cooperation between the lead supervisory authority (the “LSA”) and the other supervisory authorities concerned. The LSA may request that the other supervisory authorities concerned provide mutual assistance and may also conduct joint operations for carrying out investigations or monitoring the implementation of a measure concerning a controller or processor established in another Member State. The LSA shall communicate the relevant information on the matter to the other supervisory authorities concerned and submit a draft decision for their opinion and shall take due account of their views.

Meta draft decision:

This inquiry was launched in April 2021 after various media outlets reported a data breach which effected a significant number of Facebook users. The breach affected users worldwide and it was reported that the dataset contained user’s phone numbers and email addresses. The inquiry focused on whether Meta was in compliance with article 25 (1) and 25(2) of the GDPR. These articles outline the requirements for data protection by design and default.

TikTok draft decision:

The DPC launched an inquiry into TikTok in September 2021. The inquiry focused on TikTok’s processing of children’s personal data and in particular,

public-by-default processing in relation to users under the age of 18yrs and age verification measures for users under the age of 13yrs. The inquiry also considers whether TikTok has complied with the GDPR’s transparency obligations in the context of the processing of personal data of users under the age of 18yrs.

What’s next:

Both decisions have been sent to the other concerned supervisory authorities and they will have four weeks to consider the draft decisions. They may raise relevant and reasoned objections to the draft decisions. If objections are raised and the DPC does not believe they are reasoned or relevant or does not follow the objection the DPC will work the objecting supervisory authority to reach a resolution however, if this is not possible it will be forwarded to the European Data Protection Board to deal with it through its dispute resolution process. If the DPC follows the objection a revised draft decision will be submitted to the other supervisory authorities concerned and they will have a period of two weeks to raise any reasoned and relevant objections to the revised draft decision.

Data Protection at Clerkin Lynch

The Data Protection Team at Clerkin Lynch will be monitoring the outcome of these draft decisions and will provide a further update in due course.



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