

Further GDPR Fines for Meta

On 4 January 2023, the Irish Data Protection Commissioner (the “DPC”) announced that it had concluded two inquiries into Meta Platforms Ireland Limited’s (“Meta”) data processing operations in respect of its Instagram and Facebook services. The outcome is fines of nearly €400 million.

Background

In advance of the introduction of the General Data Protection Regulation (the “GDPR”) on 25 May 2018, Meta made changes to its Terms of Services for its Facebook and Instagram users. It changed the legal basis on which it was processing user’s data. It had previously relied on the consent of its users, and they now sought to rely upon contractual as the legal basis for the majority of its processing operations.

All users were asked to select ‘I accept’ to indicate their acceptance of the updated Terms of Service and if users declined, they would no longer be able to access the services. In Meta’s view, selecting ‘I accept’ created a contract between Meta and the user and it contended that the processing of users’ data for the delivery of its Facebook and Instagram services was necessary for the performance of the contract and this included the provision of personalised services and behavioural advertising.

Complaints were made by an Austrian data subject and a Belgian data subject on the 25 May 2018. They argued that by restricting the accessibility to the services this resulted in ‘forcing’ the user to consent to the processing of their personal data for behavioural advertising and other personalised services and this was in breach of the GDPR.

The DPC’s decision

Draft decisions were prepared by the DPC in which Meta was found to be in breach of articles 5 (1)(a), 12 and 13(1)(c) as a result of the lack of transparency provided to users as to what processing operations were being carried out on their personal data, for what purpose and by

reference to which of the legal bases identified in article 6 of the GDPR. The DPC also noted that Meta did not rely on user consent as a legal basis for the provision of behavioural advertising. However, it continued that Meta was not required to rely on consent and in principle, the GDPR did not preclude Meta’s reliance on the contract as a legal basis for processing.

The draft decisions were submitted to the Concerned Supervisory Authorities (“CSAs”) who agreed with the DPC’s findings in relation to transparency. However, they considered that the fines proposed should be increased. Several CSAs also disagreed with DPC’s view that Meta can rely on the contractual legal basis for the delivery of personalised advertising. An agreement could not be reached between the CSAs and the matter was referred to the European Data Protection Board (the “EDPB”). The EDPB considered the matter and found that Meta could not rely on the contract as a legal basis for the delivery of behavioural advertising and it was found to be in contravention of Article 6. The EDPB agreed with the breaches identified in the DPC’s draft decisions. However, it was of the view that Meta had also breached the fairness principle and directed that this should also be included.

In the case of Facebook, the DPC fined Meta €210 million and it was fined €180 million in the case of Instagram. Meta was ordered to bring its processing into compliance within three months.

Meta issued a statement on their website in response to both decisions and maintains that their approach respects the GDPR and that it intends on appealing the decisions. The team at Clerkin Lynch will monitor any developments in this case and will provide an update in due course.



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