



# Legal Update

## GDPR fine for Irish Financial Firm

The Irish Data Protection Commissioner (the “DPC”) recently welcomed a decision of the District Court regarding prosecution proceedings it had taken against a financial advisory company (the “Defendant”) based in southern Ireland for breaches of the General Data Protection Regulation (the “GDPR”).

### Background:

The proceedings related to the sending to two individuals of unsolicited marketing emails without their consent in January 2023 contrary to regulation 13 of statutory instrument 336 of 2011. The DPC had issued two warnings to the Defendant in 2022 following an investigation of a previous complaint relating to an unsolicited marketing email which was sent to one of the individuals concerned.

The general rule for electronic direct marketing is that it requires the affirmative consent of the recipient however even where the recipient has consented, they can freely withdraw such consent pursuant to article 21 of the GDPR. Article 21 provides a right to object which must be clearly brought to the attention of the data subject and some form of opt out system must be in place which makes it easy for the recipient to opt out of receiving any further direct marketing.

Communication is deemed to be unsolicited when it is not sought or requested by the recipient. Where a data subject has an ongoing relationship with a person or organisation, contact from them may not always be deemed unsolicited as some form of consent may be present. Data subjects

should also be aware that details provided when entering promotions or other similar activities may have consent attached to their future use and subsequent contact may not be deemed unsolicited.

### The court’s decision:

The Defendant pleaded guilty to the two charges and agreed to discharge the DPC’s legal costs. The court applied the Probation of Offenders Act 1907 on the condition that it make a donation of €500 to each of the individuals concerned by 18 October 2023. The court indicated that if the Defendant fails to comply with the order, it will convict the Defendant and apply a fine of €1,000. It can be noted that this fine is significantly lower than recent fines issued by the Circuit Court for GDPR breaches. See our relevant updates for further details of these fines, which run into € millions.

### How can Clerkin Lynch help?

Electronic marketing can be a very useful and efficient tool for organisations to advertise and promote their products and services. However, this case highlights the importance of ensuring that all electronic marketing is undertaken in compliance with the GDPR and E-Privacy regulations.



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