



Legal Update

GDPR: URGENT BINDING DECISION ISSUED TO META

The European Data Protection Board (the “EDPB”) adopted an urgent binding decision instructing the Irish Data Protection Commission (the “DPC”) to impose an EU – wide ban on Meta’s processing of personal data for behavioural advertising on the legal bases of contract and legitimate interest.

Background:

The EDPB's decision emanates from a request from Norway’s data protection authority to make a previously issued interim ban in Norway permanent and extend its impact to all of Europe.

The EDPB had also recently issued a binding decision whereby it was made clear that relying on a contract as a legal basis was not suitable for the processing of personal data for behavioural advertising and Meta was fined €390 million.

The Decision and recent developments:

The binding decision was adopted on 27 October and the DPC had two weeks to impose a ban on processing of personal data for behavioural advertising on the legal bases of contract and legitimate interest across the EEA. The DPC served an enforcement notice (the “Notice”) on Meta stating it had seven days to cease processing data for behavioural advertising.

Failure to comply with the Notice is a criminal offence and a fine may also be imposed.

Meta has recently launched a High Court challenge against the proposed immediate ban on its Facebook and Instagram platforms from

processing personal data for use in behavioural advertising.

Given the serious criminal consequences that could arise and the short timeframe which Meta had to comply with the notice, the judge granted a short interim stay.

Meta recently indicated that it would move to a consent-based approach for processing personal data for behavioural advertising and has implemented a subscription service for users of Facebook and Instagram. Users can choose to pay a monthly subscription to use Facebook and Instagram without any ads or can continue to use the platforms for free while still seeing ads that are relevant to them. The DPC is currently reviewing this approach.

How can Clerkin Lynch help?

Organisations should carefully consider the legal basis they rely upon for the processing of users’ data in particular when processing data for behavioural advertising. The team at Clerkin Lynch has significant litigation experience and can assist with court appeals. The data protection team will be monitoring this area and will publish updates.



Mark Browne

Partner

Email:

markbrowne@clerkinlynch.com



Eileen Woods