

Data Protection Ireland

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Headlines

- DPC publishes details of six fines, p.18
- Facial recognition technology ‘inappropriate for policing,’ say privacy rights advocates, p.19
- DPC pursues prosecution of marketing offences, p.20

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DPC to ban Meta from ads based on personal data

The European Data Protection Board has adopted three decisions under the GDPR’s Article 65 dispute resolution process that effectively pave the way for the DPC to ban Meta from continuing with its core advertising business model.

The decisions address legal issues arising from the DPC’s draft decisions as Lead Supervisory Authority in ongoing inquiries into Facebook, Instagram and WhatsApp. The Facebook and Instagram draft decisions concerned the lawfulness and transparency of processing for behavioural advertising. The WhatsApp draft decision concerned the lawfulness

of processing for the purpose of the improvement of services.

Several SAs issued objections to the DPC’s draft decisions, specifically the views that the DPC took on legal basis for processing (Article 6 GDPR), data protection principles (Article 5 GDPR), and the use of corrective measures including fines. As no consensus was reached on the objections, the EDPB was called upon to settle the dispute.

In its binding decisions, the EDPB says that it has settled the question of whether or not the processing of personal data

for the performance of a contract is a suitable legal basis for behavioural advertising, in the cases of Facebook and Instagram, and for service improvement, in the case of WhatsApp.

The DPC is now required to adopt its three final decisions on the basis of the binding decisions, taking into account the EDPB’s legal assessment, within one month of the EDPB notifying its decisions (6th December 2022).

The cases came before the DPC after Schrems’

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European Commission publishes adequacy decision for EU-US transfers

The European Commission has launched the process for adopting an adequacy decision for the EU-US Data Privacy Framework. The action follows on from the US Executive Order signed by US President Biden on 7th October 2022.

In launching the process, the European Commission confirms that it is of the view that the US legal framework provides an adequate level of protec-

tion for EU personal data and suitably addresses the concerns raised by the Court of Justice of the European Union in *Schrems II* (C-311/18). These concerns centred around access to European personal data by US intelligence agencies and the lack of independent and impartial redress for EU citizens.

The new rules introduced by the US Executive Order provide that access

to EU data by US intelligence agencies will be limited to what is necessary and proportionate to protect national security, and EU individuals will have the possibility to obtain redress regarding the collection and use of their data by US intelligence agencies before an independent and impartial redress mechanism, which includes a newly created Data Pro-

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