

Ireland Update: Data Protection Commission 2020 Annual Report

On 25 February 2021, the Irish Data Protection Commissioner ("DPC") released its 2020 annual report ("Report"). The Report¹ relates to the second full year of the operation of the General Data Protection Regulation (EU) 2016/679 ("GDPR") and the Law Enforcement Directive (EU) 2016/680. It was a busy year for the DPC and the Report details the extensive span of the DPC's regulatory work. It discusses the large scale inquiries the DPC has undertaken; complaints and breach notifications received; special projects relating to children and cookies; its focus on issuing guidance useful to individuals and controllers; and the impact and challenges of COVID-19 and Brexit.

Below we set out some of the main highlights from the Report.

Lead European Data Regulator

As the *de facto* lead European data regulator for multinational technology companies, the DPC's most notable activities in 2020 relate to the decision of the European Court of Justice of the EU in Schrems II² and its role in the One-Stop-Shop ("OSS") mechanism.

Under the OSS mechanism, the location of a company's main European establishment dictates which European authority will act as the lead supervisory authority in relation to any complaints received.

The DPC received 354 cross-border processing complaints through OSS in 2020. In May 2020, it sent Europe's first major platform Article 60

draft decision to all other EU data protection authorities under the OSS. This concluded in December 2020 with the DPC issuing its first fine in a cross-border case – Twitter was fined €450,000. The DPC also submitted a draft decision to the Article 60 GDPR procedure regarding WhatsApp's compliance with its GDPR transparency obligations.

On 31 December 2020, the DPC had 27 ongoing cross-border inquiries.

Domestic Statutory Inquiries

The DPC commenced 25 domestic statutory inquiries since the commencement of the GDPR. In 2020, it issued decisions in respect of domestic statutory inquiries related to the use of CCTV by Kerry County Council and Waterford City and County Council, and personal data breaches by Tusla, the HSE and UCD.

Complaints

The DPC received 4,660 complaints under GDPR and resolved 4,476 complaints. The most frequent GDPR topics for queries and complaints during this period continued to be access requests, fair processing, disclosure, direct marketing and the right to be forgotten (delisting and/or removal requests), with the most frequent cause of breaches reported to the DPC being unauthorised disclosure.

Amicable resolution continues to play a key role in resolving complaints. Under Section 109 of

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<https://www.dataprotection.ie/sites/default/files/uploads/2021-02/DPC%202020%20Annual%20Report%20%28English%29.pdf>

² <https://maples.com/en/knowledge-centre/2021/1/international-data-transfers-brexit-and-schrems-ii-impact-for-funds> and <https://maples.com/en/knowledge-centre/2021/1/post-brexit-personal-data>

the Data Protection Act 2018, where the DPC considers that there is a reasonable likelihood of an amicable resolution, it is empowered to take steps to arrange or facilitate this.

Interestingly, the Report highlights an emerging trend of non-data protection issues featuring in complaints to the DPC. This, it seems, reflects a desire on the part of many individuals to have access to an easily accessible, no-cost dispute resolution service for general grievances.

Fines

The DPC issued its first GDPR fines:

- In April 2020, the DPC imposed a fine of €75,000 on Tusla, an Irish state agency. It found that Tusla infringed Article 32(1) of GDPR by failing to implement appropriate measures on the redaction of documents and Article 33(1) of GDPR by failing to notify a security breach to the DPC without undue delay (Tusla reported the breach to the DPC five days after becoming aware of it). Tusla did not appeal and in November 2020, the DPC applied to the Circuit Court to confirm its decision in this inquiry to impose the administrative fine. The Circuit Court confirmed the decision pursuant to Section 143 of the Data Protection Act 2018.
- The DPC imposed additional fines on Tusla in May and August 2020 in relation to further personal data breaches.
- The DPC also fined the HSE (€65,000) and UCD (€70,000) in connection with personal data breaches.
- The DPC's most high profile fine was the €450,000 fine issued to Twitter in connection with failures to report and document a personal data breach. As noted, this decision was the first draft decision in a "big tech" case on which all EU supervisory authorities were consulted as part of the GDPR Article 65 dispute resolution process.

Security Breaches

The Report highlights the value of mandatory security breach notification under GDPR. 6,673 valid data protection breaches were recorded in 2020, representing an increase of 10% on the 2019 reported breaches. The reported breaches allow the DPC to gain insights into the risks around security and processing of personal data arising and to intervene and guide on mitigation measures around those risks. The Report notes that, in general, the responses the DPC receives from organisations are encouraging with most demonstrating a desire to comply.

Direct Marketing

In 2020, the DPC concluded 147 complaints under European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011³ in respect of various forms of electronic direct marketing: 66 related to email marketing; 73 related to SMS (text message) marketing; and five related to telephone marketing. Prosecutions were concluded against six entities for offences under the e-Privacy Regulations.

Further Information

If you would like further information, please liaise with the below or your usual Maples Group contact.

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March 2021

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³ S.I. 336/2011