

Copy of the DPC's Press Release

Monday 22 May, 2023

The Data Protection Commission (“the DPC”) has today announced the conclusion of its inquiry into Meta Platforms Ireland Limited (“Meta Ireland”), examining the basis upon which Meta Ireland transfers personal data from the EU/EEA to the US in connection with the delivery of its Facebook service.

The DPC adopted its final decision in this inquiry on 12 May 2023. The decision records that Meta Ireland infringed Article 46(1) GDPR when it continued to transfer personal data from the EU/EEA to the USA following the delivery of the CJEU’s judgment in *Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems*. While Meta Ireland effected those transfers on the basis of the updated Standard Contractual Clauses (“SCCs”) that were adopted by the European Commission in 2021 in conjunction with additional supplementary measures that were implemented by Meta Ireland, the DPC found that these arrangements did not address the risks to the fundamental rights and freedoms of data subjects that were identified by the CJEU in its judgment.

The inquiry was initially commenced in August 2020, and was subsequently stayed by Order of the High Court of Ireland, pending the resolution of a series of legal proceedings, until 20 May 2021. Following a comprehensive investigation, the DPC prepared a draft decision dated 6 July 2022. Notably, it found that:

1. the data transfers in question were being carried out in breach of Article 46(1) GDPR; and
2. in these circumstances, the data transfers should be suspended.

Under a cooperation procedure mandated by the GDPR (Article 60), the draft decision prepared by the DPC was submitted to its peer regulators in the EU/EEA, also known as Concerned Supervisory Authorities (“CSAs”). The nature of the processing under examination by the inquiry was such that all other EU/EEA Supervisory Authorities were engaged as CSAs for the purpose of the cooperation procedure.

On the question of Meta Ireland’s non-compliance with the GDPR, and the DPC’s proposal to make an order to suspend the data transfers, the CSAs agreed with the DPC’s decision.

A small number (4) of the 47 CSAs raised objections in relation to the corrective power that the DPC proposed to exercise by way of the draft decision. Within this subset of CSAs, all four CSAs took the view that Meta Ireland should be subject to an administrative fine for the infringement that was found to have occurred. Two of those CSAs also took the view that Meta Ireland should be ordered to take action to address the personal data that had already been unlawfully transferred to the US, i.e. the data transferred from July 2020 to the present.

The DPC disagreed, reflecting its view that the exercise of additional corrective powers, beyond the proposed suspension order, would exceed the extent of powers that could be described as being “appropriate, proportionate and necessary” to address the infringement of Article 46(1) GDPR.

Following an informal consultation process, it became clear that consensus could not be reached. Consistent with its obligations under the GDPR, the DPC referred the objections to the European Data Protection Board (“the EDPB”) for determination pursuant to the Article 65 dispute resolution mechanism.

The EDPB adopted its decision on 13 April 2023. Consistent with its obligations to adopt its final decision “on the basis of” the EDPB’s decision, the DPC’s decision of 12 May 2023 records the exercise of the following corrective powers by the DPC:

1. an order, made pursuant to Article 58(2)(j) GDPR, requiring Meta Ireland to suspend any future transfer of personal data to the US within the period of five months from the date of notification of the DPC’s decision to Meta Ireland;
2. an administrative fine in the amount of €1.2 billion (reflecting the EDPB’s determination that an administrative fine ought to be imposed, to sanction the infringement that was found to have occurred. The DPC determined the amount of the fine to be imposed by reference to the assessments and determinations that were included in the EDPB’s decision); and
3. an order, made pursuant to Article 58(2)(d) GDPR, requiring Meta Ireland to bring its processing operations into compliance with Chapter V of the GDPR, by ceasing the unlawful processing, including storage, in the US of personal data of EEA users transferred in violation of the GDPR, within 6 months following the date of notification of the DPC’s decision to Meta Ireland.