

Ireland turns down Google adtech case

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Hungary has taken action against Google after its lead regulator declined to handle a subject access request investigation.

Hungary's National Authority for Data Protection and Freedom of Information found on 16 July that Google had failed to provide an individual with access to their personal data, in breach of the GDPR. The individual had requested access to data processed by Google's AdWords service; the regulator found the company had provided inadequate information in response.

While the watchdog sided with the complainant on the subject access request, it rejected their call for an order forcing Google to examine its general subject access request policies as there was no evidence of a systemic problem.

During the investigation, the watchdog had contacted Ireland's Data Protection Commission under the GDPR's one-stop-shop, as Google's Irish subsidiary is the data controller for products including AdWords. However, Ireland's Data Protection Commission turned the case down, as the alleged GDPR infringement affected a Hungarian individual.

Tímea Bana at Dentons in Budapest told GDR that the Irish regulator had considered itself the lead authority, but decided that the Hungarian watchdog could "proceed with the case as a local matter, since the Irish authority did not wish to act" in the case.

Bana said the case is "an example of coordinated proceedings between [EU] member states' supervisory authorities."

CMS senior counsel Márton Domokos noted that Ireland would only have had to intervene if there had also been affected complainants outside Hungary and the alleged infringement was "systematic".

Highlighting that the Irish authority found it was unnecessary to investigate, Domokos said that the situation is in line with the one-stop-shop: "It is reasonable that the lead authority investigates a data protection complaint in relation to the data controller's core activities, and another local authority investigates a specific, local complaint (which does not indicate a systematic problem)."

Iván Bartal, the Budapest-based head of Oppenheim's IP/IT and data protection practice, noted that the GDPR's one-stop-shop procedure lets regulators handle complaints if the relevant subject matter only relates to an establishment within their member state, or substantially affects a data subject only in that member state.

"In the circumstances, it may become a usual practice for similar cases that regardless where the data controller is seated, instead of the lead supervisory authority, the supervisory authority receiving the complaint will be the acting authority," Bartal said.

The watchdog imposed no fine but agreed to pay 10,000 forint (€29) to the complainant as it had missed an administrative deadline.

Bartal said this was “certainly interesting, as the [regulator] has traditionally been one of the most conservative data protection authorities in the past, and on first look, it looks as though they adopted a more relaxed than usual stance which may be considered as an exception, rather than the rule.”

“However, we believe that this is not the actual reason for the [regulator] not imposing a fine or applying any sanctions, but it may be down to a relatively recent judgment handed down by the Hungarian Supreme Court,” Bartal added. “In said judgment, which is authoritative in respect of similar cases, the Hungarian Supreme Court decided that authorities may not impose any sanction in cases where the administrative deadline has been missed by the authority.”

Ireland’s Data Protection Commission did not respond to a request for comment about its decision to turn the case down. Google declined to comment.