

Irish Regulator To Eye Transparency In GDPR Enforcement

By **Allison Grande**

Law360, Washington (March 29, 2018, 8:59 PM EDT) -- When the European Union's sweeping data protection overhaul takes effect at the end of May, the Irish privacy authority plans to focus its early enforcement sights on how companies are complying with their obligation to be transparent about the ways they collect and use personal data, Data Protection Commissioner Helen Dixon said Thursday.

During a meeting of the International Association of Privacy Professionals' Privacy Bar Section in Washington, D.C., Dixon was asked by moderator Darcey Rhoades, director of privacy at Bayer, what her office's enforcement priorities would be under the new general data protection regulation, which tightens restrictions across the EU on the use and flow of consumer data and is to take effect May 25.

Noting the importance of being able to proactively set an enforcement agenda in addition to reacting to complaints from individuals and reports from whistleblowers and the media, Dixon said that a "key" priority early on will be ensuring that companies are transparent in their practices and disclosures.

"We're starting with transparency because we think it's a key concept in empowering data subjects and giving them control of their data," Dixon said. "Data subjects can't access their rights if there is no transparency."

Dixon said that she was surprised to see pushback from the business community on the principle that using phrases in transparency policies such as "We may use personal data to enhance our products" should be avoided whenever possible.

"Does anyone even know what that really means?" Dixon asked, wondering if such a statement was intended to cover practices such as the scanning of emails before they reach the intended recipient.

While Dixon acknowledged that some situations might call for such phrases, she said she preferred that such vague statements be "avoided if possible," and that if they must be used, businesses accompany them with examples of how they have used personal data in the past to improve their products.

Aside from the proactive measures, Dixon also anticipates that her office will need to spend a lot of time responding to data protection risks, trends and concerns identified in media reports and complaints by whistleblowers and consumers. As under the current data protection regime, her office will be required under GDPR to respond to every consumer complaint it receives.

These complaints will likely give data protection authorities insight into a “whole range of abuses and failures of personal data” and help establish the regulators’ reactive priorities, according to Dixon.

Given that the GDPR establishes the bloc’s first-ever breach notification mandate, requiring businesses to report such incidents within 72 hours, Dixon predicted that breach investigations would be one of the areas that keep her office busy.

“I think they’ll be more breach enforcement, if only because we’re going to be hearing more about them,” Dixon told Law360, adding that her office was setting up an online breach portal where businesses would be able to go to record such incidents and rate their severity.

Businesses would also be wise to focus on ensuring that consumers’ rights to concepts such as data portability and erasure are respected, Dixon said, since more than half the complaints the Irish regulator currently fields center on these alleged failures.

The issue of data subjects’ rights “attracts the highest fines, and is also what leads data protection authorities quickest to your door,” Dixon added during the panel.

Fellow panelist Henriette Tielemans, a Covington & Burling LLP partner who is based in Brussels, said that while “the GDPR has 150 articles, and businesses are worried about all 150 of them,” companies are most concerned about the regulators’ ability to issue massive fines of up to 4 percent of global annual revenue.

But Dixon pointed out that while the fines are generating the most attention, working to ensure that data is being adequately protected would be a better place to direct these concerns.

“It isn’t really appropriate to start out with fines, you should start out with accountability,” Dixon said. “Then there won’t be the need for ex-post enforcement.”

--Editing by Peter Rozovsky.