

EU Advocate General: Austrian anti-doping committee GDPR compliant for publishing decision

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In September 2023, the Advocate General of the European Union released an opinion which found that the publishing of personal data of a professional athlete regarding a breach of anti-doping rules by a national anti-doping authority on their publicly accessible website was not in breach of the General Data Protection Regulation (GDPR).

Why is the opinion of the Advocate General significant, if non binding?

The Advocate General ("AG"), as an advisor to the judges of the Court of Justice of the European Union (the CJEU), writes an independent opinion on cases brought before CJEU prior to a judgment being handed down. The judgment is then given at a later date. Although an AG's opinion is not binding, it will often be followed by the CJEU.

What happened in the case?

The case involved an Austrian professional middle distance runner, who was found to have breached Austrian anti-doping rules by the Austrian Anti-Doping Legal Committee (**Committee**). Consequently, the Committee published, on their public website, the athlete's name, the length of her suspension from participating in future sporting competitions and the details of the breach concerned. The athlete challenged this decision to the USK, Austria's independent arbitration committee on the basis that the publication of her data online was incompatible with GDPR. The USK sought guidance from the CJEU on whether such publication complied with the GDPR.

What was the view of the AG in this case?

The AG held that:

- The processing of personal data for the purpose of implementing national anti-doping legislation did not constitute an 'activity' of processing under EU law;
- Anti-doping rules primarily regulate sport's social and educational functions, rather than its economic aspects, and the EU does not have competence to regulate sport;
- The information that a professional athlete has committed a breach of an anti-doping rule linked to the use or attempted use or possession of a prohibited substance or method does not, in itself, constitute "data concerning health" within the meaning of Article 9 of the GDPR;
- The GDPR does not preclude the practice, by a national authority responsible for promoting, coordinating, and monitoring a national doping control programme, of disclosing on its website in a publicly accessible manner, the personal data of a professional athlete in relation to a breach of an anti-doping rule.

The Court is expected to deliver its judgment at a later date and is not bound by the opinion of the AG.

In the Irish context

Anti-doping testing and enforcement is conducted by Sport Ireland pursuant to its obligation under section 42 of the Sport Ireland Act 2015. Following a finding of an anti-doping violation, Article 15.4 of the Irish Anti-Doping Rules 2021 requires Sport Ireland to publish information about the decision including the sport, the anti-doping rule violation, the name of the athlete who committed the violation, the prohibited substance or prohibited method involved and the sanction imposed.

It is conceivable that an aggrieved Irish athlete could challenge on the same grounds as the Austrian athlete in this case. While the AG opinion suggests that such a challenge would not succeed, we await the CJEU judgment for a definitive position on the matter.

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