

Brussels, 19 November 2020

Ref: OUT2020-0122

Subject: Letter of 13 July 2020 from News Media Europe and others

To whom it may concern,

I refer to your letter dated July 13th 2020, in which you raise questions on the French *Conseil d'Etat* decision of June 19th 2020¹, regarding which the *Commission Nationale Informatique et Libertés* (“CNIL”) has provided full information to the European Data Protection Board (“EDPB”) members.

First of all, the EDPB would like to underline that in the opposite of what may have sometimes been reported in the press, the French Court did not take a position on whether “cookie walls” are lawful or not on the merits, but considered that the CNIL could not set out a general and absolute ban of cookie walls in a soft law instrument like its guidelines on Article 82 of the French data protection act².

Furthermore, as the EDPB has stated numerous times³, the revision of the current ePrivacy Directive is an important and necessary step that has to be concluded rapidly. It is indeed the hope of the EDPB that the future ePrivacy Regulation provides clear answers to stakeholders, data subjects and Data Protection Authorities.

Until then, the EDPB recalls that the 2002 ePrivacy Directive, amended in 2009, remains the applicable legal framework, and that the consent under the ePrivacy Directive needs to meet the standards set by the GDPR. Indeed, recital 17 of the ePrivacy Directive states that *“For the purposes of this Directive, consent of a user or subscriber, regardless of whether the latter is a natural or a legal person, should have the same meaning as the data subject's consent as defined and further specified in Directive 95/46/EC. Consent may be given by any appropriate method enabling a freely given specific and informed indication of the user's wishes”*. In addition, Article 94(2) of the GDPR clearly states that *“References to the repealed Directive shall be construed as references to this Regulation”*.

The EDPB also recalls that, in line with Article 70(1)(e) GDPR, one of its tasks is indeed to examine, on its own initiative, on request of one of its members or on request of the Commission, any question

¹ Available here <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2020-06-19/434684>

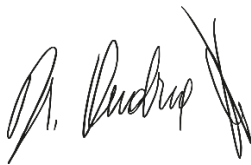
² Available here <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000038783337>

³ See for example the Statement of the EDPB on the revision of the ePrivacy Regulation and its impact on the protection of individuals with regard to the privacy and confidentiality of their communications, available here https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_statement_on_eprivacy_en.pdf

covering the application of the GDPR and issue guidelines, recommendations and best practices in order to encourage consistent application of the Regulation. The EDPB notably fulfilled this task when issuing the latest update of the EDPB guidelines on consent (Guidelines 05/2020 on consent under Regulation 2016/679, version 1.1, adopted on 4 May 2020).

Kindly note that the EDPB continues to follow carefully the evolution of the negotiations on the future ePrivacy Regulation and would like to thank you for your continued interest in the work of the EDPB.

Yours sincerely,



Andrea Jelinek