

Summary Final Decision Art 60

Complaint

Compliance order

EDPBI:FR:OSS:D:2022:330

Background information

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| Date of complaint: | 19 August 2020 |
| Date of final decision: | 03 February 2022 |
| LSA: | FR |
| CSAs: | AT, BE, BG, HR, CY, CZ, DK, EE, FI, DE, DEBW, DEBY, DEBE, DEHB, DEHH, DEHE, DEHI, DEMV, DENW, DERP, DESL, DESN, DEST, DESH, DETH, HU, IE, IT, LV, LI, LT, MT, NL, PL, PT, RO, SK, SI, ES, SE |
| Legal Reference(s): | Article 44 (General principle for transfers), Article 46 (Transfers by way of appropriate safeguards), Article 49 (Derogations for specific situations). |
| Decision: | Compliance order |
| Key words: | Consumer protection, Cookies, E-Commerce, International transfer, Online and electronic devices, Pseudonymisation. |

Summary of the Decision

Origin of the case

The controller performs distance selling activity and is registered in France. On 12 October and 16 November 2020, the LSA delegation carried out a documentary audit by sending questionnaires to the controller. The questionnaires concerned the transfer of personal data of the visitors of the controller's French language version website to the United States of America. As a response to the LSA's questionnaires, the controller informed the LSA that it had decided to integrate the Google Analytics functionality on its website. The controller stated that the statistics obtained through Google Analytics concerned individuals in several member states of the EU. The controller considered that the processing activity resulting from the integration of Google Analytics appeared to meet the definition of cross-border processing as referred to in Article 4.23 b) of the GDPR. On 9 March 2021, the LSA sent a questionnaire to Google LLC covering the Google Analytics feature, to which Google LLC replied on 9 April 2021. In its reply, Google LLC stated that data collected on the controller's website through the Google Analytics functionality are stored in and thus transferred to the United States of America. In

accordance with Article 56 GDPR, on 5 August 2021, the LSA informed all the European supervisory authorities of its competence to act as lead supervisory authority. As part of the cooperation procedure based on Article 60 of the GDPR, a draft decision was submitted on 4 January 2022. The draft decision did not give rise to any relevant and reasoned objections.

Findings

Firstly, the LSA concluded that, by deciding to implement the Google Analytics feature on its website for the purposes of measuring its audience and the performance of its media campaigns, the company managing the website determined the means and purposes of the collection and processing of the data obtained through the use of Google Analytics. Thus, the company should be considered controller within the meaning of Art. 5(7) of the GDPR. Secondly, the LSA established that the data collected under the Google Analytics feature and transferred to the United States of America constituted personal data within the meaning of Art. 4 of the GDPR. Referring to Recital 30 of the GDPR, the LSA noted that online identifiers, such as IP addresses or information stored in cookies, can commonly be used to identify a user in particular when combined with other similar types of information. In the case at hand, the controller would, under the Google Analytics feature, process a visitor's identifier (the Google Analytics customer ID unique for each user), internal identifier by the controller (in case a visitor has logged into the website through a user account provided by the controller), order identifiers (if such existed) and IP addresses. As stated in Recital 26 of the GDPR, the singling out of individuals is sufficient to make individual website visitors identifiable. Finally, on the question of whether there was a breach of the obligation to regulate transfers of personal data outside the European Union, the LSA presented the following findings. According to Art. 44 of the GDPR, a transfer of personal data to a third country shall take place only if the conditions laid down in Chapter V of the GDPR are complied with by the controller and processor. The LSA pointed out that there is currently no adequacy decision as referred to in Art. 45 of the GDPR which the parties of the transfer can rely upon when transferring personal data to the USA. Moreover, pursuant to CJEU's judgement in case C-311/18, standard contractual clauses do not alone provide appropriate safeguards for a transfer of personal data to the USA as they are contractual in nature and therefore do not prevent US authorities from accessing the transferred data. With regard to the contractual, organisational and technical measures to supplement the standard data protection clauses implemented by Google LLC, the LSA found that none of the measures, such as the notification of users, publication of a transparency report, protection of communications between the Google services and encryption of data at rest in data centres, prevented or reduced the possibility of US authorities to access the data. Thus, the safeguards could not be deemed effective in the present case. Further, the derogations set forth in Art. 49 of the GDPR were not applicable as the data subjects had not given their explicit consent to the transfer within the meaning of Art. 49(1)(a) of the GDPR. The controller had not presented evidence to support its claim to base the transfer on Art. 49(1)(b) either. Based on the aforementioned, the LSA concluded that the controller could not invoke any of the tools provided for in Chapter V of the GDPR to justify the transfer of personal data of visitors to its website. Thus, it had undermined the level of protection of the personal data of data subjects as guaranteed in Art. 44 of the GDPR.

Decision

The controller was ordered to bring its data processing activity into compliance with Art. 44 of the GDPR notably by ceasing its processing activities under the Google Analytics functionality within one month of the notification of the LSA's decision and provide supporting documentation to the LSA confirming that it has complied with the aforementioned request within the abovementioned time limit.