



Newsletter Data Protection

Harlay Avocats | October 2022

Is it safe to (re)use Google Analytics?

The signing by the U.S. President on October 7th 2022 of an Executive Order to ratify the negotiations with the EU on data transfer is a new step towards restoring a secure framework for transatlantic data transfer. While waiting for an adequacy decision by the European Commission which is expected in the spring of 2023, data transfers to the US should be strictly supervised to avoid risk exposure to sanctions.

It is precisely for reasons of illicit data transfers to the US that the Google Analytics tool is in the radar of data protection authorities, including Austria, France, Italy and Denmark, which have ruled that the tool is not compliant with the GDPR.

Why focusing on Google Analytics?

After more than a hundred complaints filed by the NOYB association before the data protection authorities of the 27 Member States to challenge the lawfulness of personal data transfers to the US - among which 52 were directed to the use of Google Analytics - a task force was created within the European Data Protection Board to ensure the harmonization of national decisions. As a result of this consultation, the Austrian, French, Italian and Danish supervisory authorities have each concluded that data transfers to Google's US servers occurred in violation of the GDPR.

What is the risk of transferring personal data to the US?

In July 2020, the European Court of Justice invalidated the Privacy Shield, which allowed data transfers from the EU to the US, on the grounds that US laws enable national authorities to access personal data of individuals in the EU without granting any right to object.

Since then, data transfers out of the EU can still be performed but must be based on other transfer instruments (such as standard contractual clauses or BCRs), providing that additional measures are implemented to ensure the effectiveness of the rights of individuals granted by the GDPR.

With respect to Google Analytics, the effectiveness of the additional measures implemented were analyzed by the data protection supervisory authorities. Those that rendered their opinion are unanimous: Google Analytics' additional measures are inadequate, consequently data transfers to the American servers are not GDPR compliant.

What are the sanctions?

To date, the data protection authorities have issued formal notices to the concerned publishers to bring their processing into compliance or, if not, stop using Google Analytics. The objective shared by the European authorities is to ensure that the rights of individuals in the EU are protected.

For the time being, data transfers, especially in the context of the cloud, are currently a priority topic for controls on the French CNIL agenda. Users of IT solutions from American providers are therefore invited to be more vigilant about the supervision of data transfers.



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