

Data Privacy Alert

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On the 21st of January 2019, Google was fined with EUR 50 million for the long-term non-compliance with certain main provisions included in the GDPR regarding the obligation to provide information to data subjects, but also to rely on a legal ground when processing personal data of individuals. Sanctioning Google in this respect comes as a natural reaction of the French authority, taking into account the variety of data processing activities performed by Google, as well as the inherent impact such processing activities have on the private lives of individuals, mainly as a result of combining datasets and identifying behavioural, identity and preference related characteristics of the individuals.

Please find below a series of main observations resulting from the assessment of the decision adopted by the French authority ("CNIL").



GDPR: Google fined EUR 50 million for rookie mistakes. The decision's impact on the market

1. Google cannot rely on the one stop shop mechanism provided by the GDPR

Pursuant to having undergone discussions with the data protection authorities within other Member States (i.e., including the one in Ireland), CNIL is of the opinion that the main establishment of Google cannot be identified as being in one particular Member State. Such opinion is because decisions regarding the purposes and means of processing personal data are taken within various establishments of Google in different Member States.

Google's main expectation with respect to the assessment of potential GDPR non-compliances was that such assessment was to be performed by the data protection authority in Ireland, as lead authority corresponding to the main establishment of Google – i.e., from a corporate perspective. However, CNIL comes and contradicts this expectation, stressing out that from a data protection perspective, when determining the main establishment (i.e., and by way of consequence the lead supervisory authority) one must refer to the identification of the place where the purposes and means of processing are determined, if such a place exists at the level of the EU. Moreover, according to CNIL there is no clear proof that the decisions regarding the information notice or the legal grounds for the provision of personalised ads are taken by the entity Google operates in Ireland. Consequently, one cannot identify a main establishment for such processing activities, such being performed in many places within the EU, granting investigation competences to all the data protection authorities in the EU.

When this complaint was assessed by CNIL, Google did not finalise "moving" its main establishment regarding the activities performed in the EU in Ireland, aspect that may have influenced CNIL's decision if such change would have also involved the transfer of the power to take decisions regarding the purposes and means of processing personal data to the Irish entity.

2. Google does not comply with the transparency principle provided by the GDPR

Having assessed the information available on the relevant Google website, as well as the ones provided by the controller when users using Google IDs and systems initially set up their Android phones, CNIL is of the opinion that the information provided is excessively scattered, fragmented, incomplete and unclear. For example, in order to understand the way in which the ads provided by Google are personalised, one needs to perform 5 or more actions – accessing the general confidentiality policy, the tab "more information", as well as reading other documents containing confidentiality rules and the corresponding sections regarding personalised services.

As such, the user must continuously question the completeness of the provided information, verifying various sections available on the Google website and the corresponding policies in order to understand the ways in which its personal data is being processed. Moreover, the criticism Google is facing highlights the fact that due to the architecture of the information provision system, the user is inclined to access such information after having set up its account on Android devices, and by way of consequence, after additional data is collected, and not when or before such data are being obtained. Therefore, the expectations of the users regarding the implications and consequences of the data processing activities by Google are low. Moreover, Google does not provide for retention periods or rules to determine such periods for the personal data that it is processing.

According to CNIL the necessity to provide such information in accordance with the provisions of GDPR is extremely important, especially due to the large quantity of personal data collected (i.e., millions of users), the intrusive character of such data (i.e., including behavioural data) and to the variety of sources used (i.e., starting with data stored on the phone, words searched on Google, videos seen on Youtube or actions performed on the internet pages of third party entities using Google cookies/plugin ins).

3. Google does not comply with the consent validity conditions imposed by the GDPR

In this respect, CNIL considers that the consent granted by Google users regarding the personalisation of ads is not informed, expressed via an affirmative action, specific or distinctively provided in relation to the another provisions of the Google terms and conditions.

Taking into account that the consent for ads personalisation is included in the Google terms and conditions, all the above-mentioned observations regarding the information criteria are applicable in this respect. Moreover, such consent is drafted and granted en bloc and in a non-specific manner for all the data processing purposes provided in such terms and conditions, being expressed by way of the same action through which users grant their consent for the set-up of their Google account. Additionally, CNIL's decision criticises the fact that even though users are granted the possibility to withdraw or change their consent regarding ads personalisation, such possibility is offered only after the account is set up, the consent being considered as automatically granted upon set up.

As such, even though all the above seem basic errors concerning the processing of personal data, Google has persevered in replicating them from the moment it developed the Google account product. Such errors represent minor points of interest in terms of compliance check in comparison with the more important problems of Google regarding the profiling of users, providing statistical data regarding the activity of such users to third parties, or the unlimited collection of data by way of cookies and plug ins.

4. Final issues to be taken into account

Actually, the impact of this decision is a lot greater than the one strictly related to the individuals using Google products (such should not be neglected in the context of the great popularity and large-scale use of such product). This decision affects third party entities using Google products – such as Google Analytics, Google Ads, Google or Youtube social plug ins. Why? Because controllers using such products generally rely on the information Google is providing to users, and, in certain cases on the grounds identified by Google when acting as controller.

What are the next steps?

Each business should attentively assess the Google products used, with an accent on the specific data collected by way of such products (e.g., from general personal data, to data obtained via cookies), and proceed to informing the individuals with respect to such processing activities on their own. Moreover, businesses should attempt negotiating with Google the contractual terms, as taking into account the latest events, it may be more receptive in amending or personalising them.

Nevertheless, additional guidance may appear with respect to the above mentioned aspects, as other EU authorities may focus their attention to the issues presented in the CNIL decisions - the Swedish and the Czech authorities have already announced that they are investigating complaints against Google having as object the information of users and the means of obtaining their consent.

For further questions regarding the aspects mentioned in this alert, please contact us.



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