

Summary Final Decision Art 60

Complaint

Administrative fine, Compliance order

EDPBI:BE:OSS:D:2022:325

Background information

Date of final decision:	02 February 2022
Date of broadcast:	02 February 2022
Controller:	Interactive Advertising Bureau Europe (IAB Europe)
Processor:	N/A
LSA:	BE
CSAs:	AT, CY, CZ, DEBY, DEBE, DEBB, DENI, DENI, DEMV, DENW, DERP, DESL, DK, EL, ES, FI, FR, HR, HU, IE, IT, LU, LV, NL, NO, PL, PT, SE, SI.
Legal Reference(s):	Article 5 (Principles relating to processing of personal data), Article 6 (Lawfulness of processing), Article 7 (Conditions for consent) Article 12 (Transparent information, communication and modalities for the exercise of the rights of the data subject), Article 13 (Information to be provided where personal data are collected from the data subject), Article 14 (Information to be provided where personal data have not been obtained from the data subject), Article 24 (Responsibility of the controller), Article 30 (Records of processing activities), Article 32 (Security of processing), Article 35 (Data protection impact assessment), Article 37 (Designation of the data protection officer)
Decision:	Administrative fine, Compliance order
Key words:	Advertising, E-Commerce, Profiling, Lawfulness of processing, Legitimate interest, Consent, Transparency, Data security, Data protection officer, Data protection impact assessment, Accountability, Data protection by design and by default, Record of processing activities.

Summary of the Decision

Origin of the case

The defendant is a federation representing the digital advertisement and marketing industry on the European level. This organisation has developed a Transparency and Consent Framework (TCF)

allowing to capture users' ads preferences in order to share them with organisations that take part in one of the most used "Real-Time Bidding" (RTB) protocols worldwide (publishers, consent management providers and other adtech vendors).

A RTB protocol is an automatic system allowing third-party companies to bid instantly for advertising space in order to display targeted ads specifically tailored to a user's profile. As a result, the user will be shown the ads of the company that offered the highest bid for the profile assigned to it.

Thanks to the TCF developed by the defendant, the organisations participating to this RTB protocol can be informed of what the user has consented or objected to, and thus know whether they have a legal basis for displaying their ads to this user.

Findings

As regards the nature of the data processed in the context of the TCF, the LSA noted that the TCF inevitably involves the collection of users' IP addresses which, when combined with other information held by the participants, makes it possible to identify the users who have expressed their preferences when visiting a website or an app. The LSA thus concluded that the data processed in the framework of the TCF qualifies as personal data.

Further, the LSA held that, although the defendant may not process nor access these personal data, it nevertheless exercises a decisive influence on the purposes of these processing. In addition, the LSA pointed out that the defendant is the one which defines the rules applicable to the processing and that those rules are imposed to the organisations participating in the TCF. As a result, the LSA found that the defendant, together with the other organisations participating to the TCF, is a joint controller for the processing related to the collection and dissemination of users' preferences, objections and consent, as well as for the subsequent processing of the users' personal data based on those preferences.

Moreover, the LSA found that the defendant did not provide a valid legal basis for the processing related to the registration of the consent signal, objections and users' preferences. As to the processing related to the collection and dissemination of user' personal data in the context of the RTB, it was established by the LSA that none of the legal grounds proposed and implemented by the TCF (i.e. consent or legitimate interest) could be lawfully invoked by the TCF participants. Thus, the defendant infringed Art. 6 GDPR.

Concerning the information provided to the users, the LSA observed that the information provided to data subjects was expressed in a too generic manner and did not enable them to understand the nature and scope of the processing carried out in the context of the TCF. The LSA therefore concluded that the defendant did not comply with the obligations under Articles 12, 13 and 14 GDPR.

Finally, the LSA found that the defendant failed to comply with several other of its obligations under the GDPR. These violations relate to the principle of accountability (Art. 24 GDPR), data protection by design and by default (Art. 25 GDPR), data security (Art. 5(1)(f) and 32 GDPR), the obligations to keep a register of processing operations (Art. 30 GDPR), to carry out DPIA (Art. 35 GDPR), as well as to appoint a DPO (Art. 37 GDPR).

Decision

The LSA imposed a €250.000 fine to the defendant. Additionally, it ordered the defendant to undertake a series of corrective measures in order to bring the processing carried out under the TCF into compliance with the GDPR. The LSA gave the controller two months to present an action plan to implement these corrective measures, and a maximum period of six months to complete the compliance measures indicated in the action plan, after validation thereof by the LSA.