George Z. Georgiou
& Associates LLC
Lawyers, Arbitrators & Legal Consultants

Is the use of Google Analytics/Facebook Connect by EU Entities unlawful following Schrems II?

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NOYB, a non-profit group founded by Max Schrems, filed 101 complaints against entities in all 30 EU and EEA countries for continued use of Google Analytics and Facebook Connect integrations to transfer data of EU citizens to the U.S. without a valid transfer mechanism, following the Court of Justice of the European Union's "Schrems II" ruling which invalidated the EU – US Privacy Shield and set additional requirements for the use of Standard Contractual Clauses (SCCs). Google still claims to rely on the 'Privacy Shield' a month after it was invalidated, while Facebook continues to use SCCs.

The European Center for Digital Rights - NOYB (acronym for 'None of your Business'), a non-profit organization founded by lawyer and data protection activist Maximillian Schrems, filed complaints against 101 EU organisations for continuing to transfer data to the US by continuing to rely on the EU-US Privacy Shield which was invalidated last month by the Court of Justice of the EU, or on Standard Contractual Clauses.

Among the 101 complaints, complaints have been filed against 3 Cyprus organisations before the Austrian data protection Authority. These organisations are: **Politis**, the **Cyprus News Agency** and the **Cyprus Football Association**.

The complaint against Politis concerns the use of *Facebook Connect* on its website which results in the transfer of personal data of the complainant to Facebook Inc in the US.

The complaints against the Cyprus News Agency and the Cyprus Football Association concern the use of *Google Analytics* on their websites which results in the transfer of the complainant's personal data to Google Inc in the US. According to the complaints these transfers are unlawful and Google is actively providing user data to the US Government as it is subject to US intelligences surveillance.

In all three complaints, the complainant is asking, among other things, for a ban on the transfer of data and a dissuasive fine to be imposed on Politis, the Cyprus News Agency and the Cyprus Football Association.

These complaints will likely be forwarded to the Lead Supervisory Authority under the GDPR's One Stop Shop Mechanism, which for the 3 Cyprus organisations is the Office of the Cyprus Commissioner for Data Protection.

The three organisations above may have been selected by NOYB in filing their complaints however the issue is much wider and affects all organisations currently having Google Analytics and Facebook Connect integrations (or other similar) on their websites.

By way of background, on July 16th, 2020, the Court of Justice of the European Union ('CJEU') delivered its judgment in the *'Schrems II' Case (Facebook Ireland and Schrems [Case C-311/18])* concerning the legality of data transfers outside the European Economic Area ('EEA') under the General Data Protection Regulation (EU) 2016/679 ('GDPR').

Prior to the Schrems II decision, many organisations relied on the EU-US Privacy Shield (an agreement between the EU and the US which allowed the transfer of personal data from the EU to the US), to transfer personal data to the US.

Following the complaint of Maximillian Schrems, and the subsequent proceedings brought by the Irish Data Protection Commissioner, the case reached the CJEU which was asked to consider if law and practice in the US relating to personal data ensured an equivalent protection of personal data to that of the EU.

The CJEU invalidated the EU-U.S. Privacy Shield as it found that: 1) US law does not effectively set limits on the activities of the intelligence services and 2) does not provide effective remedies for individuals whose data has been transferred to the US. Subsequently, the 'Privacy Shield', as we know it, is no longer available as a legitimate mechanism for transfers of personal data to the U.S.

The CJEU further considered the Standard Contractual Clauses ('SCCs) as a mechanism for the transfer of personal data to third countries valid and emphasized that organisations using SCCs to transfer data outside of the EEA should make case-by-case assessments on the effectiveness of the SCCs. They must also suspend their data transfers if it is not or no longer possible to adhere to the SCCs (this is the case for US transfers as intelligence services surveillance and the lack of effective remedies for data subjects is not something that can be solved with SCCs but will require a political decision and a change of laws in the US). The CJEU further encouraged the use of additional safeguards and technical methods to supplement SCCs, in order to compensate for the lack of data protection in a third country.

The European Data Protection Board ('EDPB') in its statement following the decision in Schrems II welcomed the CJEU's decision adding that it intends to further improve the transfer of personal data outside the EEA. The EDPB has issued an FAQ about data transfers following the Schrems II case.

Currently the EU Commission and the US Department of Commerce have initialized discussions to evaluate the potential for an enhanced privacy shield framework to comply with the Schrems II decision. It is notable that in the meantime no grace period has been given in respect of data transfers to the US under the Privacy Shield. More than 5.000 US companies were participating in the Privacy Shield before it was invalidated.

The Office of the Commissioner for Personal Data Protection in Cyprus issued an announcement informing the public about these developments, emphasizing that additional guidance from the EDPB, should be expected.

We will keep sharing additional guidance, analysis and insights to help you navigate the challenges of GDPR compliance.

Polina Christodoulou
Senior Lawyer
Head of GDPR Department

For further information please contact:

George Z. Georgiou & Associates LLC 1 Iras Street, 1060 Nicosia, Cyprus
T +357 22763340 F +357 22763343
W www.gzg.com.cy E admin@gzg.com.cy