



Andrea Jelinek

Chair

European Data Protection Board

Rue Wiertz 60,

B-1047, Brussels

Belgium

27/10/2021

Follow-up Letter to the “Call for consistent interpretation of cookie consent requirement by the EDPB”

Dear Ms Jelinek

We are writing to you following our letter dated 23/07/2021 re. formal involvement of the European Data Protection Board (EDPB) in providing consistent EU-wide guidelines interpreting the requirements for valid consent to the use of cookies and similar technologies, for which we had received an acknowledgement of receipt. However, we did not have the opportunity to further discuss the practical consequences of various interpretations arising from various national data protection authorities (DPA).

Since our initial letter, we have been following closely the developments and we welcome with great appreciation the establishment of an EDBP taskforce on cookie banners. We understand that Gwendal Le Grand, former vice secretary-general of the French CNIL has joined the EDPB to lead the support of law enforcement and cooperation between DPAs. We are glad to see that EDPB is strengthening its organisational and human resources to tackle the aforementioned issues.

This first step relating to cookie banners will only focus on the visible part of currently diverging interpretations of consent requirements. Nevertheless, some other serious different approaches also deal with the scope of the consent itself and exempt cookies, as well as the right to object cookies which would become an unprecedented condition of validity of the consent requirement.

To elaborate further our concerns relating to the absence of a coordinated pan-European approach to the interpretation of prior user consent for the deployment of cookies, we wish to emphasize the following:

- The diverging regulatory guidance and enforcement by the relevant DPAs has led to significant uncertainty and confusion among organisations, especially where the interpretation of the e-privacy legal framework and the GDPR by the DPAs deviate from the text, spirit and intent of the respective legal instrument. This

is notably the case where some DPAs impose that a 'Reject' option prohibiting businesses from further soliciting consent from individuals. Accordingly, even though the adoption of EU-wide guidelines that provide consistent and practical directions for how organisations should address the cookie consent requirements is absolutely vital, it is important that such EU-wide guidance does not deviate from the text of the legal instruments by setting a bar not embodied within the EU legislation.

- As these issues are of a cross-border nature, and ultimately relate to the interpretation of GDPR's consent requirements, the adoption of such EU-wide guidelines should avoid permitting DPAs to circumvent the 'one-stop-shop' mechanism which ensures cooperation between DPAs in the case of cross-border processing. We believe that such understanding of the interplay between the ePrivacy Directive and the GDPR would form an important contribution to EDPB's role in ensuring the consistent application of the GDPR throughout the EU.
- In light of these complex issues, the professionals and industries have developed and put in place different compliance tools and mechanisms. For example, IAB's Transparency and Consent Framework (TCF) v2.0., a widely-adopted tool in the online advertising industry in Europe, takes into account various legal basis for processing for different purposes. This framework today represents mandatory condition to access online digital advertising market, since no publisher, no advertiser and no intermediary agent can run its activities without going through the TCF protocol and its related consent string requirements. However, the DPAs and the EDPB have been relatively silent on the implementation of such tools and mechanisms and their conformity with the legal framework. As the lack of legal certainty and consistency of the current legal position entails a heavy technical, financial and organisational burden on organisations, such organisations tend to follow, at a minimum, industry wide standards. It would be highly appreciated if EDPB could articulate a common analysis of such industry specific tools and mechanisms.

We would highly appreciate if EDPB is considering such harmonisation of regulatory guidance and what will be in the EDPB's agenda on these topics.

We would welcome the opportunity to discuss these issues with you further.

Yours sincerely

Signatories

Our 12 associations together represent +95% of their respective sectors in France, from the press, media and online services, to digital advertising, retail and e-commerce sectors. You will find below a description of each association participating in this initiative to keep the Internal Market unite and, therefore, fair and competitive.

AACC

Founded in 1972, the AACC (Association des Agences Conseil en Communication) is a professional organization which unites 180 companies employing nearly 10,000 people. The AACC is also a federation that cover all the disciplines of the profession : advertising, marketing services, digital communication, corporate communication, health communication, advertising production, events... To be a membership entails an adherence to the professional rules that make the value of the AACC.

www.aacc.fr

contact: Ms. Alexandra Basset (abasset@aacc.fr)

Alliance

L'Alliance de la presse d'information générale is a professional organization which represents 300 political and general information newspapers in France. The Alliance is an essential interlocutor and partner of French and European public authorities, as well as of press sector's stakeholders.

www.alliancepresse.fr

contact: Mr. Pierre Petillault (p.petillault@alliancepresse.fr)

CPA

Created in 2008, the CPA (Collectif Pour Les Acteurs du Marketing Digital) is the labour union of digital marketing players—digital marketing is a sector of activity that forms the stand of any digital acquisition strategy. It brings together key players in the digital marketing market, which represents 10,000 jobs and a turnover of 600 million euros. The CPA represents Publishers and expert Providers, offering independent and tailor-made solutions to digital marketing decision-makers (advertisers and e-merchants) to support their growth.

With the proliferation of acquisition models and increasingly complex user journeys, CPA members are committed to putting their expertise, understanding of the industry, and innovative spirit at the service of their clients.

www.cpa-france.org

contact: Ms. Noella Boullay (nboullay@cpa-france.org)

FEVAD

Fevad (Fédération E-Commerce et Vente à Distance) is the representative organisation of the e-commerce and distance selling sector in France. Fevad's mission is to gather and disseminate information enabling a better understanding of the sector and to act in favour of a sustainable and ethical development of e-commerce and distance selling in France. Fevad represents 770 companies. The e-commerce sector in France in 2020 amounted to 1.8 billion of transactions and 112 billion € of turnover, involved more than 40 million of online shoppers and generated over 200,000 direct jobs.

www.fevad.com

contact: Mr. Marc Lolivier (contact@fevad.com)

FNPS

FNPS (Fédération Nationale de la Presse d'information Spécialisée), the French Specialised Periodical Publishers Federation, founded in 1974, represents about 450 publishers, more than 340 online publications and 1,200 printed publications, most of them in the B2B publishing sector: medicine and science, farming and agriculture, law, finance, management, trade and industry. Members hire about 5,000 journalists among a total of 13,000 employees.

www.fnps.fr

contact: Mr. Laurent Bérard-Quélin (lbq@sgpresse.fr)

GESTE

GESTE (Groupement des éditeurs de contenus et services en ligne) brings together leading online French professional publishers (media, video, music, games and classifieds). They converge towards a common goal: establish a sustainable and fair ecosystem. Attentive to market development and expectation of content publishers and online services, GESTE organizes pragmatic and innovative recommendations related to the development of economic models, editorial innovation, new tools & technology, legal and regulatory developments. Over one hundred GESTE members (representing almost 2,000 French websites and app) are actively involved in the development of online publishing economic, legislative and competitive landscapes.

www.geste.fr

contact: Mrs. Laure de Lataillade (laure@geste.fr)

SEPM

SEPM (Syndicat des éditeurs de la presse magazine) is the representative organization of the general magazine press. It brings together about 80 companies and press groups publishing 500 publications, from political and general information to interest-based press, including educational, cultural and women's publications. As a center of expertise and foresight, it coordinates the actions of the profession, defends its interests and also works to promote the media. The members companies of SEPM employ around 11 000 persons of which 7 300 journalists.

www.lapressemagazine.fr/

contact: Ms. Julie Lorimy (jl@lapressemagazine.fr)

SNPTV

SNPTV (Syndicat National de la Publicité Télévisée) has several missions:

1. The promotion of the audiovisual and television advertising media.
2. Defending the general, moral and material interests of the activities of the union and its members.
3. The development of links of good confraternity, courtesy and solidarity between its members, and the respect of professional loyalty practices, in accordance with the rules and practices to which the activities concerned are subject.
4. In general, the study and the application of all means and all measures in favor of these activities.
5. In addition, SNPTV represents our members and the profession in professional bodies or joint committees such as the ARPP, Afdas, Advertising Federation, CPPNI, CPNEF etc.

www.snptv.org

contact: Mr. Antoine Ganne (antoine.ganne@snptv.org)

SPIIL

Spiil is the French trade association for independent online press that gathers more than 230 editors and 300 press titles. Created in 2009, it conducts the study, support and representation of the professional, economic, ethical, material and moral interests of independent, general or specialized press publishers and thus has the mission of:

- promoting independent and quality press.
- advocating for a legal and regulatory framework that allows real economic development of the online press, and ensures its sustainability.
- participating actively in strengthening a rapidly evolving profession, by defining common operating principles, as well as by sharing very diverse experiences and practices.

www.spiil.org

contacts: Ms Cécile Dubois, co-president (cd@spiil.org), Mr. Laurent Mauriac, co-president (lm@spiil.org) and Ms Anne-Claire Marquet, director (acm@spiil.org)

SRI

The SRI (Syndicat des Régies Internet) is a French trade association regrouping 35 members, digital sales houses and sell-side adtech partners. The SRI and its members share their expertise and promote best practices for a responsible and sustainable digital advertising landscape. It also provides key information to understand the complexity of the digital advertising ecosystem, in particular through its report "l'Observatoire de l'e-pub".

www.sri-france.org

contact: Ms. Hélène Chartier (hchartier@sri-france.org)

UDECAM

UDECAM (Union des Entreprises de Conseil et d'Achat Media) is a French media association gathering the main media agencies in France, whose goal is to promoting and sharing best practices, improving the existing ones and anticipating the future of media and advertising environment.

www.udecam.fr

contact: Ms. Françoise Chambre (f.chambre@wanadoo.fr)

Union des Marques

Union des Marques is the French representative association of advertisers and counts 230 members (approx.1500 brands) from all sectors, with various status or sizes, who invest in advertising and communication to promote their products, services, brands and activities. Our mission is to promote advertising, to develop sustainable marketing communications and to strengthen the effectiveness of the marketing communications and actions.

www.uniondesmarques.fr

contact: Ms. Laureline Frossard (lfrossard@uniondesmarques.fr)