Following a similar case from Austria, the French data protection authority recently concluded that certain use of cookies placed by US data analytics tools violated GDPR. The case came before the CNIL as the result of a complaint filed by “None of Your Business,” the non-governmental organization created by Max Schrems.

The complaint argued, and the CNIL agreed, that because of the way Google Analytics was implemented, there were not sufficient supplemental protection measures in place when transferring personal data to the US. Although Google had adopted additional measures, the CNIL concluded these measures could not prevent US intelligence services from accessing the personal data and are therefore
insufficient. The website operator in question has one month to comply. Supplemental measures may be needed if a company is relying on standard contractual clauses as a basis for transferring personal data to the US. The EDPB has provided direction on what those measures might look like.

Following the earlier Austrian decision, Google indicated that to address the EDPB’s direction on “supplemental security measures” it had several security features that companies could put in place when configuring Google Analytics. They also disagreed with the EU DPAs conclusions that US law enforcement would likely gain access to EU individuals’ information. This French decision suggests that other EU DPAs may also disagree with Google’s current position.

Putting It Into Practice: The CNIL recommends that companies use Google Analytics with anonymous data, thus avoiding the transfer of personal information to the US (and taking the activity outside the scope of GDPR). CNIL has also indicated that it will be providing more direction on how to use these tools when transferring personal data to the US and directed companies to its September 2021 recommendations regarding use of cookies. We will continue to monitor developments here.

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