



# PRIVACY LAWS & BUSINESS

DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

## United Arab Emirates federal data protection law in force

The law will operate alongside – but not replace – the free zone regimes in Dubai and Abu Dhabi. By **Dino Wilkinson** and **Masha Ooijevaar** of Clyde & Co.

The United Arab Emirates (UAE) has issued its first standalone legislation to regulate the collection and processing of personal data in the country. The Law is in effect from 2 January 2022, although organisations will have a

period of six months from the date of issuing of the executive regulations (expected by March 2022) to adjust their status and comply with the Law.

*Continued on p.3*

## Report keeps India's DP Bill partly within GDPR orbit

India's Bill nudges closer to being adopted. Companies will face many new requirements including data localisation and expanded user rights. By **Graham Greenleaf**.

The thirty-member Joint Parliamentary Committee (JPC) of India's two legislative chambers has presented its Report on *The Personal Data Protection Bill 2019*, two years after the Bill was referred to it in December 2019.<sup>1</sup> The

delay was in part due to Covid. The Report is complex, containing a 40-page introduction to Indian's data privacy policies (in the JPC's view), 140 pages of a clause-by-clause

*Continued on p.6*

Issue 175

FEBRUARY 2022

### COMMENT

- 2 - What's new in data privacy in 2022?

### NEWS

- 14 - Austria: Website in breach of GDPR by transferring Google Analytics data to the US

### ANALYSIS

- 10 - EDPB provides much needed guidance on what is a 'transfer'
- 22 - Australia's Privacy Act Discussion Paper: 'All that is solid melts into air'

### LEGISLATION

- 1 - UAE federal DP law in force
- 1 - India's DP Bill
- 16 - GDPR shapes Estonia's DP law

### MANAGEMENT

- 18 - Data scraping: Dispelling the myths
- 27 - Events Diary

### NEWS IN BRIEF

- 12 - Belgian DPA fines IAB Europe €250,000
- 13 - Finland fines a Psychotherapy Center €608,000
- 13 - France fines Google, Facebook
- 13 - Thailand DP Act likely to be fully in force in June
- 13 - Poland's DPA orders disclosure of behavioural profile to website user
- 21 - Irish DPC finalises children's privacy guidelines
- 21 - Italy's cookie guidelines in force
- 21 - EU adopts adequacy decision with South Korea
- 21 - Spain to create an AI regulator
- 27 - Zambia, Rwanda and Zimbabwe adopt data protection laws

### Partner with PL&B on Sponsored Events

PL&B would like to hear about your ideas for webinars and podcasts (topics, speakers).

Multiple opportunities for sponsorship deals to build brand awareness with a globally recognised and trusted partner.

Email [info@privacylaws.com](mailto:info@privacylaws.com)

**PL&B Services:** Conferences • Roundtables • Content Writing  
Recruitment • Consulting • Training • Compliance Audits • Research • Reports

# Austria: Website in breach of GDPR by transferring Google Analytics data to the US

The clash between EU GDPR rights and US surveillance law has culminated in a series of complaints, of which the first decision comes from Austria. By **Laura Linkomies**.

Austria's Data Protection Authority has decided that an Austrian website using the free version of Google Analytics is in breach of the GDPR data transfer rules and *Schrems II*, as personal data may become exposed to US intelligence agencies.

The decision by Austria's DPA<sup>1</sup> on 22 December 2021 says the dilemma lies with Google Analytics data transfers to the US, and whether the efforts made with using Standard Contractual Clauses and the Supplementary Measures are sufficient.

This case, brought by the campaigning group nyob against an Austrian website Netdoktor.at involved Google Analytics as it provided the statistical analysis of visitors to the website. The regulator said that the IP anonymization function was not properly implemented thus allowing analytics data, sent to the US, to be personally identified. The DPA therefore found that the website operator was in breach of GDPR A 44 which prohibits the transfer of personal data beyond EU/EEA, unless the recipient country has adequate protection.

## WHAT HAPPENED?

The complaint is just one of the 101 cases filed by nyob with Austrian and 13 other EU data protection authorities. The concentrated campaign led the European Data Protection Board to establish a taskforce to investigate the matter which involves 50 organisations that use Google Analytics. In this decision, Austria's DPA determined that Google Analytics was the processor, but it is not certain how other DPAs will see this matter in their jurisdictions, Dr Rainer Knyrim, Partner at law firm Knyrim Trieb in Austria told *PL&B* in an interview.

The processing of the anonymous

statistics takes place predominantly in data centres in Europe, but also by Google Analytics on servers outside the EEA.

Google said in its response<sup>2</sup> of April 2021 to Austria's Data Protection Authority that it had applied supplementary measures when launching Standard Contractual Clauses for Google Analytics. Although it says it had baseline encryption and pseudonymisation in place, the DPA considered that the mere possibility of identification was still present, and was doubtful whether the measures taken would actually prevent or limit access by US intelligence agencies. The DPA thinks that even if Google had encryption in place, it is not an adequate measure if Google also has the key.

The DPA said that the cookies set when visiting the website contained unique user identification numbers: "The combination of cookie data and IP address allows tracking and the evaluation of geographical localization, Internet connection and context of the visitor, which can be linked to the cookie data... This would also include data such as the browser used, the screen resolution or the operating system (device fingerprinting)."

Dr Knyrim clarified: "The DPA ruled that even if third parties could not access the online identifiers, Google could read them in plain text and any supplementary measures were therefore not adequate."

## JUST THE START FOR GOOGLE

Google says it has received enquiries about the functioning of Google Analytics in terms of data transfers from the EU to US not just from Austria, but also from the regulators in France and Belgium. It says that Google Analytics is "highly customisable and can therefore be implemented in many

different ways, which lead to a wide spectrum of data that individual website owners can choose to collect." It goes on to say that website owners determine the purposes for which they collect data.

The Netherlands' DPA also has its eye on Google Analytics, as it is currently investigating two complaints about the use of Google Analytics in the Netherlands.

Max Schrems, honorary chair of noyb.eu said: "Instead of actually adapting services to be GDPR compliant, US companies have tried to simply add some text to their privacy policies and ignore the Court of Justice. Many EU companies have followed the lead instead of switching to legal options."

## FIGHT BACK

In a 19 January blog<sup>3</sup>, Kent Walker, President, Global Affairs & Chief Legal Officer, Google & Alphabet says that it is time for a new EU-US data transfer framework.

"Businesses in both Europe and the US are looking to the European Commission and the US Department of Commerce to quickly finalize a successor agreement to the Privacy Shield that will resolve these issues", he says.

Referring to the Austrian case and US surveillance, Walker notes that "Google has offered Analytics-related services to global businesses for more than 15 years and in all that time has never once received the type of demand the DPA speculated about."

## WILL THERE BE A FINE?

No fine has been set as yet. The authority says that any penalty would be set against the website and not Google, which is regarded as a "processor" in this case.

Austria's DPA has not been able to set a fine against Netdoktor as it had

moved its operations to Munich in Germany. The file is therefore now under Germany's jurisdiction. However, Austria's DPA has said that it will conduct a separate investigation of Google's role as a processor in this case.

### A THREAT FOR US CLOUD?

Going forward, will US cloud providers need to host EU data in Europe?

Dr Knyrim explained that the future of US cloud services in the EU will not be decided by this case however as they all use European cloud services. The issue with this case was that there was a direct transfer to the United States, he said.

"DPAs in Europe have different views on this matter – the EDPB is trying to streamline opinions. This is not a cross-border case as the website in question was only focused on Austrian consumers, but the fact that many other DPAs have received complaints by nyob involving Google Analytics makes this issue significant."

Dr Knyrim said that companies that have Google Analytics cannot continue to use it as before. He is advising his smaller clients which do not depend too much on online business using Google Analytics to opt for other, European solutions that provide adequate, even if not as comprehensive statistics analysis as Google Analytics. In his experience

most companies only utilise a fairly basic set of statistics in any case. As to large or online-focused businesses he said that there are now start ups in the marketplace that act as a conduit between the companies needing website statistics and Google Analytics. "Such Middleware can even solve the problem of device fingerprinting."

### CONCLUSIONS

The DPA decision from Austria, especially if followed by fellow EU DPAs, has huge significance, as most EU-based websites use Google Analytics as their statistics program.

Notably, this decision conflicts with the German Supervisory Authorities May 2020 statement that Google could not be considered a processor but, instead, should be considered a joint controller with website operators deploying Google Analytics. It once again demonstrates that the "controller" and "processor" concepts are often difficult to apply in practice, Covington & Burling lawyers Dan Cooper, Kristof Van Quathem & Anna Oberschelp de Meneses write in their blog.

Interestingly the EDPS in January sanctioned the European Parliament for EU-US data transfers that were in breach of the GDPR. In this case a Covid-19 testing website had been using cookies from Google Analytics and Stripe.

"The EDPS made it clear that even the placement of a cookie by a US provider is violating EU privacy laws. No proper protections against US surveillance were in place, despite the fact that European politicians are a known target for surveillance. We expect more such decisions on the use of US providers in the next few months, as other cases are also due for a decision." Max Schrems said.

This decision applies only to Austria. It has been reported that progress has been made with the EU-US negotiations on how to replace the Privacy Shield, and enable seamless data transfers from the EU to the US. Until that arrangement is in place, or Google makes changes to how Google Analytics operates, we will be in a state of flux.

### REFERENCES

- 1 Machine translation into English from original DPA decision [noyb.eu/sites/default/files/2022-01/E-DSB%20-%20Google%20Analytics\\_EN\\_bk.pdf](https://noyb.eu/sites/default/files/2022-01/E-DSB%20-%20Google%20Analytics_EN_bk.pdf)
- 2 [noyb.eu/sites/default/files/2021-05/2021-04-09\\_Response\\_to\\_Austrian\\_DPA\\_-\\_NOYB\\_Complaints\\_b.pdf#page=23](https://noyb.eu/sites/default/files/2021-05/2021-04-09_Response_to_Austrian_DPA_-_NOYB_Complaints_b.pdf#page=23)
- 3 [blog.google/around-the-globe/google-europe/its-time-for-a-new-eu-us-data-transfer-framework/](https://blog.google/around-the-globe/google-europe/its-time-for-a-new-eu-us-data-transfer-framework/)

## DENMARK, NORWAY AND GUERNSEY REACT TO AUSTRIAN DECISION

### Denmark

Denmark's Data Protection Authority says it understands that many organisations using Google Analytics are now uncertain on whether they should use this product or other similar tools.

"As the data protection rules are basically a common European set of rules, which intend to promote the internal market, it is essential that European regulators have a common interpretation of the rules," the regulator says.

"The Danish Data Protection Agency will therefore now read the decision from our Austrian colleagues closely and continuously follow the other decisions from our European colleagues in the 101 appeals cases from NOYB. The Danish Data Protection Agency then expects to prepare a summary, indicative text on the basis of both the Austrian decision and the other expected decisions on the use of tools such as Google Analytics."

• See [www.datatilsynet.dk/presse-og-nyheder/nyhedsarkiv/2022/jan/afgoerelse-](https://www.datatilsynet.dk/presse-og-nyheder/nyhedsarkiv/2022/jan/afgoerelse-)

[om-brug-af-google-analytics-fra-det-oestrigske-datatilsyn](https://om-brug-af-google-analytics-fra-det-oestrigske-datatilsyn)

### Norway

On 26 January, Norway's DPA, the *Datatilsynet*, announced that it is following the Austrian decision and declared the use of Google Analytics when transferring personal data to the US to be illegal. It is currently investigating Telenor ASAS on this issue. The DPA states: "We know that there will also be more decisions about Google Analytics from other European data regulators. Therefore, we now recommend everyone to explore alternatives to Google Analytics."

The DPA made a broader point: "Although this particular case concerned Google Analytics, it is important to note that other website tools may also send personal information to the United States. More tools send much more data than Google Analytics does. Therefore, it is important that website owners have a full overview of what tools they use and what personal

information they process through the tools."

As a practical next step the DPA has announced that it has worked with Novacare to create a separate analysis tool, which from autumn 2019 has been implemented on the DPA's website. It asked Novacare to minimise the data and focus on the DPA's actual needs.

• [www.datatilsynet.no/aktuelt/aktuelle-nyheter/2022/google-analytics-kan-vare-ulovlig/](https://www.datatilsynet.no/aktuelt/aktuelle-nyheter/2022/google-analytics-kan-vare-ulovlig/)

### Guernsey

The Guernsey Data Protection Authority, on 21 January, announced that it had removed Google Analytics from its own website stating: "Because we were using it in such a limited way, and in light of the January 2022 judgment by the Austrian Data Protection Authority on its use within the EU, we decided to remove it from our website."

• [www.odpa.gg/news/news-article/?id=9687d013-bb7a-ec11-8d21-6045bd8e013b](https://www.odpa.gg/news/news-article/?id=9687d013-bb7a-ec11-8d21-6045bd8e013b)