

Fine imposed by Belgian data protection supervisory authority on IAB Europe for Transparency and Consent Framework (TCF)

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On February 2, 2022, the Belgian data protection authority (APD) imposed [a fine of EUR 250,000](#) on the IAB Europe and assessed the procedure for obtaining consent based on the Transparency and Consent Framework (TCF) of the IAB Europe and thus the so-called real-time bidding (RTB) or real-time advertising as contrary to data protection. The IAB Europe has six months to design the consent procedure in a manner that complies with data protection requirements.

The term "real-time bidding" describes a method by which providers, so-called "vendors" or "advertisers" buy advertising space in real time via a bidding contest on the websites of website operators, so-called "publishers".

Real-time advertising is based on a **user identification number** or the "TC string", which in turn is based on the IP address of the website users and refers to the advertising profiles of the users. In this way, it is possible to match the advertising profiles of the web page users.

The [IAB Europe](#) as the European **association** for digital marketing and advertising has established a set of rules for obtaining consent for the so-called [Transparency & Consent Framework](#) (TCF). This widely used procedure has now been judged to be in breach of data.

In the following, I would like to summarize the aspects on which the decision was based and the data protection violations covered:

1. **The user identification number is a personal data.**
2. **There is no legal basis for the processing of personal data.**
 - a. **Data protection-compliant processing based on consent in accordance with Article 6(1)(a) GDPR is not possible, since the TCF does not meet the requirements of Article 7 in conjunction with Recital 32 GDPR (voluntary, specific case, informed and unambiguous statement).**

- The purposes of processing are not clearly and misleadingly described, and data subjects are unable to identify the scope of the processing.
 - Data subjects are not given an overview of the categories of data collected.
 - It is very difficult for data subjects to obtain information about the identity of all data controllers to whom they have given consent. In particular, the recipients for whom consent is obtained are so numerous that data subjects would need a disproportionate amount of time to read this information.
 - The information is too general to reflect the specific processing operations of each provider.
 - The design of the TCF is opaque because, in its current form, it does not require participating organizations to indicate what personal data they already hold and what processing they already do with that data.
 - Consents obtained cannot be withdrawn as easily as they were collected.
- b. Processing for the fulfillment of a contract pursuant to Article 6(1)(b) GDPR is excluded, as there is no contract between the data subjects and IAB Europe.
- c. The processing of personal data based on legitimate interest pursuant to Article 6(1)(f) GDPR is ruled out, as a balancing of interests is in favor of the data subjects, in particular because the data processing is non-transparent and the data subjects are not provided with sufficient opportunity to withdraw the processing.
- 3. There is a lack of transparent information on data processing in accordance with Article 13, 14 GDPR.**
- a. There is no information about the processing of the IAB Europe.
- b. The TCF does not meet the requirements for transparent consent required under the GDPR. Data subjects are not able to see in advance the scope and underlying

purposes and cannot understand which providers process which data, which is also due to the fact of the high number of providers.

4. The principle of integrity and confidentiality according to Article 5(1)(f) GDPR is violated.

Insufficient safeguards exist to prevent unauthorized modification of the information contained in a TC string. This may result in data being processed for non-consented purposes and by providers to whom the data subjects have not given their consent.

5. The data subjects are not able to assert their data subject rights to a sufficient extent.

Data subjects cannot easily access the consent banners at any time to change your preferences and track the identity of the providers.

6. The IAB Europe, the Providers and the website operators are joint controllers according to Article 26 GDPR.

7. IAB Europe does not keep a register of data processing activities in accordance with Article 30(1) GDPR.

8. The IAB Europe has not appointed a data protection officer and thereby violated Article 37 GDPR.

Conclusion:

- The decision of the Belgian authority has been made in a so-called one-stop-shop procedure (cooperation of supervisory authorities in cross-border processing) and applies throughout Europe and thus also to Germany. The IAB Europe has 30 days to appeal against this decision.
- IAB Europe previously did not claim to be responsible under data protection law but is now being fined itself. The IAB must now ensure within **six months** that the consent

procedure is designed in accordance with data protection law.

- It is very likely that this decision will be followed by court proceedings.
- Companies that use the TCF must now check whether they still want to use this procedure in its current form. It can currently be assumed that they will **not be able to obtain effective consent** with this procedure and will also **not be allowed to process the personal data based on legitimate interest**.

The use of the Transparency & Consent Framework may result in fines, claims for damages by third parties and, if necessary, warnings.