



**Andrea Jelinek**  
Chair  
European Data Protection Board  
Rue Wiertz 60,  
B-1047, Brussels  
Belgium

23/07/2021

### Call for consistent interpretation of cookie consent requirement by the EDPB

Dear Ms Jelinek

We are writing to you in order to seek the 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.

#### Diverging regulatory guidance and enforcement

Since 2011, the European e-privacy legal framework has mandated prior user consent for the deployment of cookies, subject to some limited exceptions. Over the years, different approaches to compliance with this obligation have developed and following the GDPR's introduction in 2018, many data protection authorities (DPAs) across the EU have issued their own opinions of what amounts to valid cookie consent. However, in the absence of a coordinated pan-European approach to the interpretation of this requirement, diverging regulatory guidance has emerged across EU Member States. For example:

- The French CNIL recommends on cookie consent that 'Accept' and 'Reject' options should be given equal prominence and provided on the same screen, with the 'Reject' option prohibiting businesses from further soliciting consent from individuals. This position can be directly contrasted with the AEPD's position in Spain amongst others, which allows for the reject options to be provided in a second-layer interface. Meanwhile, the EDPB's own guidelines on consent make no reference to this requirement and instead indicate that organisations have liberty to develop a consent flow that suits their own circumstances.
- The Irish DPC indicates that details about the purposes for which cookies are used can be provided in a second-layer of information in order for consent to be considered informed, while both the CNIL and AEPD expect this information to be provided in the first-layer.

- There are express prohibitions on the use of cookie walls in the guidelines issued in Belgium, Italy and the Netherlands. Yet in France, the Supreme Administrative Court (*Conseil d'Etat*) ruled in July 2020 that the CNIL did not have the power, in a soft law instrument, to generally declare cookie walls unlawful and instead their legality should be determined on a case-by-case basis, notably on the notions of '*acceptable alternatives*' or '*equivalent services*' while interpreting '*freely given consent*'.

Due to these inconsistent regulatory approaches, the enforcement of the law has also been incoherent and ranged from inexistent to very strict.

### **Lack of certainty and consistency of the current legal position**

The current uncertainty and inconsistencies in the interpretation and enforcement of the law have created a fragmented approach to consent in the EU's single market, which seriously undermines the objectives of the GDPR. Organisations seeking to comply with the law in relation to their cross-border operations are presented with a myriad of regulatory approaches to the same obligation. Therefore, while many organisations are trying, in good conscience, to comply with the regulatory framework, this is proving to be very challenging given the degree of divergence in the application of the law.

Data protection authorities are also likely to face increasing challenges in correctly applying the rules following the complaints that have been instigated by *noyb* against hundreds of companies. As you will no doubt be aware, these complaints make various allegations of non-compliance in connection with cookie consent mechanisms, many of which concern issues that are subject to the divergent opinions of DPAs that we have referred to above.

In summary, the lack of a pan-European interpretation of this obligation has led to significant uncertainty and confusion, which has become hugely detrimental to the effectiveness of the legal framework.

### **Why the EDPB has a vital role to play**

It is clear that the only way in which these divergences in interpretation of the law can be adequately resolved is through the adoption of EU-wide guidelines that provide consistent and practical directions for how organisations should address the cookie consent requirements. Given that these issues are of a cross-border nature, and ultimately questions of interpretation of the GDPR's consent requirements, we believe the EDPB is the most appropriate body to undertake this exercise.

This would once again embody the important role that the EDPB has already played in providing guidelines on cookie walls and its opinion on the interplay between the ePrivacy Directive and the GDPR. It would also form an important contribution to the EDPB's role in ensuring the consistent application of the GDPR throughout the EU.

Accordingly, we urge you in your capacity as Chair of the EDPB to treat this matter as a regulatory priority and urgently seek the engagement of the EDPB as a whole to provide clarity and consistency. We would welcome the opportunity to discuss these issues with you further and look forward to hearing from you.

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](http://www.aacc.fr)

contact: Ms. Alexandra Basset ([abasset@aacc.fr](mailto: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](http://www.alliancepresse.fr)

contact: Mr. Pierre Petillault ([p.petillault@alliancepresse.fr](mailto: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](http://www.cpa-france.org)

contact: Ms. Noella Boullay ([nboullay@cpa-france.org](mailto: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](http://www.fevad.com)

contact: Mr. Marc Lolivier ([contact@fevad.com](mailto: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](http://www.fnps.fr)

contact: Mr. Laurent Bérard-Quélin ([lbq@sgpresse.fr](mailto: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](http://www.geste.fr)

contact: Mrs. Laure de Lataillade ([laure@geste.fr](mailto: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/](http://www.lapressemagazine.fr/)

contact: Ms. Julie Lorimy ([jl@lapressemagazine.fr](mailto: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](http://www.snptv.org)

contact: Mr. Antoine Ganne ([antoine.ganne@snptv.org](mailto: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](http://www.spiil.org)

contacts: Ms Cécile Dubois, co-president ([cd@spiil.org](mailto:cd@spiil.org)), Mr. Laurent Mauriac, co-president ([lm@spiil.org](mailto:lm@spiil.org)) and Ms Anne-Claire Marquet, director ([acm@spiil.org](mailto: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](http://www.sri-france.org)

contact: Ms. Hélène Chartier ([hchartier@sri-france.org](mailto: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](http://www.udecam.fr)

contact: Ms. Françoise Chambre ([f.chambre@wanadoo.fr](mailto: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](http://www.uniondesmarques.fr)

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