

Google Analytics – an update from a GDPR/AVG perspective (July 2022)

Introduction

If your company uses Google Analytics, the analytical cookies are used to collect personal data from your website visitors. Google Analytics is used to collect statistics about a website in order to improve the experience of the website visitor. Numerous national and international companies are currently still using this tool.

By default, Google Analytics transmits (personal) data to Google in the United States (US). Although these (personal) data are protected and encrypted, the U.S. security services can -in theory- view them on the basis of applicable laws and regulations. For this reason, several privacy regulators in EU countries have ruled that the level of protection is too low and that the use of Google Analytics is not permitted under EU privacy laws (GDPR).

What has happened recently?

After the Austrian and French privacy authorities ruled that Google Analytics is in violation of the GDPR (AVG), the Italian privacy regulator recently also ruled that Google Analytics may no longer be used for Italian websites. This (shared) judgment is based on the -by now well-known- "Schrems II" judgment (link: <https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=ecli:ECLI:EU:C:2020:559>) pursuant to which the Court of Justice of the European Union ruled that transfers of EU personal data to the US can't be considered to be lawful, since according to the GDPR, personal data may only be transferred outside the European Economic Area (EEA) if the legislation of that (recipient; data importer) country can provide the same level of protection as within EEA/the GDPR.

As explained above, the level of protection in US is considered less than within EEA, mostly due to the rights and powers of US security agencies. The EU privacy authorities mentioned above indicate, that even if additional measures are taken, such as a model contract or the EU-Standard Contractual Clauses, the use of Google Analytics will still not meet the requirements of the EU privacy legislation (GDPR).

What does this mean for users of Google Analytics for Dutch websites?

The Dutch privacy authority, the '*Autoriteit Persoonsgegevens*' (AP), already indicated in January 2022 that it is not likely that the use of Google Analytics complies with the Dutch privacy regulations (AVG) and that the "privacy-friendly" settings of Google Analytics do not seem a realistic option.

The AP is currently still formulating its final opinion on Google Analytics for the Dutch situation. It is expected that the final assessment of the AP will be published soon and that this assessment will be in line with the other EU privacy authorities. Consequently: in order to remain GDPR compliant, companies better investigate if there is an alternative to Google Analytics.

How to proceed?

If your company uses Google Analytics now, it is important to consider:

- why is it being used?
- what facilities of the tool are being used?
- what benefits does the use of Google Analytics bring to your company?
- can the same result be achieved in a different way?
- is there an alternative tool that could provide a solution? Please involve your IT consultant in this process.

Probably, a proper alternative tool will most likely be a paid solution, with the possibility to keep personal data within EU/EEA. If so, include such costs in your (marketing?) budget (for next year). Remember that a 'free' tool (Google Analytics is offered for free) is never really free.

Should you have a query relating to GDPR/AVG, or if you wish to stay informed about the AP's verdict on this matter, don't hesitate to contact us.