

# Newsletter

Practice Area TMT

Italian Data Protection Authority rule on the use of Google Analytics establishing its unlawfulness

## I. Introduction

The Italian Data Protection Authority (“**Authority**” or “**Italian DPA**”) has ruled declaring the unlawfulness of the transfer of personal data to the United States carried out with the use of Google Analytics.

Specifically, the Authority pointed out that among the information that is sent overseas there is the IP address, which constitutes personal data to the extent that it allows the user to be identified, even indirectly. This is especially when, as in the case under analysis, this information is associated with others related to the browser used and the date and time of browsing.

So, the transfer made by Google Analytics is subject to Chapter V of Regulation (EU) 2016/679 (“**GDPR**”) and, therefore, is lawful only where means are adopted to ensure that the level of protection of natural persons guaranteed by the GDPR is not affected.

## II. Main elements of unlawfulness

In the case under analysis, the Italian DPA pointed out that the exporter’s use of Standard Contractual Clauses is not sufficient in itself. Indeed, by virtue of the principle of accountability – under which the data controller must put in place appropriate technical and organizational measures to ensure, and be able to demonstrate, that the processing is carried out in accordance with the GDPR – it is necessary to make a concrete assessment of the effectiveness of the chosen instrument. This must take into account, among other things, the legislation in force in the country of destination and the applicable practices, especially in order to check that these do not impede compliance with the obligations under the chosen instrument. So, the analysis in question must be based on parameters of an objective nature.

In light of the above, the assessment made by the exporter must take into account numerous factors, including whether or not public authorities in the importer's country can access personal data, possibly including through telecommunications providers or communication channels.

Moreover, the inadequacy of the U.S. regulation had already been pointed out by the Court of Justice of the European Union in the ruling that invalidated the Privacy Shield, the bilateral agreement between the U.S. and the EU aimed precisely at allowing personal data transfers. What is more, Google Analytics itself has published on its website all the appropriate documentation to acknowledge the possibility for the U.S. government to access personal data.

Furthermore, it should be pointed out how even the additional measures taken by the parties (such as, for example, encryption of information) were not found to be inadequate to mitigate the risk.

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