

Q&A: Belgian APD ruling against IAB Europe on the TCF

Updated March 2022

This information is provided by IAB UK for its members to help explain what the **APD ruling** means for you in practice.

For more information about what the ruling means for IAB Europe and the TCF itself, see IAB Europe's **statement** and **FAQs**.

The ruling

1. What has happened?

- a. On 2 February 2022, the Belgian data protection authority (DPA) (the 'APD') issued a ruling against IAB Europe, concluding its investigation of IAB Europe and the Transparency & Consent Framework (TCF).
- b. The APD considers 'TC Strings', the digital signals created on websites to capture data subjects' choices about the processing of their personal data for digital advertising, to be personal data.
- c. Further, the APD found IAB Europe to be a data controller for TC Strings and a joint controller for TC Strings in the specific context of OpenRTB.
- d. IAB Europe previously did not consider itself to be a data controller, in line with previous DPA guidance, relevant case law and its own interpretation of the GDPR.
- e. As this ruling results in IAB Europe's role changing, IAB Europe has not, to date, fulfilled certain obligations required for data controllers under the GDPR.
- f. Further, the ruling requires IAB Europe to make a number of changes to the TCF to ensure that the information provided to users through consent management platforms is sufficiently transparent to allow those users to provide valid consent (or an alternative lawful basis) to the use of their personal data through the TCF.
- g. The ruling requires IAB Europe to work with the APD to ensure these obligations are met and the changes to the TCF are implemented going forward, with IAB Europe being required to prepare and submit to the APD a remediation plan within two months from the date of the ruling. Upon approval by the APD, IAB Europe will then have six months to implement such plan.
- h. IAB Europe has announced that it intends to **appeal** the decision. This does not, however, automatically suspend the ruling; instead, the Belgian court would need to approve any such suspension.

2. Does this mean that the TCF is non-compliant?

- a. No. The APD raises a number of concerns within the ruling in respect of the TCF as it currently is implemented, in particular with regard to the transparency information provided to users. IAB Europe is required by the ruling to make a number of changes to the TCF going forward in order to address these concerns.
- b. However, despite the concerns raised, the APD seems to accept that the TCF as conceptually being able to provide valid consent were these areas to be remedied.

3. Does this only apply to Belgium?

- a. The ruling itself applies to Belgium. However, as part of the GDPR's cooperation procedure, the ruling was shared and approved by a number of other concerned DPAs, notably Italy, Slovenia, Poland and Luxembourg.
- b. It is expected that other DPAs will take a similar approach to these issues going forward and the outcome of this ruling will therefore ultimately apply across the EU.

4. Does this apply to my organisation that is based in the UK and processes only UK personal data?

- a. If your organisation is based in the UK and only processes UK personal data, the ruling will not apply to you directly. As a result of Brexit, the Information Commissioner's Office (ICO) in the UK is not bound by decisions by DPAs in the EU.
- b. If the ICO were to independently investigate the TCF it could potentially come to similar, or the same, conclusions. Such an investigation may be informed by the ruling by the APD but would not be obliged to take into account the APD ruling or its findings.
- c. Note that, if your organisation is based in the UK but processes EU personal data, you remain subject to the EU GDPR, and applicable rulings thereunder, directly.

5. What are the views of the ICO?

- a. At the moment, on this specific issue, the ICO's views are unknown. Although certain of the items noted within the ruling accord with previous ICO positions (such as the use of consent as the appropriate legal basis for profiling activities), the ICO has not undertaken a formal investigation covering the same ground previously.
- b. IAB UK remains in discussion with the ICO about its **ad tech work** and will update members further with any additional information the ICO publishes.

Use of TCF by IAB UK members

6. How does this impact me as an IAB UK member using the TCF?
 - a. No immediate changes are needed as a result of this ruling.
 - b. Going forward, this may result in some changes to TCF policies, terms, and potentially technical implementation, but the timeframe for any such changes will be clearly communicated in advance by IAB Europe.
 - c. The timeframe for these changes is uncertain given that IAB Europe is appealing the decision.

7. Could this result in enforcement action and/or fines against my organisation directly as a user of the TCF?
 - a. This is currently unclear. Potentially, national DPAs could bring enforcement action against users of the TCF, requiring them to cease making use of the TCF going forward, and possibly requiring the deletion of data previously collected on the basis of consent obtained through the TCF.
 - b. However, as IAB Europe has announced its intention to appeal the decision, the hope is that any such action from national DPAs will be paused until the outcome of this appeal is known. This is not guaranteed, however.

8. What does this mean for me as an IAB Gold Standard member?
 - a. If you are an existing IAB UK Gold Standard 2.0 certified member, there are no changes at present. Once any changes to the TCF are communicated by IAB Europe we will review the implications for the Gold Standard.
 - b. As the TCF is subject to change, we are considering what this means for the IAB UK Gold Standard in terms of new or upgraded certifications going forward and will communicate any changes to members impacted by them.

Looking forward – what is next?

9. What are the next steps for this process?
 - a. IAB Europe has announced it intends to appeal the ruling.
 - b. However, this does not automatically result in the decision being suspended – rather this requires the Belgian court's approval.
 - c. The appeals process will take some time to complete and, as such, it seems unlikely that immediate changes will be required.

- d. IAB Europe is working on developing an action plan to submit to the APD, as required by the decision.
- e. We will continue to keep members updated on the process.

10. Will this result in changes to the TCF policies, terms and/or technical implementation?

- a. Most likely yes, with the exact changes being determined by the outcome of IAB Europe's appeal.
- b. If the ruling remains as-is, this will require a number of changes to the TCF and IAB Europe will work with the APD to update the TCF as required.
- c. Any changes that are necessary will be clearly communicated by IAB Europe in advance of their taking effect.

11. Should I stop using TCF?

- a. No – users of TCF should be continuing as usual.
- b. Subject to the outcome of IAB Europe's appeal, the ruling will require certain changes to TCF policies, terms and/or technical implementation going forward, but any changes that are necessary will be clearly communicated by IAB Europe in advance of their taking effect.