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In Google Privacy Standoff, EU Shows Off Expansive Reach

By **Allison Grande**

Law360, New York (April 02, 2013, 10:35 PM ET) -- Six European countries on Tuesday inched closer to penalizing Google Inc. for allegedly refusing to revise its privacy policy to comply with their laws, escalating a standoff in the European Union's first unified push to apply its stringent data protection rules to a foreign company.

The data protection authorities of France, Germany, Italy, the Netherlands, Spain and the U.K. have initiated investigations into Google's privacy policy under each of their own national privacy laws, according to CNIL, the French regulator leading the EU-wide probe. The regulators are looking into the legality of recent changes that enabled Google to combine and track user information across all platforms.

The six countries are members of a task force that met with Google on March 19. After Google allegedly failed to meet a deadline to implement changes they had recommended, the regulators had vowed to take action before summer. They elected Tuesday to follow through on their pledge because "no change has been seen" since the March meeting, they said.

"The action by the data protection [authorities] was the expected one," Snell & Wilmer LLP partner Timothy Toohey told Law360 Tuesday. "It is another attempt to ratchet up the pressure on Google."

The action also turns up the heat on other global data collectors by showing that the regulators are not shy to work together to enforce their comparatively strict national data protection laws against companies that operate in multiple jurisdictions, according to attorneys.

"Although it is not surprising that the CNIL has taken the lead — it has been a very proactive [regulator] in the EU — the involvement of [regulators] from other EU countries, such as Germany and the U.K., indicate a collective concern over Big Data practices," said Jones Day global privacy practice co-chair Mauricio Paez.

The regulators' coordinated stance against a big-time player like Google shows that no U.S. company is safe from EU privacy law scrutiny, according to Silverman Thompson Slutkin White LLC's Internet and privacy law practice group chair Anne McKenna.

"EU regulators want to show U.S. companies that they're here and they're serious about data protection and privacy," she said. "Using Google as an example is the best way for the EU regulators to rattle their 'hey, we're protecting privacy' saber."

The regulators' most recent clash with Google stems from the company's March 2012

announcement that it was amending its privacy policy to share users' data across platforms.

The revelation drew interest from the EU's data protection working party, which consists of data protection officials from the European Commission and European Union member states.

Frustrated with Google's allegedly inadequate response to several letters requesting more information, regulators issued an ultimatum in October, giving the company four months to revise the policy to clarify how data is shared across its services and how long the company holds on to it.

But Google has refused to make the suggested changes, according to the regulators. CNIL announced Tuesday that the working party had finished its analysis and that it was "now up to each national data protection authority to carry out further investigations" based on its national laws.

"Google has created for itself quite a legal nightmare," McKenna said. "Now instead of having to deal with one combined recommendation from the EU authorities, it is facing legal battles in each of these nations, which I think is going to make it much harder."

Google continued to defend its policy's legality Tuesday, saying it has attempted to work with the regulators.

"Our privacy policy respects European law and allows us to create simpler, more effective services," a Google spokeswoman said in an emailed statement Tuesday. "We have engaged fully with the [regulators] involved throughout this process, and we'll continue to do so going forward."

Paez said it wasn't hard to see why a "global, ad-driven, Big Data company" like Google would resist recommendations that would impact its strategic changes to its privacy policy.

Another factor that could be contributing to the apparent impasse is the fact that some of the regulators have limited abilities to impose substantial monetary penalties.

"From a monetary penalty standpoint, Google really does not have much to worry about," Michelman & Robinson LLP senior counsel Torin Dorros said.

But they still wield the threat of bans on data transfers — which could hit the search giant in its pocketbook, since bans might affect the amount of revenue it can rake in from advertising partners or affiliates that rely on the data.

McKenna suggested that other global companies learn from Google's predicament by ensuring that their privacy policies clearly disclose what types of information are being shared and what is being done with this data.

"I think that the EU is not objecting to the unification of the policies by Google, but rather that the company is framing it as something that will make it easier for consumers, instead of clearly explaining the larger data gathering practices going on," she said. "For other companies, this is a warning to be clear in their privacy policies about what data is being collected and how they use the data."

--Editing by Kat Laskowski and Sarah Golin.

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