

Summary Final Decision Art 60

Complaint

No violation

Background information

Date of final decision:	21 December 2018
LSA:	DE - North Rhine-Westphalia
CSAs:	DE - Rhineland-Palatinate, DE - Mecklenburg-Western Pomerania, DE - Bavaria (priv), DE - Lower Saxony, DE - Saarland, ES
Legal Reference:	Lawfulness of the processing (Article 6)
Decision:	No violation
Key words:	Direct Marketing, Legitimate interest, publicly available data

Summary of the Decision

Origin of the case

Complainant states they received postal advertisement and tried to exercise their right of access and right to erasure. The contacted branch stated that the letter was not sent to the correct recipient, as they do not manage personal data. The correct establishment is in Germany. The complainant contacted their local SA as they deem that the controller is wrongfully processing their personal data, which is stored in a publicly accessible register.

Findings

According to recital 47 and Art 6.1.f GDPR legitimate interest of the controller or of a third party may be used as legal basis, also when the processing is carried out for marketing purposes. LSA argues the data subject did not present any prevailing fundamental rights and freedoms and neither are prevailing rights and freedoms apparent, as the data is already publicly accessible. As such, the aforementioned legal basis “can be considered as an allowing legal basis.”

The original request of access and to erasure were filed before the 25 May 2018. Articles 13 and 14 GDPR were thus not yet applicable. However, under the GDPR the data subjects are to be informed from which source the personal data originate. The enterprise should be informed about this for future advertising mails”.

Decision

The LSA deems this not be an infringement. The processing of publically available personal data for direct marketing purposes may constitute lawful processing according to Art 6.1.f GDPR.