

[REDACTED]

[REDACTED]

[REDACTED]

Legal Department

by IMI

Date :	2nd October 2019
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National Reference:	[REDACTED]

**Final Decision – Complaint against [REDACTED]**

- IMI A56ID 55264
- IMI Case Register entry 58950
- IMI A60DD 74979

Dear colleagues,

on 27 August 2019, the above-mentioned draft decision was submitted to the supervisory authorities that have reported to be concerned. Within the four-week period, no relevant and reasoned objection was expressed. Therefore the complaint will now be closed without further actions on the basis of the draft decision cited below. For this purpose, a closing message was sent to the controller today, which contained the relevant extracts from the draft decision. The controller was also informed of the note made by the French CNIL on 23rd September 2019 under "Other relevant comments".

**I. Submission of the complaint; competence**

On 31<sup>st</sup> August 2018, the then 15-year-old complainant filed a complaint against [REDACTED] [REDACTED] with the Austrian data protection authority ("ÖDSB") regarding the [REDACTED] [REDACTED] [REDACTED] roof of parental consent to raise the complaint at issue was submitted to the ÖDSB.

[REDACTED] is the contractual partner and controller for all (registered) users [REDACTED] on the following websites: [REDACTED] [REDACTED] With regard to these websites, [REDACTED] maintains its (main) establishment within Europe in [REDACTED] [REDACTED] [REDACTED]. The website [REDACTED] is operated by [REDACTED] which is therefore not subject to this draft decision.

The signature of customer service messages, as received by the complainant, mentions [REDACTED] [REDACTED] however, this company only provides services on behalf of [REDACTED] as a processor. The [REDACTED] [REDACTED], which is also located in [REDACTED], is therefore not controller with regard to the subject of the complaint to be assessed below. We have already pointed out to [REDACTED] that the signature of the customer service messages should reflect the relationship more clearly.

[REDACTED]

Since the case could constitute cross-border processing under Art. 4 No. 23 lit. b GDPR, the ÖDSB initiated an Art. 56 identification procedure (A56ID 63640) in IMI in December 2018 for further clarification. Due to the controller's main establishment in [REDACTED] [REDACTED] is according to art. 56 GDPR and § 19 Federal Data Protection Act the lead supervisory authority for cross-border processing activities of the controllers. The [REDACTED] confirmed its competence to investigate the case via IMI on 7<sup>th</sup> January 2019 and created the case register entry no. 58950 on 29<sup>th</sup> January 2019.

## II. Facts of the case

The complaint documents containing the conversation between the complainant and the [REDACTED] customer service show that the complainant requested information about his user account [REDACTED] on 1 July 2018 via a contact form (please see the complaint attachments uploaded under "relevant documents"). On 5<sup>th</sup> July 2018 [REDACTED] customer service responded via e-mail by asking the complainant to verify his identity in order to ensure that the information was provided only to the data subject.

It is known to the [REDACTED] from previous supervisory activities that data access requests can be submitted to the controller by e-mail, contact form or post; there is not (yet) any possibility of submitting a request from the user account whilst logged in. [REDACTED] in general provides different modes of identity verification (including telephone verification). In cases where data access of a certain volume is requested, the user – for different reasons already detailed to us in a previous case – is first asked to provide verification by means of a redacted copy of his or her ID – as was the case with the complainant. In such requests for proof of identity it is expressly pointed out to the user that various specific data fields may be redacted. According to the current process implemented by the controller since November 2018, all fields may be redacted except name, date of birth, period of validity and address (at the time of the complainant's request, it had not yet been explicitly stated that photo, title, signature and ID number can also be redacted). Name, address and date of birth are data categories which [REDACTED] asks its newly registered website users to provide before the [REDACTED] and which are verified in the course of the contractual relationship (depending on the type of user account, [REDACTED] [REDACTED] etc.) by different methods (e.g. [REDACTED]). For the submission of the redacted copy of the identity document, various options are explained to the applicants and (since November 2018) indications are given as to the degree of security of the respective option.

The aforementioned e-mail of 5<sup>th</sup> July 2018 also indicated that the proof of identity and address "will be used exclusively for the purpose of identity verification in connection with the requested data access".

The complainant then passed the requested verification process and received feedback from [REDACTED] customer service on 1<sup>st</sup> August 2018, stating that his user account had been suspended as there were indications that the complainant had not yet reached the age of majority. For this reason, the message stated, the company's general terms and conditions did not allow the complainant [REDACTED]. According to [REDACTED] T&C (as of May 2018) [REDACTED]  
[REDACTED]  
[REDACTED]

On 2<sup>nd</sup> August 2018, the [REDACTED] customer service also informed the complainant (translated by [REDACTED])

"Unfortunately we cannot give you the data as things stand because you are not yet of age. We need your parents' consent, as well as the birth certificate and a copy of your parents' identity card."

On 3<sup>rd</sup> August 2018, the complainant replied (translated by [REDACTED])

"I don't think you've been properly informed. According to the (Austrian) Data Protection Code, the processing of my data with my consent is legally binding with the completion of age 14. Therefore I may make dispositions with regard to my data and I urge you to grant me my right to information. Otherwise, I will seek to complain to the competent authority."

In the original complaint submitted to the ÖDSB, the complainant described the following in response to the question as to how the controller had reacted to his request for information (translated by [REDACTED])

"I was told that my account had been deactivated because it turned out during the processing of my request that I was under the age of majority.

I consider this answer to be inadequate and believe that my rights have been infringed for the following reasons.

My account has been deactivated although I have only requested information. I have never intentionally given false information about my birth date. The fact that I made a request for information was used against me, which is certainly not appropriate."

The case description of the ÖDSB in the A56 identification procedure contains the following summary:

"On 1 July 2018, the complainant sent a request demanding access for information by a contact form to the controller. The controller replied to the complainant that he could not easily provide information because the complainant was not of legal age and therefore had to provide the controller with the consent of his parents, his birth certificate and a copy of his parents' identity card."

Following an initial oral request for comment to the company's data protection officer on 15<sup>th</sup> January 2019, the [REDACTED] was informed that [REDACTED] does not provide standardized processes for requests from minors, as such requests could not normally occur because minors are not allowed to register for the service. The customer services demand for further documents was therefore not a requirement of the company and, from its point of view, under no aspect necessary.

By letters dated 25<sup>th</sup> February and 7<sup>th</sup> March 2019, which have been brought to the ÖDSBs attention, the [REDACTED] turned to the German-speaking complainant directly in order to ask further questions about the subject matter of the complaint. The background is that, from the [REDACTED] perspective, the complaint is not directed against the fact that a birth certificate and copies of the parents' identity cards were requested, but against the fact that information from the copy of the identity card was used for comparison with the data stored in the user account and that the user account was suspended due to the discrepancy found.

On 28<sup>th</sup> February and 16<sup>th</sup> March 2019, the complainant informed the [REDACTED] that this was the case (translated by [REDACTED])



addition to or instead of a copy of an identity document only includes powers of attorney of legal representatives, certificates of inheritance in the event of death or

Birth certificates or identity cards of custodians are not mentioned at any point. The above-mentioned documents also show the process by which the copies of identity cards are immediately deleted or destroyed after access to information has been granted (the was able to convince itself of the practical implementation of these requirements on the occasion of an on-site meeting). Upon request furthermore informed us that an applicant will be contacted by telephone (provided a valid number is stored) or in writing if a discrepancy between the data on the ID copy and the data in the user account is found. If a discrepancy cannot be resolved and doubts cannot be dispelled, access will not be provided.

### III. Legal assessment

The as no concerns that the verification process in its current form and as specified by the controller for customer service is compatible with the requirements and limits of Art. 12, 15 GDPR.

Before granting access to his information, the complainant initially was asked to verify his own identity, which he did immediately, without expressing any concerns about the concrete procedure. The complainant was expressly informed as to which data fields of the identity document he could black out before transmission - whether he made use of this is not known. This is, however, of no relevance for the assessment of the complaint case, since the complainant objects to the processing of his date of birth, which should remain visible in any case. The data that was not to be redacted according to the current data access process (name, date of birth, address) is data that requests from its newly registered website users as a matter of course, and that it verifies with the help of external sources in the course of the contractual relationship. With regard to this data, the company therefore has a database of valid user data to compare to, which means that the verification process carried out is suitable for ensuring that the account holder and the applicant are identical and that the documents containing the information requested are only transmitted to an authorized person. Only the period of validity of the identity card is a new date for the company, the consultation of which is also necessary and suitable to ensure the aforementioned purpose.

The verification process, which was carried out differently in some details at the time of the complainant's request, has already been modified by in November 2018 in order to minimize the process to the most necessary data and to make it technically and organizationally more secure.

#### a. Request for additional documents - Art. 12, 15 DS-GVO

In contrast to the aforementioned verification process, the does not see on what legal basis an underage applicant, whose identity has already been determined, could be asked to furnish additional documents relating to the custodian before information pursuant to Art. 15 GDPR is provided. This query would not be covered by Art. 12 para. 6 GDPR, which allows the controller to request additional information necessary to confirm the identity of the data subject in cases of reasonable doubt as to the identity of the applicant. On the one hand a birth certificate or a copy of a parent's identity card has no influence on whether or not the applicant is the same as the account holder whose data is supposed to be submitted. On the other hand, in the context of the data access request, there is also no consent required of the custo-

dians. It is therefore not apparent that any documents of the custodians fulfil a purpose which justifies their request by the controller.

In the [REDACTED]'s opinion this question can ultimately remain unanswered in the specific case. [REDACTED] has provided meaningful documentation to show that the customer service's request to transfer additional documents of the custodians did not comply with the controllers specifications and instructions. Rather, this was a case of faulty communication by a customer service employee in a single case. There is no reason for the [REDACTED] to doubt the information provided by the controller, especially since the [REDACTED] customer service immediately revised its initial statement following a brief note from the complainant. The requested information then was provided without any further intermediate steps. Even if one were to assume that for a short period of time an obstacle for a data subject to assert his rights had been created, it should be borne in mind that according to his e-mail of 3<sup>rd</sup> August 2018 the complainant was very familiar with his rights. At no time did he seem to be under the impression that he had to comply with the request. There was therefore only a hypothetical risk that further data would be transmitted involuntarily and without necessity in order to obtain data access.

The [REDACTED] sees no evidence of a risk of repetition in the sense that obstacles will be wrongly imposed on other minor applicants before granting data access. The controller has submitted various internal documents that comprehensively set out the internal requirements for customer service with regard to data access requests. These documents do not contain any instructions that might give cause for concern.

#### **b. Correction of birthdate/ storage of an internal note - Art. 5, 6 GDPR**

Overall the complainant's concerns are solely directed against the individual processing of his birthdate from his ID. The complainant regards this as a data processing for an unlawful purpose and thus a violation of Art. 6 para. 1 and para. 4 GDPR.

These concerns are not shared by the [REDACTED]. The [REDACTED] deems the described process as – at least – covered by Art. 6 para. 1 lit. f, para. 4 and Art. 5 para. 1 lit. d GDPR. The controller has requested data from the complainant for an identity verification and compared it with his own database. The complainant had previously been informed that his copy of the identity document would be used for the purpose of identity verification in connection with the data information provided. Against this background, the complainant did not simply make the document available in order to enable the information to be transmitted. This would be the case if someone was asked to provide the address on the ID so that it could be used [REDACTED]. Rather, the present case concerned the verification of identity, which presupposes the comparison and check of identity card and user account data in order to determine that the person submitting the application is identical to the account holder.

In the complaint case, it became apparent that there was a discrepancy between the date of birth as it appeared on the ID card and as given by the complainant himself when registering on the [REDACTED]. Even though the complainant has stated that he never intentionally provided false information, false information concerning the date of birth had been deposited in his user account for reasons which at this point cannot be ascertained anymore.

According to its own security standards, in consequence [REDACTED] should not have been able to grant data access to the complainant because it could not be determined with certainty that the applicant and the account holder matched up and because there was a risk of unauthorized

data transfer to third parties. In order to try to fulfil the complainant's interest and because in the specific case no further anomalies were identifiable with regard to the complainant's user account, the [REDACTED] customer service nevertheless completed the verification solely by means of name and address matching.

According to Art. 5 para. 1 lit. d GDPR, "personal data shall be accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they were processed, are erased or rectified without delay ("accuracy")". In view of this principle, after permissible data matching, a controller may not simply ignore the finding that one of the customer's data sets must be incorrect. Otherwise the controller would even risk violating Art. 6 para. 1 lit. b and Art. 5 para. 1 lit. d GDPR. In addition, the date of birth is information which has direct influence on the contractual relationship as the company according to its T&Cs expressly excludes minors from [REDACTED]. In the present case circumstances made it obvious that the birthdate in the ID had to be the accurate date. In order not to avoid violation of the accuracy requirement of the GDPR and to enforce the controller's own T&Cs, the actual birthday from the ID as well as the information that it does not coincide with the date indicated at the time of registration has been stored by [REDACTED], together with the consequence of the account suspension. Instead of immediately rectifying the data stored in the user account, only an internal note was created to alert the complainant to the suspicion and give him the opportunity to clarify.

Finally, the complainant's request for information of 1<sup>st</sup> July 2018 was also answered in due time within the meaning of Art. 12 para. 3 GDPR. In the absence of any indication to the contrary, it can be assumed that the information was provided in a satisfactory manner.

#### **IV. Decision**

Based on the foregoing facts of the case and legal assessment, the [REDACTED] considers the investigation procedure to be completed. In summary, no ongoing violation of the provisions of the General Data Protection Regulation could be found. As the complaint has only limited personal impact and due to the measures already taken by [REDACTED] to improve the data access process, the [REDACTED] does not regard as necessary any further action according to Art. 58 para. 2 GDPR. Therefore, the cross-border complaint is hereby closed.

On behalf of the [REDACTED]

[REDACTED]