



ANDMEKAITSE INSPEKTSIOON

Your: 17/12/2020

Our: 01/07/2021 No. 2.1.-1/18/3288

Notice of termination of the proceedings in a case concerning the protection of personal data

Through the cross-border proceedings system IMI, the Estonian Data Protection Inspectorate (the Inspectorate) received a complaint from [REDACTED], pursuant to which [REDACTED] is illegally collecting and using the complainant's personal identification code in their information system, incl. has added it to a contract. The complainant finds that adding personal identification codes to contracts is excessive, illegal, and poses a risk to the security of personal data. They find that [REDACTED] has no specific grounds for processing personal identification codes and such processing should take place only with the consent of the data subject. In this specific case, the complainant has not consented to the processing of their personal identification code.

Based on the above, we have initiated supervision proceedings on the basis of clause 56 (3) 8) of the Personal Data Protection Act.

Throughout the supervision proceedings, we submitted an enquiry to [REDACTED], in which we asked the following:

1. What is the legal basis (show the specific legal provision) for [REDACTED] processing the personal identification code of the complainant in their information system (incl. added it to a contract)?
2. If [REDACTED] finds that processing the personal identification code of the complainant is not lawful, they should explain whether and which measures are implemented to resolve the situation.

In their response to the enquiry of the Data Protection Inspectorate, [REDACTED] said the following:

Article 3 of the Lithuanian Law on Legal Protection of Personal Data establishes the specificities of managing personal identification codes, pursuant to which personal identification codes may be processed if one of the conditions of lawfulness established in Article 6(1) of the GDPR is met.

Disclosing personal identification codes is prohibited, as is processing personal identification codes for the purposes of direct marketing.

[REDACTED] is a client of [REDACTED] with whom a contract for the provision of [REDACTED] service has been concluded (Annex 1).

In accordance with the above, [REDACTED] processes the personal data of the complainant pursuant to the contract concluded with the client. [...] In this situation, Article 3(1) of the Lithuanian Law on Legal Protection of Personal Data and Article 6(1)(b) of the GDPR apply; the latter states that processing of personal data (incl. personal identification codes) is lawful if the processing is necessary for the performance of a contract to which the data subject is party or to take steps at the request of the data subject prior to entering into a contract.

[REDACTED] has processed the personal identification code of the complainant lawfully.

Pursuant to the submitted complaint and considering the response from [REDACTED], we also asked for the opinion of the Lithuanian Data Protection Authority on whether, in their assessment, [REDACTED] has breached legislative requirements.

On 10 February, the Lithuanian Data Protection Authority replied as follows: *In our opinion, the provisions of the Law on Legal Protection of Personal Data of the Republic of Lithuania do not apply in the present case, because data controller [REDACTED] is not established in Lithuania. The lawfulness of the processing of the data referred to in the complaint should be assessed in accordance with Estonian law and GDPR.*

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We wish to clarify that legal grounds for the processing of personal data can be based on Article 6(1) of the General Data Protection Regulation (GDPR). Thereat, the person's consent is only one of the possible legal grounds. However [REDACTED] has noted that the legal grounds for processing personal data was not the consent of the complainant, but Article 6(1)(b) of the GDPR, pursuant to which personal data (incl. personal identification codes) may be processed if it is necessary for the performance of a contract. We also wish to note that adding a personal identification code to a contract and/or an annex to a contract is required for the unambiguous identification of the person (user of the service).

As [REDACTED] has received the personal data of the complainant upon the conclusion of the contract and processed data lawfully (for the conclusion and performance of a contract), we find that the processing of the personal identification code was lawful in this specific case. For this reason, we are terminating the supervision proceedings.

This administrative act can be disputed within 30 days by:

- submitting a challenge to the Director General of the Data Protection Inspectorate pursuant to the Administrative Procedure Act¹ or
- filing a petition with an administrative court pursuant to the Code of Administrative Court Procedure² (in this case, any challenges submitted in the same case can no longer be processed).

Respectfully

/signed digitally/

[REDACTED]

Lawyer

Authorised by the Director General

¹ <https://www.riigiteataja.ee/en/eli/527032019002/consolide>

² <https://www.riigiteataja.ee/en/eli/512122019007/consolide>