



Our reference: LDA-1085.1-2300/20-F

IMI Art. 61: 185779

IMI draft decision: 591896

Controller: [REDACTED] (publ)

On the basis of the draft decision of the Swedish Integritetsskyddsmyndigheten (SWE DPA) No. 591896, the Data Protection Authority of Bavaria for the Private Sector (BayLDA) pursuant to Article 60(8) of the GDPR issues the following

Final Decision:

The complaint is rejected.

Justification:

The complaint was received by the BayLDA on 02.03.2020 and was forwarded via IMI to the SWE DPA as the lead data protection supervisory authority for the controller.

On 02.01.2024, the SWE DPA submitted the draft decision no. 591896 to the concerned supervisory authorities with the following contents:

Decision of the Swedish Authority for Privacy Protection (IMY)

The Swedish Authority for Privacy Protection (IMY) finds that the investigation has not shown that [REDACTED] has processed the complainant's personal data in breach of Article 6(1) of the General Data Protection Regulation in the manner alleged in the complaint.

The case is closed.

Report on the supervisory case

The Swedish Authority for Privacy Protection (IMY) has initiated an audit towards [REDACTED] (the company or [REDACTED]) due to a complaint. The complaint has been submitted to IMY, as a supervisory authority for the company's operations pursuant to Article 56 of the General Data Protection Regulation from the supervisory authority in Germany where the complainant has lodged their complaint in accordance with the GDPR's provisions on cooperation in cross-border processing.

The investigation in the case has been carried out through written correspondence. On 10 of November 2023, IMY sent a request for information to [REDACTED], in order to ascertain whether [REDACTED] was the controller of the processing in question and, if so, under which legal basis under Article 6(1) of the GDPR the applicant's personal data had been processed.

Since this is a complaint relating to cross-border processing, IMY has used the mechanisms for cooperation and consistency contained in Chapter VII GDPR. The supervisory authorities concerned has been the data protection authorities in Germany, The Netherlands, Norway, France, Finland and Denmark.

The complaint

In its complaint, the complainant essentially stated the following. The complainant made two attempts to purchase an online service on 26 August 2019. The complainant used [REDACTED] as a payment solution. The complainant made a third attempt to purchase the online service on 2 September 2019. The complainant used [REDACTED] as a payment solution on this occasion as well. This purchase went through. [REDACTED] subsequently invoiced the appellant for two purchases, even though only one purchase was successful. [REDACTED] then forwarded the complainant's personal data to a debt collection agency. According to the complainant, [REDACTED] did not have the right to process her personal data in the way that it did.

What [REDACTED] has stated

[REDACTED] has mainly stated the following. In its statement dated 24 November 2023, [REDACTED] has stated that it cannot identify the complainant with the information available from the complaint and that it is therefore unable to answer the questions in IMY's supervision letter, unless they receive more information.

On 28 November 2023, IMY contacted [REDACTED] by telephone to find out what additional information [REDACTED] needed to be able to identify the complainant. [REDACTED] replied that they needed information about the email address with which the purchase had been made.

On 29 November 2023, IMY communicated [REDACTED]'s response to the concerned national supervisory authority in the country where the complainant filed the complaint (Germany) and asked them to contact the complainant in order to obtain the requested email address.

On 21 December 2023, the national supervisory authority (Germany) returned with the information that the complainant had not returned.

Justification of the decision

It follows from Article 57(1)(f) of the GDPR that Swedish Authority for Privacy Protection (IMY) must deal with complaints from data subjects who believe that their personal data is being processed in a way that is contrary to the GDPR. The provision also states that IMY shall, where appropriate, investigate the subject matter of the complaint. The Court of Justice of the European Union has stated that the supervisory authority shall investigate such complaints with due diligence. (Schrems II, case C-311/18, EU:C:2020:559, para. 109.)

According to Section 23 of the Swedish Administrative Procedure Act (2017:900), an authority shall ensure that a case is investigated to the extent required by its nature.

IMY's audit concerns whether [REDACTED], as data controller, has processed the complainant's personal data without a legal basis in Article 6(1) of the General Data Protection Regulation. [REDACTED] has not been able to answer IMY's questions concerning the processing of the complainant's personal data in the light of the fact that they have not been able to identify the complainant. The complainant has been given the opportunity to supplement [REDACTED] complaint with information about the e-mail address used for the purchase in question.

IMY considers that the matter has been investigated to the extent required by Article 57(1)(f) of the General Data Protection Regulation and Section 23 of the Swedish Administrative Procedure Act. IMY notes that there is no basis in the investigation to conclude that [REDACTED] processed the complainant's personal data without a legal basis in Article 6(1)(f) of the GDPR.

The case is closed.

As the concerned supervisory authorities (including BayLDA) did not object to this draft decision, the BayLDA hereby adopts this draft decision as final decision in accordance with Article 60(8) of the GDPR.