

Summary Final Decision Art 60

Complaint

EDPBI:SE:OSS:D:2023:824

Administrative fine; Compliance order

Background information

Date of final decision:	30 June 2023
LSA:	SE
CSAs:	DE, NO, DK, EE, PT, ES, FI, AT
Legal Reference(s):	Article 44 (General principle for transfers), Article 4 (Definitions), Article 46 (Transfers by way of appropriate safeguards) Ref 4 (if any).
Decision:	Compliance order, Administrative fine.
Key words:	International transfer, Third party access to personal data, Administrative fine, Cookies, Definition of personal data

Summary of the Decision

Origin of the case

On the basis of a complaint that the LSA received against the controller regarding transfers of personal data to a third country under Chapter V of the GDPR, the LSA initiated supervision against the controller.

In the complaint of 14 August 2020, the complainant submitted that the controller, through the use of an analytics tool implemented on its website, was transferring the complainant's personal data to third countries without fulfilling the conditions laid down in Chapter V of the GDPR. According to the complainant, with the analytics tool implemented on the controller's website, the transfer of the complainant's personal data to the data processor established in the United States of America took place, when the complainant visited the controller's website.

The LSA investigated whether the controller had transferred personal data to the United States of America within the framework of the analytics tool, and whether the controller had done so in accordance with Chapter V of the GDPR.

Findings

The LSA found that, in light of the unique identifiers and the possibility of combining these with additional data, the controller was processing personal data through the analytics tool.

The LSA also found that the personal data collected through the tool was stored by the data processor in the United States of America. For this transfer, the controller and processor had relied on the European Commission's Standard Contractual Clauses within the meaning of Article 46 of the GDPR. However, the LSA noted that following the judgment by the Court of Justice of the European Union ("CJEU") in C-311/18 (Schrems II), and based on the recommendations of the European Data Protection Board on the consequences of the judgment, the use of the Standard Contractual Clauses may require supplementary measures. The LSA then noted that, in order to determine whether such supplementary measures would be necessary, an analysis of the legislation of the third country in question needed to be carried out. With reference to the assessment of the legal situation in the United States of America conducted by the CJEU in Schrems II, the LSA found that the use of the Standard Contractual Clauses was not in itself sufficient to achieve an acceptable level of protection for the transferred personal data.

Then, the LSA assessed whether the controller had taken supplementary measures to ensure the effectiveness of the Standard Contractual Clauses. The LSA considered the measures implemented by both the controller and processor and found that the supplementary measures implemented by the controller and processor were not effective, as they did not prevent the US Intelligence Services from accessing the personal data or rendering such access ineffective. The LSA considered that neither the Standard Contractual Clauses nor the supplementary measures implemented could support the transfer as set out in Chapter V of the GDPR. On this basis, the LSA found that the controller undermined the level of protection of personal data guaranteed by Article 44 of the GDPR.

Decision

The controller was found to have processed personal data in breach of Article 44 of the GDPR. The LSA noted that the controller had transferred a large amount of personal data, that the processing had been going on for a long time and that the transfer meant that the personal data was not guaranteed the level of protection afforded in the EU/EEA but also that the controller had taken some measures, albeit insufficient, to try to limit the transfer. The LSA concluded that the controller should pay an administrative fine of SEK 300.000 (approximately EUR 25.600). Further, the LSA ordered the controller to discontinue the use of the version of the analytics tool used on 14 August 2020, unless appropriate safeguards were put in place. The LSA ordered to implement these measures no later than one month after the decision had become final.