



*Exempt from public disclosure:
Offl. § 13, jf. personopplysningsloven
§ 24 første ledd 2. punktum .*

IMI reference
A60FD 632908

Our reference
20/01756

Date
24.04.2024

Rejection of complaint and closure of case – Zalando SE

The Norwegian supervisory authority (Datatilsynet) refers to your complaint dated 13 August 2018 regarding a credit check ordered by Zalando SE (Zalando). In emails dated 8 January 2019 and 16 May 2019, we informed you that this is a so-called cross-border case, which, according to data protection rules, is subject to different case handling procedures than ordinary cases.¹ The supervisory authority in Berlin, Germany has handled the case as lead supervisory authority because Zalando has its main establishment in Berlin. The supervisory authorities in Norway, Sweden, Denmark, Germany,² Finland, Poland, Spain, Austria, Luxembourg, France, Italy and Ireland have participated in the case as concerned supervisory authorities.

About the case handling

The Berlin supervisory authority has investigated the case by contacting Zalando. In cooperation with us and the other concerned supervisory authorities, they have assessed the case based on your complaint and other information you have provided, as well as the responses from the controller. In cooperation, we have made a decision. The case handling has followed the procedure in Article 60 GDPR, whereby the Berlin supervisory authority has presented a draft decision. We and the other concerned supervisory authorities agree with the Berlin supervisory authority's draft decision, and we are therefore adopting the final decision in line with their findings.

Our assessment

Datatilsynet closes the case with reference to the reasoning in the decision that follows below. The decision is written in English. We can assist with translation to Norwegian if needed. Please contact us if you need the decision translated.

¹ See the General Data Protection Regulation (GDPR) Art. 4(23) and Art. 56(1).

² The regional German supervisory authorities in the states North Rhine-Westphalia, Rhineland-Palatinate, Thuringia, Lower Saxony, Mecklenburg-Western Pomerania, Hesse, Saarland and Bavaria.

Decision

We hereby inform you that the investigation initiated in response to the above-mentioned complaint has been concluded. Based on the information provided to us, we have not been able to establish an infringement of the General Data Protection Regulation (GDPR) in the processing of the complainant's personal data by the controller Zalando SE.

Justification:

I.

We have established the following facts:

The above-mentioned complainant, represented by her mother, submitted a complaint about Zalando SE (Controller) to the Data Protection Authority in Norway on 13 August 2018. The complainant alleged that the controller had carried out a credit check in August 2018 without cause. Upon request, customer service informed the complainant that the controller checks the creditworthiness of customers once or twice a year, regardless of purchase.

In a statement dated 10 May 2019, the controller informed us that credit checks are not carried out independently of orders. Credit checks are only carried out in connection with a specific order if the payment method 'purchase on account' is selected.

In Norway, the process would be as follows: If a new customer has placed goods in the shopping basket, the customer would be offered possible payment methods in the order process (checkout). If the customer selects 'purchase on account', they are asked to enter their Social Security Number. The Social Security Number is then used to check the credit rating with Experian AS, based in Oslo.

For existing customers, a credit check is only carried out if more than 180 days have passed since the last order process and the customer initiates an order process again and selects 'purchase on account'. If the last order process has taken place within the last 180 days, the controller uses the existing creditworthiness values to decide whether the 'purchase on account' payment method is possible.

With regard to the complainant, the controller stated in a statement dated 14 October 2021 that a credit check had been carried out for the complainant's customer account on 4 August 2018 at 11:22 PM. The controller assumes that an order process was initiated with the complainant's customer account, but was not completed. In this respect, the controller submitted an excerpt from the event logs. The event logs submitted show that a login to the complainant's customer account took place on 4 August 2018 at 21:21:42. The legal basis for the credit check is Art. 6 para. 1 lit. b or f GDPR.

In a statement dated 12 January 2022, the controller added that since June 2021, credit checks in Norway have only been carried out after a customer has placed goods in the shopping cart, entered their delivery and billing address, selected ‘purchase on account’ in the checkout process and confirmed this by clicking on the ‘Continue’ button. Clicking the ‘Continue’ button is the last step in the checkout process before the final page with the order summary appears. Then, the final completion of the order follows by clicking on the ‘Confirm’ button.

II.

Our legal assessment of the facts of the case is as follows:

We were unable to establish an infringement by the controller Zalando SE in the processing of the complainant’s personal data on the basis of the information provided to us.

Art. 6(1)(f) GDPR can be considered as the legal basis for carrying out a credit check. The avoidance of payment defaults constitutes a legitimate interest of the controller within the meaning of Art. 6(1)(f) GDPR. However, data processing for the purposes of the legitimate interest is only considered necessary in the present case if there is a credit risk. Yet, a credit risk only exists if and when a customer selects a product, goes through the purchase process and actually selects a payment method that requires the controller to make advance payments, as is the case with the ‘purchase on account’ payment method. When designing the ordering process, it must be ensured that credit checks are not carried out in cases where a risky payment method is not clicked on at all or only inadvertently.

The ordering process in Norway described by the controller at the time of the alleged infringement is not objectionable in this respect with regard to the performance of credit checks. The performance of a credit check can be based on Art. 6(1)(f) GDPR. The controller’s legitimate interest was the avoidance of payment defaults. Carrying out a credit check was also necessary to safeguard this legitimate interest if the credit check, as submitted by the controller, was only carried out in connection with a specific order and only after selecting the payment method ‘purchase on account’, as the existence of a credit risk for the controller can then be assumed. In addition, the requirement to enter the Social Security Number ensures that a credit check is not carried out if a person inadvertently clicks on ‘purchase on account’.

We were unable to establish that the actual ordering process did not correspond to the ordering process presented by the controller. The complainant claimed that the controller had carried out a credit check in August 2018, although she had not ordered anything. Although the controller confirmed that the credit check was carried out on 4 August 2018 at 11:22 PM, it denied that the credit check was carried out without cause. Instead, the controller argued that it was assumed that an order process had

been started but ultimately not completed. By submitting the event logs, the controller has comprehensibly demonstrated that the complainant's customer account was active, i.e. logged in, at the time of the credit check. It therefore appears at least possible that a purchase process was initiated that legitimately led to the credit check of the complainant. In particular, the complainant has not argued that she was not active on the controller's website on the evening of 4 August 2018.

Insofar as the complainant has argued that she did not order anything, it should be noted that a credit check is not only necessary within the meaning of Art. 6(1)(f) GDPR after the final placement of an order, but under the above-mentioned conditions already during the ordering process in order to be able to check the existence of a risk of non-payment on the seller's side.

We therefore cannot establish an infringement of Art. 6(1) or Art. 5(1)(a) GDPR.

III.

Based on this assessment, we assume that no infringement of data protection regulations has actually occurred in the case available for review. The proceedings are terminated pursuant to Art. 60(8) GDPR.

As far as the complaint is concerned, we consider the matter to be closed.

Ability to appeal

This decision has been adopted by us in accordance with Article 56 and Chapter VII GDPR, and can therefore not be appealed to the Norwegian Privacy Appeals Board pursuant to Section 22(2) of the Norwegian Personal Data Act (*personopplysningsloven*). This decision can nevertheless be challenged before Norwegian courts in accordance with Article 78(1) GDPR.

Kind regards

Tobias Judin
Head of Section

Trine Smedbold
Senior Legal Adviser

This document is signed electronically and therefore includes no handwritten signatures.