



SA Spain

Ours 19.06.2024 nr 2.1.-1/24/85-182-6

ARTICLE 60 FINAL DECISION

Notice of termination of proceedings concerning the protection of personal data

Estonian Data Protection Inspectorate (Estonian DPI) received a complaint from Spanish citizen [REDACTED] (Complainant) through European Commissions Internal Market Information System (IMI) against [REDACTED] (Controller, [REDACTED]). Since the Controller has its main establishment in Tallinn, Estonia, Estonian DPI has accepted the case as LSA.

According to the complaint, the Complainants' personal data (debt information) was transmitted to a Spanish payment default registry [REDACTED] ([REDACTED] payment default registry). The Complainant claims that he has not been notified about the disclosure of this data at payment default registry. According to the Complaint, the Complainant claims that he found out about the disclosure of his data at 18.05.2023 after which he contacted the Controller and requested explanations regarding the processing of his data but received no answer. The Complainant has objected to the processing of his personal data (disclosing his debt data at [REDACTED]).

Estonian DPI initiated supervision proceedings on the basis of clause 56 (3) 8) of Personal Data Protection Act and sent several inquiries to the Controller. The aim of supervisory proceedings was to clarify the purpose and legal basis for data processing (data transfer to third parties); whether appropriate measures were taken to provide necessary information referred to in GDPR Article 13 to the Complainant and whether Article 15 GDPR Right of Access was met by the Controller.

CONTROLLER'S EXPLANATIONS

1. The Complainant has digitally signed a loan agreement nr [REDACTED] with [REDACTED] on 19.01.2023.¹ The signed loan agreement was sent to the Complainant's e-mail address after signing and is also available through [REDACTED]'s portal.
2. The payment defaults origin from the loan agreement that the Complainant has entered into with the Controller. The first repayment according to the payment schedule² of the loan agreement nr [REDACTED] was due on 27.01.2023 with the amount of 78.35 EUR. [REDACTED] received a late payment of 10 EUR on 30.01.2023, 1 EUR on 31.01.2023 and 67.48 EUR on 06.02.2023. Next payment was due on 28.02.2023 with the amount of

¹ Appendix 1 – loan agreement

² Appendix 2 – payment schedule

119.93 EUR, ██████ received 79 EUR on 06.03.2023 and 12 EUR on 12.03.2023 so the first debt occurred. After that the Complainant was late repaying next three monthly payments and eventually did not repay them. The Controller terminated the loan contract as per the loan agreement p. 13.2 on 29.06.2023.

3. ██████ uses an automated debt data processing system, where debt information is regularly communicated to the debtor via SMS, e-mails, automated telephone calls. In addition to that, debt collectors communicate with the clients on daily basis reminding them their duties to repay the debt or negotiate the repayment terms. ██████ has been in constant communication with the Complainant – ██████'s log file³ proves that tens of reminders, notifications, and repayment options have been sent to him. Additional notifications about the debt were sent to the Complainant on 01.03.2023 via e-mail and 02.03.2023 via SMS (log entries can be found in log file).
4. On 17.03.2023 ██████, acting on behalf of the Controller, sent the Complainant a postal letter (using the address that the Complainant had provided to the Controller) through registered post with the debt information and a notification that if the debt will not be cleared in 15 days, it will be disclosed at ██████ payment default registry. This might cause the Complainant's future loan applications to be rejected. No errors occurred according to the Controller when delivering the letter.⁴
5. On 04.04.2023 the Controller sent the Complainant an additional notification via postal letter (using the address that the Complainant had provided to the Controller) through registered post notifying him about the next steps regarding debt collection actions, also about the possible disclosure of his data to ██████ payment default registry in case the debt is not repayed in 30 days.⁵ The Complainant was also offered a chance to reschedule the payments or ask for a payment holiday, however the Complainant did not wish to use this opportunities. The confirmation from the postal service is attached.⁶
6. The Controller sent the debt data of the Complainant to ██████ on 07.04.2023. On 10.04.2023 ██████ has sent the Complainant a notification regarding the disclosure of his debt data at payment default registry. A confirmation from ██████ has been attached.⁷ The debt data was disclosed at ██████ on 10.04.2023.
7. The loan agreement (Appendix 1) that the Complainant signed states under p. 13 that ██████ has the right to transmit the information to payment default registry when the repayments are not made on time: *Following a payment overdue or default under the Loan Agreement, the Lender shall have a right, in each case pursuant to the applicable law, to notify the Borrower thereof and send the following information to the chosen Payment Default Register: 1) given name and surname of the Borrower; 2) national identification number of the Borrower; 3) commencement and end date of the payment default; 4) the total amount of the payment default; and 5) data concerning the nature of the contractual relationship from which the arrears arise. The Payment Default Register shall have the right to communicate the aforementioned data on the basis of a contract entered into for an indefinite period to other credit providers and other persons who have a legitimate interest concerning the creditworthiness of the persons entered in the register and collect a charge therefor.*

³ Appendix 3 – Sent notifications

⁴ Appendix 4 – ██████ Certified letter (ESP); Appendix 4a – English translation

⁵ information available in Sent notifications (App.2)

⁶ Appendix 5 – ██████ confirmation

⁷ Appendix 10 – Certificate; Appendix 10a – English translation

8. On 19.07.2023 the Controller received the Complainant's request to which the Controller replied on the same day⁸.
9. On 20.07.2023 a similar request was received through ██████ to which the Controller replied on the same day.⁹ All the documentation requested by the Complainant was sent to him (documents, loan agreement and debt certificate)¹⁰ and a compromise proposal was offered.
10. Another similar request was received through ██████ on 03.08.2023 to which the Controller replied on the same day.¹¹
11. On 16.10.2023 another similar request was received through post to which the Controller replied on 24.11.2023 adding all the documentations concerning the loan and debt and all the sent notifications.¹²

ESTONIAN DATA PROTECTION INSPECTORATE'S OPINION

12. Estonian DPI explains that it only assesses whether the processing of personal data has been lawful in terms of GDPR and shall not assess the lawfulness of the debt claim itself. Estonian DPI does not have the competence to assess whether the contracts are valid lawfully, what the claims consist of, whether the debt has actually been liquidated, whether or not the rules for the assignment of the claim have been complied with, as those are disputes that arise from contractual relations. Settlement of contractual disputes between private parties is a matter for the civil court.
13. Pursuant to GDPR Art 6(1) processing shall be lawful only if and to the extent that at least one of the legal bases stated in Art 6(1) applies. The Controller stated that the legal basis for processing Complainant's personal data falls under Art 6 (1)(b) of GDPR – processing is necessary for the performance of a contract. The Controller and Complainant signed a loan agreement nr ██████ on 19.01.2023. Processing personal data is necessary for the Controller in order to pursue the claim.
14. Pursuant to GDPR Art 6(1)f) of processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data. According to the Controller – Complainant's debt data was transmitted to the payment default registry ██████ on 07.04.2023 on the basis of GDPR Art.6(1)f).
15. In order to rely on GDPR Art.6 (1)f) as a legal basis of processing, the Controller should be able to demonstrate that their or third party's legitimate interest overrides the impact on individuals' interests and rights and freedoms. This requires a balancing test that compares the controller's and the data subjects' interests or fundamental rights and freedoms, which the Controller has conducted.
16. ██████ is a creditor who offers different loans to data subjects. Consequently, ██████'s interest is to claim the debts. If the data subject has not fulfilled their obligation and has failed to make loan payments, ██████ as a Controller has an interest to share that information with payment default registry. The purpose of the debt data transfer to payment default registry is a disclosure of personal data related to a breach of

⁸ Appendix 6 – ██████ 25.07.2023 answer (ESP); Appendix 6a – English translation)

⁹ Appendix 7 - ██████ 20.07.2023 answer (ESP)

¹⁰ Appendix 7a – documents; Appendix 7b – loan agreement; Appendix 7c – debt certificate; Appendix 7d – English translation

¹¹ Appendix 8 – ██████ 03.08.2023 answer (ESP), Appendix 8a – English translation

¹² Appendix 9 – ██████'s answer (ESP), Appendix 9a – answer documents; Appendix 9b – data; Appendix 9c – English translation; Appendix 9d – cover letter(ESP); Appendix 9e – English translation

- debt relationship to third parties to enable them to verify the reliability of a person regarding fulfilling his financial obligations and to fulfil the obligation of responsible lending arising from the law when assessing the creditworthiness. The processing is not only in the interest of [REDACTED] but the market of civil transactions in general.
17. In order to rely on GDPR Art.6 (1)f) as a legal basis of processing the Controller's or third party's interests cannot be overridden by the fundamental rights and freedoms of the data subject. Complainants' interest is to protect their personal data and to be treated equally to other people who do not have payment difficulties. However, person's right to the protection of personal data is not an absolute right, it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality. Payment default registry's purpose is to give third parties an opportunity to assess the creditworthiness of the data subject and therefore protect transaction reliability. When the data subject fails to make loan payments, the creditor has a legitimate interest to transmit personal data to the payment default registry. Estonian DPI considers the legitimate interest (GDPR Art.6 (1)f) as a valid legal basis for disclosing the data to the payment default registry.
 18. Pursuant to GDPR Art 13(3) - where the controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2 to ensure fair and transparent processing. Pursuant to GDPR Art 13(4) – paragraphs 1,2 and 3 shall not apply where and insofar as the data subject already has the information.
 19. The Controller has explained during the investigation that the information about Controller's right to transmit the debt information to payment default registry when the repayments are not made was made available to the Complainant in the loan agreement.
 20. Secondly, the Complainant was made aware about the possible data disclosure via postal letters (sent to the address that he provided to the Controller) on 17.03.2023, 04.04.2023, 10.04.2023.
 21. Thirdly, [REDACTED]'s log file proves that numerous reminders, notifications, and repayment options have been sent to the Complainant.
 22. As a conclusion Estonian DPI finds that the Controller has fulfilled their obligation to inform the data subject about the further processing of his data (in terms of disclosing his data to the payment default registry).
 23. Pursuant to GDPR Art 15(1) the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and information.
 24. The Complainant claimed that after finding out about the disclosure of his debt data at payment default registry, he contacted the Controller and requested explanations regarding the processing of his data but received no answer.
 25. The Controller has confirmed to Estonian DPI that they have received Complainant's requests on 19.07.2023, 20.07.2023, 03.08.2023, 16.10.2023 and have replied to all of them. The Controller has sent proof that confirm this.
 26. Pursuant to GDPR Art 21(1) the data subject shall have the right to object at any time, on grounds relating to his or her particular situation, to processing of personal data concerning him or her which is based on point (f) of Article 6(1). The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject.
 27. The Complainant signed a loan agreement with [REDACTED] but did not fulfil his obligations to repay the loan. The Controller has confirmed and proved that the processed data is correct and data subject was adequately informed of the processing.
 28. Based on all the evidence that the Controller has presented during this investigation and taking into consideration that Complainant's arguments were overruled by Controller's

arguments, Estonian DPI is of the opinion that the processing of the Complainant's debt data has been lawful, and that the complaint should be rejected.

Based on above, Estonian DPI will terminate the proceedings concerning the protection of personal data in this matter.

Footnote reference documents will be annexed to relevant documents.

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 Act¹³ or
- filing a petition with an administrative court pursuant to the Code of Administrative Court Procedure¹⁴ (in this case, any challenges submitted in the same case can no longer be processed).

Respectfully,

[REDACTED]

Lawyer
authorized by Director General

Appendixes:

- Appendix 1 – loan agreement
- Appendix 2 – payment schedule
- Appendix 3 – sent notifications
- Appendix 4 – [REDACTED] Certified letter (ESP)
- Appendix 4a - [REDACTED] Certified letter (ENG)
- Appendix 5 – [REDACTED] Confirmation 04.04.2023
- Appendix 6 – [REDACTED] 25.07.2023 answer (ESP)
- Appendix 6a – [REDACTED] 25.07.2023 answer (ENG)
- Appendix 7 – [REDACTED] 20.07.2023 answer (ESP)
- Appendix 7a – Answer 20.07.2023_ZIP
- Appendix 7b - Answer 20.07.2023 ZIP and files
- Appendix 7c – Certificado de Deuda 20.07.2023
- Appendix 7d – [REDACTED] 20.07.2023 answer (ENG)
- Appendix 8 – [REDACTED] 03.08.2023 answer (ESP)
- Appendix 8a – [REDACTED] 03.08.2023 answer (ENG)
- Appendix 9 – Respuesta sobre la Peticion recibida el 16 de Octubre de 2023
- Appendix 9a – [REDACTED] 24.11.2023 Answer documents
- Appendix 9b – [REDACTED] Datos de Base
- Appendix 9c – [REDACTED] 24.11.2024 answer to the request (ENG)
- Appendix 9d - [REDACTED] 24.11.2023 cover letter (ESP)
- Appendix 9e - [REDACTED] 24.11.2023 cover letter (ENG)
- Appendix 10 – Certificada [REDACTED] (ESP)
- Appendix 10a – Certificate [REDACTED] (ENG)

¹³ <https://www.riigiteataja.ee/en/eli/527032019002/consolide>

¹⁴ <https://www.riigiteataja.ee/en/eli/512122019007/consolide>