



REPUBLIC OF ESTONIA
DATA PROTECTION INSPECTORATE

Dear [REDACTED]
Member of the Management Board

Your: 08/02/2021

Our: 19/01/2022 No. 2.1.-1/21/129

Reprimand and 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 he learned on 02/09/2020 about the inclusion into ASNEF insolvency file of an alleged debt owed to [REDACTED] amounting to 2.706,41 EUR. On 14/09/2020 the claimant contacted [REDACTED] customer support, in order to request all the information regarding the generation of the abovementioned debt, as well as the reliable communications of the payment request, without receiving any answer to the whole of the raised questions. The claimant stated that he kept on asking for the preventive cancellation of the debt inscription, but got no satisfactory reply.

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 data of the complainant? If the processing is necessary for the performance of a contract to which the data subject is party, then they should send a copy of the contract concluded with the claimant.*
2. *Has [REDACTED] transferred the claimant's data to the Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) and when? If they have, we asked them to indicate the legal basis and purpose of the transfer.*
3. *Are there any documents proving the claimant's debt? Has the complainant received the documents?*
4. *Was the accuracy of the insolvency file verified before it was transferred to ASNEF?*
5. *Whether and how was the complainant informed of the right to transfer data and the actual transfer of data. If the notice was given, we asked [REDACTED] to provide proof of notification.*
6. *Why hasn't [REDACTED] replied to the claimant's questions? If they have answered, we asked [REDACTED] to send a copy of the answer to the inspectorate.*

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

██████████ has transferred the complainant's data to ASNEF payment default register as of 09.03.2020 and the legal basis for the transfer of data is the performance of the contract on the basis of Article 6 (1) (b) of the GDPR (see also clause 13.11 of the Agreement):

13.1. 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. The Payment Default Register shall have a right to communicate the following data concerning the person who is an object of the inquiry to the other persons with a legitimate interest:

- 1) commencement and end dates of the payment default;
- 2) the total amount of the payment default; and
- 3) the business sector from where the payment default arose.

The Borrower shall have the right to submit a claim to the Payment Default Register pursuant to the procedure published on the webpage of the Payment Default Register and demand deletion of a payment default entry from the Payment Default Register. The purpose of processing the data mentioned herein is to allow the Borrower to monitor his/her payment defaults and allow other persons with legitimate interest concerning the creditworthiness of the Borrower to rely on the disclosed information upon making credit decisions with respect to the Borrower.

The purposes of the processing are:

- 1) performance of the contract;
- 2) giving the complainant the opportunity to monitor his / her debts to ██████████ (in addition to other notifications and the complainant's portal account); and
- 3) giving others the opportunity to process the complainant's data on the basis of a legitimate interest in order to assess the complainant's creditworthiness.

Please note that these purposes and grounds have also been assessed separately for ██████████ by the Spanish Supreme Court, which has confirmed the lawfulness of the processing of customer data for such purposes and grounds.

The complainant received information about his debt from his portal account, from notifications sent by ██████████ and from notifications sent by the Spanish default register. According to ██████████ the complainant has been aware of all these sources of information, i.e. he has visited the portal account repeatedly, the notifications have been received (including opened) and the data included the Spanish payment default register is also known to the complainant.

██████ verifies the accuracy of the debt data through a technical solution that notifies the ██████ system of the loan amount on the due date. Verifiability is ensured by checking the payment deadline and the receipt of the loan repayment from ██████ bank account.

The Appellant was at the earliest aware of the right to transfer data when concluding the contract. This right arises from clause 13.1 of the contract. ██████ repeatedly informed the complainant by e-mail (ie 04.02.2020, 08.02.2020, 17.02.2020 and 02.03.2020) before sending the defaults to the Spanish default register. In order to prove this, we also included a list of outgoing notifications, the fourth box of which also shows that the complainant has also opened these three notifications. In addition, the payment default register itself informed the complainant of the publication of the payment default.

Pursuant to Clause 13.1 of the contract, the complainant has exercised his right to communicate with the Spanish default register in connection with the cancellation of the default himself. The complainant has exercised this right twice.

The first notification of the complainant to the default register took place on 18.09.2020 (at that time ██████ was not aware of the out-of-court settlement of the default and we confirmed to the default register on 23.09.2020 that the data had been duly disclosed).

██████ received the complainant's letter by post on 06.10.2020. The second notification of the Applicant to the payment default register took place on 29.10.2020. At that moment, ██████ also became aware of the out-of-court settlement and requested that the payment be deleted from the default register on 04.11.2020 (incl. Further notifications were blocked).

We add that the deadline for replying to the complainant's letter was 06.11.2020, but as the situation related to the complainant was resolved through the payment default register (incl. it was used as a communication channel), the complainant was not notified separately. The complainant received the relevant information with the payment default register and the situation was resolved.

On 10 February, the Spanish Agency for Data Protection replied that the claim had been settled because the data of the Appellant had been removed from the payment default register pursuant to an out-of-court settlement. The Spanish Agency for Data Protection added that the Appellant had been informed of the possibility of being entered to the payment default register in the contract and also before the payment default was entered.

POSITION OF THE DATA PROTECTION INSPECTORATE

1. Lawfulness of the processing of personal data

In its reply, ██████ stated that it had transmitted the personal data of the Appellant to ASNEF under Article 6 (1) (b) of the GDPR. The Data Protection Inspectorate does not agree with this, as the transfer of the debt data of the Appellant to the payment default register is not an act that ██████ has to perform in order to fulfil its contract with the Appellant. The legal basis for providing the debt data of the Appellant to a third party can be derived from Article 6 (1) (f) of the GDPR, i.e. a legitimate interest. Relying on this legal basis, the controller is obliged to carry out a detailed assessment of the legitimate interest and to consider whether

or not the processing of the data is permissible in a particular case. If the assessment shows that the processing of the data is not permissible, it must be stopped. Otherwise, the controller must prove to the data subject that there are legitimate reasons to continue processing the data.

2. Release of personal data

On 14 September 2020, the Appellant sent a request to ██████████ to issue to him all the necessary documents regarding the debt, including the contract concluded between the Appellant and ██████████ and documents regarding how the principal debt, interest, service fees, etc. have arisen. ██████████ received the letter of the Appellant by post on 6 October 2020. A person ██████████ documents or, for example, a citation of contract clauses, goes beyond the scope of the GDPR. However, a person may request a copy of personal data collected about them pursuant to Article 15 (1) and (3) of the GDPR, in which case it is not prohibited for a copy of personal data to be issued as a copy of a document. An entry or extract from a database that reflects, inter alia, the name of the person, the components of the claim against them (principal, interest, recovery costs, etc.) constitutes personal data, and is thus the scope of the GDPR.

In accordance with recital 59 of the GDPR, the controller should be obliged to respond to requests from the data subject without undue delay and at the latest within one month and to give reasons where the controller does not intend to comply with any such requests. Article 12 (3) of the GDPR lays down the same deadline for replying to the request of the Appellant. In its reply, ██████████ explained that since the deadline for replying to the Appellant was 6 October 2020 but before that, the Appellant had entered into an out-of-court settlement, of which ██████████ became aware on 29 October 2020, the debt claims against the Appellant were deleted from the payment default register on 4 November 2020. In addition, the request of the Appellant for the release of his debt data was settled through the payment default register. As the payment defaults had been cleared before the deadline for replying to the Appellant and the Appellant had received information of interest to him through ASNEF, ██████████ did not consider it necessary to provide the Appellant with documents and other information relating to his debt.

The Data Protection Inspectorate finds that the conduct of ██████████ was not lawful because, pursuant to Article 12 (3) of the GDPR, ██████████ was obliged to reply to the Appellant within one month or to provide reasons for not providing the Appellant with the requested documents and/or information (see GDPR recital 59, Article 12 (4)), even if the claim of the Appellant falls outside the scope of the GDPR. Therefore, ██████████ should have provided the Appellant with a copy of the personal data he had requested (if the Appellant had requested it) or explained in its reply why this was not done or if the Appellant had requested specific documents, ██████████ should have justified why it was not possible to submit the documents on the basis of Article 15 of the GDPR.

I would like to explain that it is obligation of the controller to make sure that data is being processed in compliance with the GDPR. However, ██████████ disregarded the explicit request of the Appellant to provide him with documents relating to his debt and did not explain to the Appellant why it could not do so. In view of the above, ██████████ violated the requirements set out in the GDPR. However, based on the fact that the Appellant received the information requested by him through the payment default register and his debt details have been deleted from the payment default register as a result of an out-of-court settlement,

I reprimand [REDACTED] under Article 58 (2) (b) of the GDPR and draw attention to the following:

1. The legal basis for the transmission of debt data to a payment default register is the existence of a legitimate interest (**Article 6 (1) (f) of the GDPR**).

[REDACTED] is obliged to carry out a detailed assessment of the legitimate interest and to consider whether or not the processing of the data is permissible in every particular case. If the assessment shows that the processing of the data is not permissible, it must be stopped. Otherwise, the controller must prove to the data subject that there are legitimate reasons to continue processing the data.

2. The controller shall take appropriate measures to provide the data subject with the information referred to in Articles 13 and 14 and to inform them of the processing of personal data in accordance with Articles 15 to 22 and 34 in a concise, clear, comprehensible, and easily accessible form using clear and simple language. This information is provided in writing or by other means, including, where appropriate, electronically. If the data subject so requests, the information may be provided orally, provided that the identity of the data subject is established by other means (**Article 12 (1) of the GDPR**).

3. The controller has the obligation to submit a copy of the personal data concerning the data subject at the request of the data subject (**Article 15 (3) of the GDPR**).

If the data subject wants personal data about themselves, [REDACTED] must do everything in its power to ensure that all personal data is released. If personal data are not released, it must be made very clear which type of data and for what reason cannot be released.

4. The controller provides information on action taken on a request under Articles 15 to 22 of the GDPR to the data subject without undue delay and in any event within one month of receipt of the request. This period may be extended by two months, if necessary, taking into account the complexity and volume of the request. The controller informs the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay (**Article 12 (3) of the GDPR**).

Thus, if a person requests a copy of personal data concerning them, the copy must be provided within one month or, if justified, the deadline for replying may be extended within that month. In accordance with the GDPR, the maximum legal term for providing data can be three months.

5. If the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy (**Article 12 (4) of the GDPR**).

Thus, if [REDACTED] considers that it has reasonable grounds for not releasing data, this must be justified to the data subject within one month.

In view of the above and the fact that the Appellant, [REDACTED] received the information concerning him through the payment default register ASNEF, I will terminate the supervision proceedings.

I further note that in a situation where the improper practice of processing personal data in this way continues, the Data Protection Inspectorate has the right to issue a precept to [REDACTED] (and, if necessary, impose a penalty payment) or hold the controller liable in a misdemeanour. A legal person may be fined up to 20,000,000 euros or up to 4% of its total annual worldwide turnover for the previous financial year, whichever is greater.

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>