



631.106.4
CR 66495

8 November 2021

Final Decision pursuant to article 60 (8) GDPR

Preliminary comments

In July 2018 the Berlin DPA received a complaint (reference number 521.10011 / 631.106) about the controller Spotify regarding the use of cookies on Spotify's homepage. A procedure pursuant to article 56 was started in the IMI, in which Sweden resulted as Lead Supervisory Authority.

In November 2020, the Swedish Supervisory Authority IMY broadcasted a Draft Decision (DD 164968) to close the case because "in Sweden the use of cookies is regulated in the Privacy and Electronic Communications Directive which is incorporated into the Swedish Law through the Swedish Electronics Communications Act (ECA), over which The Swedish Post and Telecom Authority (PTS) is the supervisory authority". The Draft Decision received a series of comments asking for clarification but no formal objection.

In October 2021, it was clarified between the Berlin DPA and the Swedish Supervisory Authority that the aforementioned Draft Decision had been intended as a decision pursuant to article 60 (8) GDPR.

For this reason, in order to comply with article 60 (8) GDPR and close the case, the Berlin DPA hereby adopts the Draft Decision 164968 as it was originally formulated by the Swedish Supervisory Authority:

"Complaint concerning Spotify's privacy policy

Regarding the complaint against Spotify in IMI case register (66495).

Background

The complainant alleged that in order to access information on Spotify's website one has to activate cookies. Spotify also wants to force the user to accept cookies, although this should be optional. It is stated on the website that the consent to cookies can be modified or withdrawn. That is however false according to the complainant since the service doesn't work without the use of cookies.

Finding

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Visit our Website

<https://privacy.de>

The Swedish Data Protection Authority has received several complaints after GDPR came into force concerning websites that allegedly use cookies and other tracking technologies non-compliantly with applicable law.

Unfortunately, we can neither inspect, review nor influence the use of such technologies. The information provided in this complaint will therefore not lead to any further actions by the Swedish SA.

The following background information and legal grounds are applicable. In Sweden the use of cookies is regulated in the Privacy and Electronic Communications Directive which is incorporated into the Swedish Law through the Swedish Electronics Communications Act (ECA), over which The Swedish Post and Telecom Authority (PTS) is the supervisory authority.

After having assessed the circumstances in the now relevant case we have concluded that the complaint mainly concerns the collection of and consents to the use of cookies. The competent authority to initiate an audit to investigate the subject matter is the Swedish Post and Telecom Authority.

With this informational letter the case will hereby be closed.”