

National file number: E/01659/2020
IMI Case Register number: 119470

FINAL DECISION TO DISCONTINUE PROCEEDINGS

According to the action taken after the complaint lodged with the Spain supervisory authority (hereinafter AEPD), related to the following:

FACTS

FIRST: On 14 January 2020, a notification of a personal data breach was received from **RIDE HIVE OPERATIONS, S.L.** (hereinafter, HIVE), informing the Spanish Data Protection Agency that, on 9 January 2020, the *****COMPANY.1** had informed them that *****CONFIDENTIAL** had been published on the internet. *****CONFIDENTIAL**.

The data that could be accessed corresponded to basic and contact data of approximately 65.0000 clients (195.000 registers concerned) and although the notification had been made to the Spanish Data Protection Agency, there could be users from Austria, Greece, Italy, Poland and Portugal.

HIVE stated that the breach would not be communicated to the data subjects due to the low risk for the rights and freedoms of natural persons.

It also stated that an attempt had been made to notify the Spanish Agency on 12 January, but due to technical problems the notification was sent to incidencias@aepd.es.

SECOND: HIVE has its main or single establishment in Spain.

THIRD: On 17 February 2020, the Director of the Spanish Data Protection Agency ordered the General Subdirectorate of Data Inspection to carry out appropriate preliminary investigations in order to establish a possible infringement of data protection rules.

Via the 'Internal Market Information System' (hereinafter 'IMI'), regulated by Regulation (EU) N° 1024/2012 of the European Parliament and of the Council of 25 October 2012 ('the IMI Regulation'), the aim of which is to promote cross-border administrative cooperation, mutual assistance between Member States and the exchange of information, on 27 February 2020 the Spanish Agency declares itself the lead authority in the present case.

According to the information incorporated into the IMI system, in accordance with Article 60 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27/04/2016 on the protection of natural persons with regard to the processing of personal data and the free movement of such data (GDPR), the Austrian Supervisory Authority and the German authority of Hamburg have declared themselves concerned authorities in the present proceedings.

FORTH: In accordance with the procedure provided in Article 60 GDPR, the lead supervisory authority and the supervisory authorities concerned agreed on the draft decision taken by Spain.

LEGAL GROUNDS

I – Competence

Pursuant to art. 60(8) of GDPR and according to art. 12.2 litt. i) of Royal Decree 428/1993, of 26 of March, which approved Spanish Data Protection Agency's Statutes, and the First Transitory Provision of the Organic Spanish Law 3/2018 (LOPDGDD), the Director of the Spanish Data Protection Agency is competent to adopt this decision.

II – The Internal Market Information System (IMI)

The Internal Market Information System is regulated by Regulation (EU) N° 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation'). It helps competent authorities of Member States to fulfil their cross-border administrative cooperation, mutual assistance and information exchange.

III – Main establishment, cross-border processing and lead supervisory authority

Article 4(16) of GDPR defines «main establishment»:

'(a) as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment;

'(b) as regards a processor with establishments in more than one Member State, the place of its central administration in the Union, or, if the processor has no central administration in the Union, the establishment of the processor in the Union where the main processing activities in the context of the activities of an establishment of the processor take place to the extent that the processor is subject to specific obligations under this Regulation;'

According to Article 4(23) of GDPR «cross-border processing» means either:

'(a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or

'(b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which

substantially affects or is likely to substantially affect data subjects in more than one Member State.

Pursuant to Article 56 (1), regarding the competence of the lead supervisory authority, and without prejudice to Article 55, the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60.

In the case under examination, as outlined above, HIVE has its main establishment in Spain and therefore this Agency is the competent authority to act as lead supervisory authority.

IV – Supervisory authority concerned

In accordance with Article 4(22) of GDPR, ‘supervisory authority concerned’ means a supervisory authority which is concerned by the processing of personal data because:

- (a) the controller or processor is established on the territory of the Member State of that supervisory authority;
- (b) data subjects residing in the Member State of that supervisory authority are substantially affected or likely to be substantially affected by the processing; or
- (c) a complaint has been lodged with that supervisory authority.

In this procedure, the supervisory authorities concerned are the Austrian Supervisory Authority and the German authority of Hamburg.

V – Cooperation and consistency procedure

In the present case, the notification of the personal data breach has been handled according to the procedure established in articles 60(3) and 60(8), which state the following:

‘3. The lead supervisory authority shall, without delay, communicate the relevant information on the matter to the other supervisory authorities concerned. It shall without delay submit a draft decision to the other supervisory authorities concerned for their opinion and take due account of their views.’

‘8. By derogation from paragraph 7, where a complaint is dismissed or rejected, the supervisory authority with which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof.’

VI – Personal data security breach and legal reasonings

In this case, the Spanish Data Protection Agency has processed the notification of HIVE’s personal data security breach for an alleged infringement of Article 32 GDPR.

The GDPR broadly defines 'personal data breaches' (hereinafter 'security breaches') as '*a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.*'

In the present case, there is a personal data security breach in the circumstances described above, categorised as a possible confidentiality breach, as a result of possible undue access by third parties outside HIVE's database.

It appears from the investigation that HIVE had reasonable technical and organisational preventive measures to prevent this type of incident and commensurate with the level of risk.

HIVE has also been diligently confronted with identifying and correcting the breach, analysing and classifying the alleged personal data security incident and promptly reacting to it in order to notify, minimise the impact and implement new reasonable and proportionate measures to prevent a recurrence of the alleged occurrence in the future.

There are no complaints from affected customers to this Spanish Agency.

As a result, HIVE's action, as the entity responsible for processing, was in line with the rules on the protection of personal data and we consider that it is not appropriate to initiate a penalty procedure as it has put in place new security measures commensurate with the risk assessed in order to avoid the repetition of similar incidents in the future, and it is therefore decided to close the action taken.

Consistently with the conclusions described, it is agreed by the Director of the Spain-SA:

FIRST: TO DISCONTINUE the investigation proceedings against RIDE HIVE OPERATIONS, S.L.

SECOND: NOTIFY this decision to RIDE HIVE OPERATIONS, S.L.

Pursuant to Article 50 of LOPDGDD, this resolution shall be published after the notification of the parties concerned.

This resolution finalises the administrative procedure pursuant to Article 114 (1) (c) of the Act 39/2015 of 1 October on Common Administrative Procedure of Public Administration. According to Articles 112 and 123 of the aforementioned Act 39/2015, it is possible to appeal this decision before the Director of the Spain-SA within a month starting the day which follows the receipt of this notification. In accordance with Article 25 and Additional Provision 4(5) of the Act 29/1998 of 13 July regulating the Jurisdiction for Judicial Review, it is also possible directly appeal before the contentious-administrative division of the Spanish national high court. Pursuant to Article 46 (1) of the Act 29/1998, the period for filing for judicial review shall be two months long, counting from the day following the date of this notification.



Mar España Martí
Director of the Spanish Data Protection Agency

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