



REPUBLIC OF ESTONIA
DATA PROTECTION INSPECTORATE

INTERNAL INFORMATION
Information holder: Estonian Data
Protection Inspectorate
Date: 11.12.2023
Valid until: 11.12.2098 Legal ground:
Public Information Act § 35 (1) p.2, p.12

Ours: 11.12.2023 nr 2.1.-1/23/631-
1611-7

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] (the Complainant) through European Commissions Internal Market Information System (IMI) against [REDACTED] (the Controller, [REDACTED]). Since the Controller has its main establishment in Tallinn, Estonia, Estonian DPI has accepted the case as LSA.

THE COMPLAINT AND THE COURSE OF PROCEEDINGS

1. According to the complaint, the Complainants' personal data (debt information) has been transmitted to a Spanish payment default registry [REDACTED]. The Complainant claims that she has not been notified of the existence of the payment default by the Controller, how the payment default occurred and of the fact that the debt claim will be transmitted to the local payment default registry. In addition to that the Complainant claims that while entering into a contractual relationship with the Controller, she was not made aware of the possibility that her personal data might be disclosed to a payment default registry and not specified to which one.
2. According to the complaint, after discovering that her personal data was disclosed by [REDACTED], the Complainant has tried to exercise her right of access (GDPR Art 15) in order to obtain confirmation from the controller as to whether and which data concerning her are being processed, but received no reply from the Controller.
3. The Complainant has applied for the Controller to restrict the processing of her personal data while the accuracy of the personal data is contested by the data subject for a period enabling the Controller to verify the accuracy of the personal data as per GDPR Art 18 (1) a).
4. Estonian DPI initiated supervision proceedings on the basis of clause 56 (3) 8) of the Personal Data Protection Act and has sent several inquiries to the Controller. The aim of the supervisory proceedings was to clarify the legal basis of data processing and whether the Controller has taken appropriate measures to provide necessary information referred to in GDPR Article 13 and any communication under GDPR Article 15.
5. Estonian DPI has asked the Controller to restrict the processing of personal data of the Complainant during the supervisory proceedings as per GDPR Art 18 (1) a).

CONTROLLER'S EXPLANATIONS

6. The Controller has explained that the personal data of the Complainant is being processed on the basis of GDPR Art 6 (1) b), in order to perform the loan agreements.
7. The payment defaults origin from two loan agreements that the Complainant has entered into with the Controller – nr [REDACTED] (signed on 08.10.2019) and nr [REDACTED] (signed on 20.02.2020)¹. The signed loan agreements were sent to the Complainant's e-mail address after signing and they have also been available through [REDACTED]'s portal.
8. Last partial repayments made by the Complainant were on 09.03.2020 (€3.57 for loan agreement [REDACTED] and €4.30 for loan agreement [REDACTED]), after which the Complainant did not repay the debt in three following months. [REDACTED] has sent a warning on 10.06.2020 regarding terminating the contract because of unfulfillment of the contract by the Complainant and on 10.07.2020 terminated the contracts with the Complainant and notified her.
9. [REDACTED] 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.
10. [REDACTED] has been in constant communication with the Complainant – [REDACTED]'s log file² proves that tens of reminders, notifications, and repayment options have been sent to her.
11. [REDACTED] has sent a debt notification to the Complainant on 10.03.2020 via e-mail³ informing her about the debt and [REDACTED]'s right to transmit the information to [REDACTED] unless the debt is settled in 30 days. At the same time [REDACTED] offered the Complainant the possibility to schedule a repayment, however the Complainant did not want to use these opportunities.
12. In addition to the Controller's e-mail, [REDACTED] has sent the Complainant a letter through registered post on 26.03.2020 with the debt information and a notification that if the debt will not be repaid in 15 days, it will be disclosed at [REDACTED] payment default registry. The letters with the confirmation from postal service provider have been attached this document.⁴
13. The debt data was transmitted to the payment default registry on the basis of GDPR Art.6 (1) f) – legitimate interest of the Controller.
14. The information regarding the debt has also been available to the Complainant through [REDACTED]'s portal. The Complainant had access to her account at [REDACTED] firstly because the loan agreement cannot be signed without a valid e-mail address and creating an account at [REDACTED]; secondly [REDACTED]'s log files⁵ prove that the Complainant has regularly logged into her account until the end of 2022.
15. The loan agreements that the Complainant signed state under p. 13 that [REDACTED] has the right to transmit the information to payment default registry when the repayments are not made: *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.*⁶

¹ Appendix 1 (Loan agreement [REDACTED]) and Appendix 2 (Loan agreement [REDACTED])

² Appendix 3 – Sent notifications

³ Appendix 4 – copy of the e-mail notifying overdue payment

⁴ Appendix 5, 6 (English translation), 7, 8 (English translation)

⁵ Appendix 9 - customer activity log

⁶ Loan agreements of Appendix 1, p.13.1

16. The Complainant's statement that [REDACTED] has not replied to her GDPR Art.15 request in terms of which personal data is being processed, is not true. [REDACTED] has received Complainant's requests through [REDACTED] and has replied to all of them:
- Complainant's inquiry made on 16.12.2022 was answered on 04.01.2023.⁷ All of the documents regarding the debt (loan agreements and debt notification) were sent to the Complainant, a possibility to compromise was offered.
 - Additional inquiry was answered on 11.01.2023.⁸ The e-mail was also sent to Complainant's authorized representative.
 - On 22.02.2023 [REDACTED] has sent the debt documents to the Complainant again.⁹ The e-mail was also sent to Complainant's authorized representative.¹⁰
 - Another complaint was replied on 24.05.2023.¹¹ The e-mail was also sent to Complainant's authorized representative.
 - Last communication with the Complainant was on 31.07.2023.¹²
17. The Complainant has not commented on any of [REDACTED]'s replies from her side.
18. [REDACTED] has no reason to believe that Complainant has not received any letters or documents or that her e-mail is not working since the Complainant has consistently logged into [REDACTED]'s account with the same e-mail address; besides the information was also sent to Complainant's authorized representative.
19. Although [REDACTED] is certain of their right to disclose Complainant's debt information to payment default registry, [REDACTED] has agreed to restrict the processing of personal data of the Complainant during the supervisory proceedings as per GDPR Art 18 (1) a).¹³

ESTONIAN DATA PROTECTION INSPECTORATE'S OPINION

Legal basis of processing the data

20. Pursuant to Article 6 (1) of GDPR processing shall be lawful only if and to the extent that at least one of the legal bases stated in Article 6(1) applies. The Controller stated that the legal basis for processing Complainant's personal data falls under Article 6 (1)(b) of GDPR – processing is necessary for the performance of a contract. The Controller and Complainant signed two loan agreements - [REDACTED] (signed on 08.10.2019) and [REDACTED] (signed on 20.02.2020). Processing personal data is necessary for the Controller in order to pursue the claim.
21. 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.
22. According to the loan agreement's clause 13.1. [REDACTED] 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. Since the Complainant signed the

⁷ Appendix 10, 10a, 10b, 10c (English translation)

⁸ Appendix 11, 12(English translation)

⁹ Appendix 13,14 (English translation)

¹⁰ Appendix 19,20 (English translation)

¹¹ Appendix 15,16 (English translation)

¹² Appendix 17,18 (English translation)

¹³ Appendix 21 – [REDACTED] activities list

- loan agreements, the information was in her possession contrary to what was said in the complaint.
23. Pursuant to Article 6(1)f) of GDPR 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 - the debt data was transmitted to the payment default registry [REDACTED] on the basis of GDPR Art.6 (1)f).
 24. In order to rely on GDPR Art.6 (1)f) as a legal basis of processing (transmitting personal data to a payment default registry), the Controller should be able to demonstrate that their 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. The Controller has provided the legitimate interest analysis to Estonian DPI.
 25. [REDACTED] is a creditor who offers different loans to data subjects. Consequently, [REDACTED]'s interest is to claim the debts. If the data subject has not fulfilled their obligation and has failed to make loan payments, [REDACTED] as a controller has an interest to share that information with payment default registry. In this case the Complainant has signed loan agreements with [REDACTED] but has not fulfilled her obligations to repay the loans.
 26. 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.
 27. [REDACTED] did inform the Complainant about the possibility of transmission of their personal data to a payment default registry in case the payment is overdue or default first of all in loan agreement clause 13.1. and later in an e-mail (10.03.2020) and by post (26.03.2020).
 28. The Complainant failed to pay the debts and therefore her arrears information was transmitted to [REDACTED]. Estonian DPI considers [REDACTED]'s interest valid and therefore the Complainant's interests or fundamental rights and freedoms are not overridden when her personal data was sent to a payment default registry.
 29. Taking into account the nature of the personal data processed (debt data), the fact that the Complainant has not responded to any of the notifications and reminders sent to her by the Controller and the Complainant was aware of possible measures taken when repayments are not made in time while signing loan agreements, Estonian DPI is of opinion that transmitting the data to payment default register [REDACTED] was justified.

Information to be provided to the data subject

30. Pursuant to Article 13(3) GDPR 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.
31. The Controller has given the Complainant all the necessary information regarding her debt via sms, e-mails, (automated) telephone calls. The annexes sent by the Controller prove that tens of reminders, notifications, and repayment options have been sent to her. In addition to that the information regarding the debt has also been available to the

- Complainant through ██████'s portal and log files prove that she has consistently logged into her account until the end of 2022.
32. The Controller has informed the Complainant on 10.03.2020 via e-mail about the debt and ██████'s right to transmit the information to ██████ unless the debt is settled in 30 days. In addition to that ██████ has sent the Complainant a postal letter through registered post on 26.03.2020 with the debt information which the Complainant must have received.
 33. According to Estonian DPI, the Controller has provided all the necessary information regarding the debt information and the transmitting of debt information to the Complainant.

Complainant's right of access by the data subject (GDPR Art 15)

34. Pursuant to Article 15(1) GDPR the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him/her are being processed and provide the relevant information about the processing.
35. The Complainant claimed that her request to access her data was not met by the Controller, however the Controller has disproved this statement by saying that ██████ replied to all of the Complainant's requests (4.01.2023; 11.01.2023; 22.02.2023; 24.05.2023, 31.07.2023) whereby all the necessary documents (loan agreements and debt notification) were sent to the Complainant.
36. According to Estonian DPI's opinion the appendixes added to this document prove that the Controller has replied to the Complainant sending her all the necessary documentation regarding her data processing.

CONCLUSION

The Controller processes Complainant's personal data for the purpose of claiming the debt and has transmitted the debt data to a payment default registry on the basis of legitimate interest (GDPR Art.6(1)f). The Complainant has been informed about the debt through numerous reminders via e-mail, sms, automated telephone calls. In addition to that, the Complainant has had access to all of her loan data through ██████'s portal, that she has logged in until the end of 2022. The information regarding the possibility of transmitting the debt data to a payment default registry was given to the Complainant when signing the loan agreements and later through e-mail and postal letter. The Controller has replied to Complainant's request about her data processing. In Estonian DPI's opinion the processing of personal data corresponds to the requirements set to the Controller by GDPR.

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.

Respectfully,

██████████
Lawyer
authorized by Director General

Appendixes:

- Appendix 1 - Loan agreement [REDACTED]
- Appendix 2 - Loan agreement [REDACTED]
- Appendix 3 – Sent notifications from [REDACTED]’s system
- Appendix 4 – Copy of the e-mail notifying overdue payment
- Appendix 5 – Official notification [REDACTED] 1 (ES)
- Appendix 6 – Certified Debt notification letter [REDACTED] (EN) Translation
- Appendix 7 – Official notification [REDACTED] 2 (ES)
- Appendix 8 - Certified Debt notification letter [REDACTED] (EN) Translation
- Appendix 9 – Customer activity log
- Appendix 10 – [REDACTED] response (ES) Original [REDACTED] email
- Appendix 10a – Attachments to e-mail 04.01.2023
- Appendix 10b – Debt confirmation (ES)
- Appendix 10c – [REDACTED] response to postal letter from January 3rd 2023 (EN) Translation
- Appendix 11 – [REDACTED] response (ES) original [REDACTED] email 2
- Appendix 12 – [REDACTED] response to [REDACTED] petition request 2 (EN) Translation
- Appendix 13 – [REDACTED] response (ES) Original [REDACTED] email 3
- Appendix 14 – [REDACTED] Recovery Team 3 (EN) Translation
- Appendix 15 – [REDACTED] response (ES) Original [REDACTED] email 4
- Appendix 16 – [REDACTED] response to customer 4 (EN) Translation
- Appendix 17 – [REDACTED] response (ES) original [REDACTED] email 5
- Appendix 18 – [REDACTED] response to [REDACTED] petition request 5 (EN) Translation
- Appendix 19 – Original Doc. Request for [REDACTED] (ES)
- Appendix 20 – Request for [REDACTED] (EN) Translation
- Appendix 21 – [REDACTED] activities list