



ANSPDCP.Registrul Evidenta Deciziei Avize
Recomandari.0000031.30-08-2021

Decision

following the investigation carried out at
Cylex Tehnologia Informației Internațional Societate în Nume Colectiv

Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, having the premises at 28-30 Gen. Gheorghe Magheru Blvd., 1st District, PO 010336, Bucharest, legally represented by Mrs. [REDACTED], President **issues this decision against Cylex Tehnologia Informației Internațional Societate în Nume Colectiv**, with the premises in Palota village, Sîntandrei Commune, no. 119/A, Bihor County, Unique registration code 26332771, registered at the Trade Register Office under no. J5/1591/2009, legally represented by Mr. [REDACTED], as administrator.

Considering the following:

I. PREMISE

1. Intimation pursuant to Article 56 of GDPR

By the IMI application no. 159285 (registered at the Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal under no. 21372 of the 28th of October 2020), pursuant to Article 56 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation – hereinafter “GDPR”), in order to identify the lead supervisory authority (LSA) and of the concerned supervisory authorities (CSA), the Polish Data Protection Authority (DPA) has informed all EU authorities that it has received a complaint against Cylex International Information Technology Societate în Nume Colectiv, enclosing evidence to that effect, in the English and Polish languages. DPA Poland considers the Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal (hereinafter referred to as “ANSPDCP”) as the lead supervisory authority (LSA) in this case, given the fact that this company is based in Romania. DPA Poland also mentioned that the website is also available in Norwegian, French, Spanish, German, Slovak and Swedish. The proposal of the DPA Poland proposal was accepted by ANSPDCP.

2. Object and assessment of the complaints

Mrs. [REDACTED] lodged a complaint with the Polish authority on the 4th of August 2019 claiming that her personal data (name, surname, profession, address, a form of legal organisation which is no longer valid) are published, inter alia, on the website **cylex-polska.pl**. The petitioner addressed by e-mail invoking Articles 17 and 21 of the GDPR in order to obtain the deletion of these data that were published without her consent and information. The request was sent in Polish from the address [REDACTED] to the address info@cylex.pl on the 13th of June 2019.

It is noted that the **cylex site, owned by Cylex Tehnologia Informației Internațional Societate în Nume Colectiv (hereinafter referred to as "Cylex")**, through which are made public also the personal data of natural persons from different EU Member States, is available in various versions of European domain names and in the national languages of the EU Member States (such as: Romanian, French, Italian, Finnish, Spanish, German, Slovak, Swedish, Hungarian, Polish, Czech, Danish, Dutch), thus carrying out cross-border processing in the meaning of Article 4 point 23 of the GDPR. Considering that the Cylex headquarters is in Romania, ANSPDCP is the lead supervisory authority in this case, within the meaning of Articles 56, 60 and the following of the GDPR.

3. Investigation at Cylex Tehnologia Informatiei International Societate în Nume Colectiv

Pursuant to Articles 57 and 58 of the GDPR and of Article 14 and the following from Law no. 102/2005 on the set up, organisation and functioning of the National Authority for the Supervision of Personal Data Processing, republished, it was ordered to carry out an investigation to handle the issues reported to the supervisory authority.

ANSPDCP sent the investigation letter to Cylex no. 1304 of the 22nd of January 2021, completed with the letter no. 5510 of the 26th of March 2021.

Cylex replied with the letter no. 22 of the 15th of February 2021, registered at ANSPDCP under no. 3051 of the 19th of February 2021, completed with the answer registered at ANSPDCP under no. 5534 of the 26th of March 2021.

Cylex's representatives stated the following:

- the identification elements of Mrs. [REDACTED] from the CYLEX catalogue were: the name of the professional, the address declared as headquarters of the professional, the KRS registration number in the Polish Trade Register of the professional, the NIP number meaning the fiscal attribute of the professional, issued by the Polish authorities, the field of activity (Laboratories – Services);
- Cylex collected these information from the public database of the Polish Trade Register (Statistic);
- Cylex does not object to the deletion of data either they come from companies or they belong to other categories of professionals;
- the deletion option is accessible from the profile of the professional, without the need to notify Cylex;
- by error, the request of Mrs. [REDACTED] was not processed properly, whereas the e-mail from the 13th of June 2019 went directly into spam; whereas the amount of spam e-mails is very large, the moderators have omitted to open and process the e-mail; usually, such requests are processed within 24 hours on weekdays or 72 hours on weekends and holidays;
- consequently, Cylex found out about the petitioner's request after receiving ANSPDCP's letter, i.e. on the 5th of February 2021; as such, Cylex deleted without delay all data belonging to the professional and a submitted a request of deletion from Google cache; it has also taken measures to ensure that all e-mails are read and processed with the utmost rigor;
- Cylex informed the petitioner of the measures adopted by e-mail, on the 10th of February 2021.

Following the investigation carried out, pursuant to Article 60 (3) of the GDPR, ANSPDCP communicated electronically on the 7th of May 2021 a draft decision and the response sent by Cylex to the other personal data protection authorities in the European Union, the authorities in Berlin (and Bavaria) and Poland making relevant and reasoned objections on the 4th of June 2021.

By taking into account the objections thus formulated, in accordance with Article 60 (4) of the GDPR, ANSPDCP revised the draft decision, resulting in this decision.

4. Replies of other supervisory authorities in IMI

A. In the notification based on Article 56 of IMI with no. 159285 (opened on the 27th of October 2020), in addition to the Polish authority, the following authorities were declared concerned authorities: Norway, Ireland, Germany - Lower Saxony, Belgium, Italy, Germany - Mecklenburg-Western Pomerania, France, Germany - Berlin, Slovakia, Sweden, Spain, Germany - Bavaria, Finland, as the processing would or could substantially affect the data subjects in their country.

Apart from the Polish authority, no other authority has stated that it has received any complaints against Cylex.

B. Following the introduction of a first draft of the decision issued by ANSPDCP in IMI (Article 60 295321 - introduced on the 7th of May 2021), the authorities in Berlin (and Bavaria) as well as the Polish authority raised relevant and reasoned objections to IMI, with the proposal to ascertain the violation, mainly, of the provisions of Articles 6, 14, 12 (3), 17 (1), 24 of the GDPR.

The Italian authority also commented on the procedural issues (form of the draft decision).

C. Following the objections raised, ANSPDCP revised the draft decision and reintroduced it in IMI (Article 60 311339 - introduced on the 15th of July 2021), and the Berlin authority stated that it agrees with the proposed measures. As no other relevant and reasoned objections were raised, this final decision was issued.

5. The minutes of the finding

Following the investigation carried out and the consultations carried out with the other personal data protection authorities, the finding report no. 14199 of the 9th of August 2021 by which the following facts were ascertained was concluded:

1. "At the date of these minutes, it is noted that Cylex International Information Technology Societate în Nume Colectiv, with the headquarters mentioned on the first page of these minutes, did not handle the request of Ms. [REDACTED] of the 13th of June 2019, formulated based on Article 17 of the GDPR, respectively, did not send a reply within the deadlines provided by Article 12 (3) of the GDPR, the request being effectively resolved between the 5th and 10th of February 2021, according to the findings of these minutes. Pursuant to Article 24 of the GDPR, the controller is obliged to "implement appropriate technical and organisational measures to ensure and to be able to demonstrate that the processing is performed in accordance" with the GDPR, including "appropriate data protection policies", which must include appropriate and effective measures to ensure that any request received at the address provided publicly as a contact to be assessed and handled under the conditions and deadlines provided by Articles 12-22 of the GDPR.

This deed constitutes the contravention provided by Article 12 of Law no. 190/2018, by reference to the provisions presented in Article 83 (5) letter b) of the GDPR.

2. At the date of these minutes, it is noted that Cylex Tehnologia Informației Internațional Societate în Nume Colectiv, with the headquarters mentioned on the first page of these minutes, has not presented evidence so far that it has provided complete information and in compliance with the provisions of Articles 12-14 of the GDPR to Mrs. [REDACTED], including information regarding the legal basis

of the processing provided by Article 6 of the GDPR, whose personal data were available on cylex-polska.pl until the period 5th – 10th of February 2021.

This deed constitutes the contravention provided by Article 12 of Law no. 190/2018, by reference to the provisions presented in Article 83 (5) letter b) of the GDPR.”

Since in this case Cylex International Information Technology Societate în Nume Colectiv performs a cross-border processing, the provisions of Article 60 of Regulation (EU) 679/2016, as well as those of Article 16 (3), (5), (6), (7) of Law no. 102/2005, republished, which provide for the application of sanctions / corrective measures by decision of the president of ANSPDCP, which is based on the minutes of the finding and the report of the control staff, become applicable.

II. REASONS:

Having regard to the conclusions of the investigation carried out at Cylex International Information Technology Societate în Nume Colectiv,

Taking into account the relevant and reasoned objections raised by the other concerned supervisory authorities in IMI,

Based on the aspects retained and recorded in the minutes of finding no. 14199 of the 9th of August 2021, according to which:

1. " Cylex's representatives declared that they manage over 30 catalogues of online companies, with a database of over 60 millions companies (companies, institutions and other legal forms), having millions of clients all around the world"; "the CYLEX catalogue of companies is a search engine, in the sense that, specifically, the public records are accessed online and transferred to the CYLEX company catalog. In terms of features, the web catalog does not differ significantly from other search engines, such as Google, which also captures company pages and displays the related data in their link pages";
2. the purpose declared by the Cylex's representatives by processing these information is to offer "users a quick and easy way to find anywhere the products and services they are looking for, the purpose of the undersigned being to facilitate connections between companies and customers", so that entities can benefit from free registrations to promote their companies online and to gain customers";
3. Cylex's representatives also declared that "Cylex catalogs do not target data of individuals but strictly of professionals", the information being collected from public databases such as the trade registers from different countries;
4. in the case of professionals (as was the case with Mrs. [REDACTED]), the information collected and published in Cylex's online catalog also includes first and last name, address, other contact details, which allow the identification of a natural person and therefore constitute "personal data", in the meaning of the definition given by Article 4 point 1 of the GDPR ("any information concerning an identified or identifiable natural person ("data subject"); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by reference to an identifying element, such as a name, an identification number, location data, an online identifier, or one or more specific elements, specific to his physical, physiological, genetic, mental, economic, cultural or social identity");
5. consequently, all situations in which Cylex processes information that allows the identification of individuals, even if they are related to their professional activity, fall within the material scope of the GDPR, according to Article 2 (1);
6. as such, Cylex is obliged, as a personal data controller, to ensure the legality of the data processing of these persons, according to Articles 5 and 6 of the GDPR, to provide complete information, "in a concise, transparent, intelligible and easily accessible form, using a clear and simple language", according to Articles 12-14 of the GDPR, including information regarding the processing of data of these persons and, respectively, to respect the rights of these persons, as they are provided by Articles 15-22 of the GDPR, facilitating, at the same time, their exercise;

7. in this regard, it is necessary to duly supplement the existing information on each language version of the sites belonging to Cylex, on which online catalogues containing personal data of these persons are made available to the public;
8. according to Articles 13 and 14 of the GDPR, among the information that must be brought to the knowledge of the data subjects is also the legal basis of the processing, which must be established by reference to the provisions of Article 6 of the GDPR;
9. the legitimate interest (Article 6 (1) (f) of the GDPR) may constitute a valid legal basis in so far as the criteria set out in recital (47) of the GDPR are met: "The legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller. Such legitimate interest could exist for example where there is a relevant and appropriate relationship between the data subject and the controller in situations such as where the data subject is a client or in the service of the controller. At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place. The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing. (...)"
10. in situations where, following the evaluation carried out by the controller, it is concluded that the legitimate interest does not meet these criteria, the only legal basis allowed for the data processing of the above mentioned persons is the consent of the data subjects (Article 6 (1) letter a) of the GDPR);
11. regarding the particular situation reported, of Ms. ██████████, although her request of the 13th of June 2019 reached the computer system of Cylex (in the spam folder), it was not handled within the legal deadlines provided by Article 17 (1) and Article 12 (3) of the GDPR (maximum one month or maximum 3 months), deleting her data and sending a reply taking place much later, after receiving the ANSPDCP letter no. 1304 of the 22nd of January 2021, respectively, during 05.02.2021-10.02.2021; from the 8th of February 2021, according to the statements of the Cylex's representatives, measures were taken so that "all e-mails are read and processed with maximum rigour";
12. therefore, until the 8th of February 2021, Cylex did not "implement" adequate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance" with the GDPR, including "appropriate data protection policies", as provided by Article 24 of the GDPR; thus, it is the obligation of the controller to implement appropriate and effective measures to ensure that any request received at the address provided publicly as a contact to be assessed and handled under the conditions and deadlines provided by Articles 12-22 of the GDPR;
13. or, in the case of Mrs. ██████████, her request made based on Article 17 of the GDPR was not handled by Cylex without delay, respectively, within the deadlines provided by Article 12 (3) of the GDPR;
14. also, although ANSPDCP requested this information through the letter no. 1304 of the 22nd of January 2021, Cylex did not present evidence regarding the provision of information to Mrs. ██████████ whose personal data were published on the website cylex-polska.pl, according to the provisions of Articles 12-14 of the GDPR and according to the above considerations in this context;
15. this conduct of the controller must be sanctioned, in order to avoid the recurrence of similar incidents in the future and to prevent the violation of the rights of other persons whose personal data they process. When imposing the sanction, it will be taken into account that, according to the records of ANSPDCP, no other similar complaints were received against Cylex regarding the exercise of rights under the GDPR, the above circumstances, the categories of data concerned and the fact that the controller took measures in order to remedy the notified issues",

Pursuant to Articles 14, 15 and 16 of Law no. 102/2005, republished, of Article 12 of Law no. 190/2018, in conjunction with Article 83 (2) and with the dispositions listed in Article 83 (5) letter b) of Regulation (EU) 679/2016, corroborated with the provisions of Article 58 (2) letters b) and d), as well as of Article 60 of Regulation (EU) 679/2016, related to the provisions of Articles 24, 25 and 26 of the Investigation Procedure, approved by the Decision of the President of ANSPDCP no. 161/2018,

Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal

ORDERS

the following measures against Cylex Tehnologia Informației Internațional Societate în Nume Colectiv:

1. Issuing a reprimand for the deed ascertained through the minutes no. 14199 of the 9th of August 2021, based on Article 58 paragraph (2) letter b) of Regulation (EU) 2016/679, by reference to the infringement of Articles 17 and 12 (3) of this Regulation;
2. Issuing a reprimand for the second deed ascertained through the minutes no. 14199 of the 9th of August 2021, based on Article 58 paragraph (2) letter b) of Regulation (EU) 2016/679, by reference to the infringement of Articles 12-14 of this Regulation;
3. Imposing the corrective measure provided by Article 58 (2) letter d) of Regulation (EU) 2016/679 to implement appropriate technical and organisational measures in order to ensure and to be able to demonstrate that processing is performed in accordance with the GDPR, including appropriate data protection policies, which shall include appropriate and effective measures so that any request received at the address provided publicly as a contact shall be assessed and handled under the conditions and deadlines provided by Articles 12-22 of the GDPR – deadline: 30 days from the date of communication of this decision;
4. Imposing the corrective measure provided by Article 58 (2) letter d) of Regulation (EU) 2016/679 to ensure the legality of the processing of data of natural persons whose personal data are available through online catalogues, according to Articles 5 and 6 of the GDPR and to provide complete information “in a concise, transparent, intelligible and easily accessible form, using a clear and simple language”, pursuant to Articles 12-14 of the GDPR, regarding the processing of data of these persons, respectively, to respect the rights of these persons, as they are provided by Articles 15-22 of the GDPR, facilitating, at the same time, their exercise; in this regard, it is necessary to properly supplement the existing information on each language version of the sites belonging to Cylex International Information Technology Societate în Nume Colectiv, on which online catalogues are made available to the public – deadline: 30 days from the date of communication of this decision.

Cylex Tehnologia Informației Internațional Societate în Nume Colectiv shall communicate to ANSPDCP the measures adopted for the implementation of the corrective measures within 45 days from the communication of this decision.

This decision was subject to the procedure provided for in Chapter VII of Regulation (EU) 2016/679, being sent for approval to all concerned supervisory authorities.

This decision, together with the minute no. 14199 of the 9th of August 2021 shall be communicated to **Cylex Tehnologia Informației Internațional Societate în Nume Colectiv** that has the right to challenge them pursuant to Article 17 of Law no. 102/2005:

“Article 17

(1) The data controller or processor may file an appeal against the report of the finding/sanctioning and/or the decision to apply the corrective measures, as the case may be, with the administrative

contentious section of the competent court, within 15 days from handing, respectively from communication. The decision resolving the appeal can be appealed only by appeal. The appeal is judged by the competent court of appeal. In all cases, the competent courts are those in Romania.

(2) The report of finding/sanctioning or the decision of the president of the National Supervisory Authority unchallenged within 15 days from the date of handing, respectively the communication, constitutes an enforceable title without any other formality. Introducing the appeal provided in paragraph (1) suspends only the payment of the fine, until a final court decision is issued.

(3)The deadline of payment of the fine is 15 days from the date of handing, respectively from the date of communication of the minutes of finding/sanctioning or of the decision of the president of the National Supervisory Authority.”

President,

