



ANDMEKAITSE INSPEKTSIOON

Member of the Management Board

Your: 22 December 2021

Our: 27/06/2022 No. 2.1.-1/21/2432

### Reprimand and notice of termination of proceedings in a personal data protection case

The Data Protection Inspectorate received a complaint from [REDACTED] a Spanish citizen (Appellant), via the Internal Market Information System (IMI), alleging that she was in debt to [REDACTED] (in the amount of 1,069.93 euros) and that it had been declared as a payment default with the Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF). According to the complaint, the Appellant has not been notified of the debt claim or of its entry in the payment default register. The Appellant explains that she has sent a letter before claim to [REDACTED] by registered mail to the address of the company in Tallinn, but has not received a reply.

In her letter before claim to [REDACTED] the Appellant requested the following (unofficial translation from the Spanish letter):

*I hereby declare via this writ, that I have not received any communication or notification from their side, indicating this fact.*

*Hence, I wish to request all the necessary documentation informing on the causes of the claim and how the amount was generated, main amount, applied interests, commissions, etc. so that I can check that they match the original signed contract, whose copy I also request. To this respect, I want to point out that, in the formalisation of the original contract, I was not warned about the possibility that my personal data could end up in an insolvency file, nor specification of which of them. If I had availed of that data, I might have considered the formalisation of the abovementioned contract.*

*I wish to indicate also that I perceive conditions that exceed what can be assumed as normal conditions, due to the irregularities in the formalisation of the contract, the lack of the least explanations about its functioning and its failing to pass the legibility standard intrinsic to this kind of contracts before the consumers, seriously violating, moreover, the law regarding the processing of my personal data.*

*For all the reasons exposed above, I REQUEST to receive the necessary documentation showing the abovementioned 'supra', and until the matter is clarified, they abstain from maintaining annotations linked to my personal data in any insolvency files and violating my rights, as the current Data Protection Law establishes. Thus, I request the cautionary cancellation of my data, while the compliance of the rules is under supervision. Likewise, due to the double request sent to your entity, I beg that the Customer Service department forwards copy of my pretension to the data protection department.*

Based on the above, I have initiated supervision proceedings on the basis of clause 56 (3) 8) of the Personal Data Protection Act.

In the course of the supervision procedure, the Data Protection Inspectorate submitted an inquiry to ██████████ to find out additional circumstances. The following are the questions of the Data Protection Inspectorate and the answers of ██████████ thereto:

1. *On what legal basis and for what purpose do you process the personal data of the Appellant? If an agreement has been concluded with the Appellant, forward it to us.*

██████████ may process the personal data of its customers (including the Appellant) on various legal bases. For the sake of clarity, the bases and purposes of the processing of personal data of the customers of ██████████ are presented by categories of personal data in Annex 1. The loan agreement ██████████ between ██████████ and the Appellant (hereinafter the Agreement) is also attached to this reply (Annex 2).

2. *Did you transfer the debt data of the Appellant to the Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) and when? If you have transferred the data, state the legal basis and purpose of the transfer.*

██████████ submitted the data of the Appellant to the Spanish register of payment defaults (ASNEF) on 19 October 2021 (Annex 5).

The legal basis for the transfer of the data is Article 6 (1) (b) of the General Data Protection Regulation (compliance with clause 13.1 of the Agreement).

Data is processed for the following purposes:

- 1) performance of the Agreement;
- 2) giving the Appellant the opportunity to monitor her debts to ██████████ (in addition to other notifications and what is visible from the portal account of the Appellant), and
- 3) providing an opportunity to third parties to process the data of the Appellant on the basis of a legitimate interest in assessing the creditworthiness of the Appellant. The Data Protection Inspectorate has further explained in its guidelines on the disclosure of payment defaults (first published in 2010) that in the interests of the reliability of transaction turnover, the Personal Data Protection Act allows the disclosure of payment default or debt data to other persons without the consent of the customer (section 10 of the Personal Data Protection Act). The protection of others against bad transactions in such a case is considered more important than the protection of the privacy of the debtor. ██████████ is guided by these instructions and the right referred to in subsection 10 (1) of the Personal Data Protection Act.

Clause 13.1 of the Agreement also sets out the separate grounds and purpose of processing the data and also informs the Appellant of the possibility to submit a corresponding complaint directly to the register of payment defaults for the deletion of the data.

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.<sup>1</sup>

When it comes to the transfer of data to the register of payment defaults, ██████████ is governed by the Agreement, applicable guidelines, and legislation, and as a result, the transfer of data of this particular Appellant is lawful.

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<sup>1</sup> We further note that the Spanish court has previously further analysed the right of ██████████ to send customer data to the Spanish register of payment defaults and confirmed by decision No. 0000643/2017 that such processing by ██████████ is lawful. As the decision contains the personal data of another customer of ██████████ and this procedure is not related to the same customer, it is not possible for ██████████ to present this decision at this time.

3. *Are there any documents proving the payment default of the Appellant? Has the Appellant received such documents?*

*The Appellant has received information about her debt from various sources:*

- 1) from her portal account (it can be seen from the [REDACTED] system that the Appellant has logged in to her account after the payment default);*
- 2) the notifications sent by [REDACTED] (Annexes 3 to 5), which were also seen by the Appellant (the emails were opened), and*
- 3) the communication between the Appellant and the service provider [REDACTED] (see the answer to question 7). The Appellant was aware of the sources and documents related to the notification of the payment default and has had the opportunity to inspect them.*

4. *How was the accuracy of the debt data checked before it was transferred to the register of payment defaults?*

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

5. *Has the Appellant been informed of the right to transfer data? How was she informed?*

*The Appellant was informed of the right to transfer data for the first time upon concluding the Agreement. This right is provided in clause 13.1 of the Agreement.*

6. *Was the Appellant informed of the publication of the debt details in the register of payment defaults? How and on what date? If you informed the Appellant, provide proof of it.*

*The Appellant was informed of the right to transfer data for the first time upon concluding the Agreement. [REDACTED] repeatedly informed the Appellant via email before sending notifications to the Spanish register of payment defaults (Annex 5 – notifications sent on 4 September 2019, 4 October 2019, 8 October 2019, and 17 October 2019). We added an extract from the database, the fourth column (Status) of which shows that the Appellant has opened some of the notifications (Annex 3).*

7. *Why have you not replied to the letter before claim of the Appellant? If you did, please send a copy of the answer to the Inspectorate as well.*

*First, we wish to specify the procedure and circumstances for dealing with requests for information in the context of this complaint:*

- 1) the Appellant sent a letter to [REDACTED] regarding her indebtedness by post on 3 June 2021, which is also known to be the last letter from the Appellant to [REDACTED]*
- 2) [REDACTED] uses an external partner, [REDACTED] to communicate with its customers in arrears, whose representative was contacted by the customer support of [REDACTED] on 4 June 2021.*
- 3) [REDACTED] received confirmation from [REDACTED] that the customer has been contacted before 3 June 2021, the necessary information has been forwarded, and the customer is aware of the debt data. In addition, [REDACTED] confirmed that the customer would be contacted in connection with the request submitted on 3 June 2021.*

8. *Did you restrict the processing of the personal data of the Appellant when she objected?*

*For how long?*

*As ██████████ has a legal basis for the transfer of data, the Appellant is still indebted to ██████████ to this day, and ██████████ has repeatedly notified the customer of the right to transfer the data in addition to the provisions of the Agreement, the customer has no grounds to demand the restriction of the transmission of notifications related to the payment default or the cancellation of the debt on the bases provided in the Agreement. Clause 13.1 of the Agreement entered into with the customer also informs about the possibility to submit a request for the deletion of data related to the debt to the respective register of payment defaults. To our knowledge, no such request has been made at this time and there are no active inquiries into the register of payment defaults.*

██████████ attached to its reply a copy of the agreement concluded with the Appellant, the principles of processing personal data at ██████████ the notifications of ██████████ to the Appellant, and correspondence between ██████████ and the service provider ██████████ regarding the request of the Appellant.

## **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 General Data Protection Regulation. The Data Protection Inspectorate does not agree with this, as the transfer of the debt data of the Appellant to the register of payment defaults is not an act that ██████████ has to perform 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 General Data Protection Regulation, 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.

In addition, ██████████ cannot rely on Estonian national law (the Personal Data Protection Act) when transferring debt data, as Spanish law applies to the agreement in accordance with the agreement (clause 16.1 of the agreement).

### **2. Release of personal data**

On 21 April 2021, the Appellant sent a request to ██████████ to issue to her all the necessary documents regarding the debt, including the agreement 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 3 June 2021. A person requesting documents or, for example, a citation of contract clauses goes beyond the scope of the General Data Protection Regulation. However, a person may request a copy of the personal data collected about them pursuant to Article 15 (1) and (3) of the General Data Protection Regulation, 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 within the scope of the General Data Protection Regulation.

In accordance with recital 59 of the General Data Protection Regulation, 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 General Data Protection Regulation lays down the same deadline for replying to the request of the Appellant. In its reply, ██████ explained that it uses an external partner, ██████ to communicate with its customers in arrears, whose representative was contacted by the customer support of ██████ on 4 June 2021. ██████ received confirmation from ██████ that the customer has been contacted before 3 June 2021, the necessary information has been forwarded, and the customer is aware of the debt data.

The Data Protection Inspectorate finds that the conduct of ██████ was not lawful because, pursuant to Article 12 (3) of the General Data Protection Regulation, ██████ as the controller 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 recital 59 and Article 12 (4) of the General Data Protection Regulation), even if the claim of the Appellant falls outside the scope of the General Data Protection Regulation. Therefore, ██████ should have provided the Appellant with a copy of the personal data she 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 General Data Protection Regulation.

However, the allegation of the Appellant that she had not been informed of the debt or of its transfer to the register of payment defaults is also irrelevant. ██████ has attached to its letter copies of emails and extracts from its database, which show that reminders (both via text message and email) of the debt have been sent to the Appellant on a regular basis (from 13 August 2019 to the present day) and she has also been informed that in case of non-payment of the debt, ██████ has the right to submit the debt data to the register of payment defaults. This possibility was also provided for in the agreement between the Appellant and ██████

I would like to explain that it is obligation of the controller to make sure that data is being processed in compliance with the General Data Protection Regulation. However, ██████ disregarded the request of the Appellant to provide her with documents relating to her 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 General Data Protection Regulation. However, based on the fact that the Appellant received the information requested by her from her portal account (it can be seen from the ██████ system that the Appellant has logged in to her account after the payment default) and ██████ also provided her with information about the debt, I reprimand ██████ on the basis of Article 58 (2) (b) of the General Data Protection Regulation and draw attention to the following:

1. the legal basis for the transmission of debt data to a register of payment defaults is the existence of a legitimate interest (**Article 6 (1) (f) of the General Data Protection Regulation**).

██████ 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 must 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. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means **(Article 12 (1) of the General Data Protection Regulation)**.

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 General Data Protection Regulation)**.

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 is not released, it must be made very clear which type of data and for what reason cannot be released.

4. The controller shall provide information on action taken on a request under Articles 15 to 22 of the General Data Protection Regulation 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 shall inform 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 General Data Protection Regulation)**.

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 General Data Protection Regulation, 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 General Data Protection Regulation)**.

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 her through the register of payment defaults (ASNEF) and [REDACTED] a cooperation partner of [REDACTED], 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 decision can be disputed within 30 days by:

- submitting a challenge to the Director General of the Data Protection Inspectorate pursuant to the Administrative Procedure Act<sup>2</sup> or
- filing a petition with an administrative court pursuant to the Code of Administrative Court Procedure<sup>3</sup> (in this case, any challenges submitted in the same case can no longer be processed).

Sincerely

/signed digitally/



lawyer

Authorised by the Director General

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<sup>2</sup> <https://www.riigiteataja.ee/en/eli/527032019002/consolide>

<sup>3</sup> <https://www.riigiteataja.ee/en/eli/512122019007/consolide>