

Summary Final Decision Art 60

Complaint

Administrative fine.

EDPBI:ES:OSS:D:2022:334

Background information

Date of final decision:	N/A
Date of broadcast:	23 February 2022
LSA:	ES
CSAs:	AT, BE, CY, DEBY, DEBE, DEMV, DENW, DERP, HU, IE, IT, NL, PL, PT
Legal Reference(s):	Article 12 (Transparent information, communication and modalities for the exercise of the rights of the data subject), Article 5 (Principles relating to processing of personal data).
Decision:	Administrative fine
Key words:	Administrative fine, Data minimisation, Exercise of data subject rights, Identity verification, Lawfulness of processing, Principles relating to processing of personal data, Right of access.

Summary of the Decision

Origin of the case

The controller is a company based in the United Kingdom that is part of a business group dedicated to recruitment. In March 2018, the complainant opened an account on the website of the company and applied for a job through the services of its Dutch brand. Later on, the complainant requested access to her personal data. In order to grant access, the controller required the complainant to prove her identity by providing two of the following documents: passport, identity card or driving license showing the date of birth; social security or national insurance card; utility bill not older than 3 months. The data subject replied that this constituted excessive data processing and communicated her intention to lodge a complaint with the NL SA. Following this, the controller limited the conditions for granting access and required a copy of the data subject's identity card. The data subject then lodged a complaint, underlining that identity card had not been required for the creation of her account on the controller's website.

As the department responsible for managing access requests for continental Europe was found to be established in Spain, the ES SA was identified as the LSA. It received the aforementioned complaint on

3 March 2020 and on 10 November 2020, it issued a draft decision in which it considered that there was no infringement of the right of access. The PT SA and the DE SA raised objections that were taken into consideration by the LSA. It then drew up a revised draft decision and since none of the CSAs raised any objection, an agreement was reached. Consequently, on 29 June 2021, the LSA decided to initiate penalty proceedings against the controller.

Findings

The LSA identified that this claim by a specific data subject had revealed a general action by the controller that applied to all the other data subjects that were in the same situation as the complainant. For this reason, the LSA determined that the infringement lied in the general action taken by the controller, and not exclusively in the present case.

The LSA held that the verification of the identity of the applicant must be limited to cases in which the controller has 'reasonable' doubts as to the identity of the person. In order to confirm the identity of the data subject in such cases, Article 12 (6) GDPR allows to require "additional information". The LSA also brought forward Recital 64 of the GDPR that gives the controller the possibility to use all 'reasonable measures' to verify the identity of data subjects. However, as the Agency pointed out, these rules do not require to provide an identification document, and an electronic signature might be equivalent to an ID card. In addition, it highlighted that the request for access was made from the same email account registered in the controller's database, and hence it was not understandable how the company could have doubts about the applicant's identity. The LSA determined that the controller had not justified the existence of a 'reasonable doubt' to identify the identity of the applicant. Contrary to the respondent's argument that the identity verification scheme applied only to cases where there were doubts about the identity of the applicant, it was demonstrated that this scheme applied to all cases of exercise of rights of access and portability in general, without providing other means of verification, and without determining first if such reasonable doubts existed.

Furthermore, the LSA also raised the issue that the controller had less intrusive methods to check the identity of the data subject. The LSA also considered that the applicant's contact details available to the controller provided enough guarantees to have complied with the re-quest received. Besides, the LSA highlighted that the strict requirements imposed to comply with the applicant's request left it unanswered, so that the data subject chose to go to her national SA instead. Although on 27 August 2020 the right of access was finally granted after an express request from the LSA, the latter reminded that it cannot be expressed in the context of an administrative procedure. For the aforementioned reasons, it was considered that there was an infringement of Article 12 (2) and (3) of the GDPR, as a result of the failure to take account of the right of access exercised by the complainant.

The LSA also pointed out that there was not a guarantee that only personal data necessary for the verification of the identity was processed by the use of two out of the three documents required by the controller. Moreover, the LSA considered that this processing increased the risk for those concerned and did not guarantee a level of security appropriate to the risk. Besides, the LSA took into account the arguments raised by the two CSAs that made objections to the draft decision - it accepted that access to the data subject's private account in the controller's website should be considered as sufficient and encouraged less intrusive verification means of the identity Hence, the LSA concluded that the identification system designed by the company did not meet any of the criteria and factors lied down in Article 25 (1) of the GDPR, such as the context, the risks or the purpose of the processing.

Therefore, the LSA considered that, in the cases where data subjects had provided them with the documentation required to satisfy requests for access or portability, the controller had processed inappropriate, irrelevant, and not necessary personal data. It held that this processing was contrary

to the principle of 'data minimisation' laid down in Article 5 (1) (c) GDPR, even though the controller rectified and required only the copy of the identity card, instead of the previous required documents.

Decision

On 24 November 2021, a motion for resolution was issued, penalising the controller for a minor infringement of Article 12 GDPR, with a fine of 50,000 EUR and for a very serious infringement of Article 5 (1) (c) GDPR, with a fine of 250,000 EUR. In addition, the LSA considered that the new means of validating the identity of applicants and the new procedures set to manage applications for the exercise of rights complied with the GDPR and it was not necessary to impose additional measures to the respondent. On 2 December 2021, the controller voluntarily paid the penalty making use of a reduction (240,000 EUR), thus terminating the procedure and waiving any administrative action or appeal against the penalty.

