Information and Data Protection Commissioner

CDP/IMI/LSA/19/2022

[redacted]

vs

[redacted]

COMPLAINT

1. On the 11th June 2020, [redacted] (the **"complainant"**) lodged a complaint (the "**complaint**") with the supervisory authority of Denmark (Datatilsynet, hereinafter the "**Danish SA**") against [redacted][1] (the "**controller**") pursuant to article 77(1) of the General Data Protection Regulation[2] (the **"Regulation"**).

2. By virtue of article 56 of the Regulation, the Danish SA identified the Information and Data Protection Commissioner (the "**Commissioner**") as the lead supervisory authority competent for the handling of the complaint. The Commissioner confirmed with the Danish SA that it is indeed the lead supervisory authority and proceeded to investigate the complaint on the basis of the procedure set out in article 60 of the Regulation.

INVESTIGATION

3. On the 11th June 2020, the complainant filed a complaint with the Danish SA and submitted the following principal arguments:

[1] [redacted] is a private limited company incorporated in Malta and operating in the online gaming sector with registration number [redacted] and registered address at [redacted].

[2] 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.

a. that *"[redacted] seems to store more data than what is necessary – even though I have used my right to be forgotten. They have even confirmed completing the deletion process. They have sent me a file containing all the data that is still in their systems after this process was completed"*;

b. that *"I wonder a lot about the amount of data, as I don't understand that they can lawfully store so much data regarding me. When I contracted them about it, they said that it was necessary to store the data due to legal obligations"*;

c. that "*I full understand that [redacted] has to store some data in order to document some things to the [redacted] authorities. I cannot understand thought that they lawfully can store that much data, and I want it to stop as far as my assumption is correct"*;

d. that the controller satisfied his request to have his personal data erased. He noted that *"these data are what they have regarding me after responding to my request to be forgotten. It is my clear impression that they do not have a legal basis for keeping all these data when I have requested deletion"*.

4. In this regard, the controller submitted its reply to rebut the arguments made by the complainant and highlighted the following salient points:

a. that the controller is a group of undertakings with its main establishment located in Malta and although the controller operates in Denmark under a Danish license, its website which is only available to the Danish market is operated by the main establishment, namely [redacted], a company incorporated under the laws of Malta, which is the controller responsible for the data processing through such platform;

b. that the complainant closed his account on the 2nd May 2020, and exercised his right to be forgotten on the 4th May 2020, and the controller replied to the request on the 18th May 2020;

c. that when a customer exercises such right, no further processing takes place in relation to the individual, apart from the retention of personal data which is either required to

comply with legal obligations or to establish, exercise or defend legal claims which may be instituted against the controller;

d. that the controller emphasised that as a licensed operator, it is subject to obligations stemming from [redacted] regulatory and licencing requirements, notably those relating to [redacted];

e. that the controller is also a subject person in terms of Directive EU 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (commonly known as the 4th Anti-Money Laundering Directive) as transposed under the Laws of Malta, and therefore the controller noted that such law imposes an obligation upon the controller to retain documentation concerning business relationship with a customer or after the date of an occasional transaction;

f. that it is evident that the controller *"is unable to fully exercise the complainant's request as this would hinder our compliance with legal obligations to which we are subject as well as our legitimate rights at law. In this regard, it is respectfully being submitted that most of the personal data relating to the complainant is indeed still necessary within the meaning of Article 17(1)(a) of the GDPR";*

g. that the controller referred to the retention periods and criteria used to establish such time frames, which information is made available on the controller's website[3]; and

h. that upon signing-up to use the controller's services, a customer must accept the *'Terms & Conditions'* and confirm that the privacy policy has been read and consequently, all the information contained in the privacy policy including the retention periods applicable to the processing of personal data have been duly made available to the complainant, in compliance with the transparency principle under the Regulation.

LEGAL ANALYSIS

5. The Commissioner proceeded to carefully examine the privacy policy available on the website of the controller, which must be accepted by the customer prior to signing-up to use its services.

[3] [redacted]

The privacy policy which sets out general information in relation to the controller's retention periods, particularly that for anti-money laundering purposes, states that the controller has a legal obligation to keep its customer's personal data up to ten (10) years from the closure of the account.

6. In terms of article 17(1) of the Regulation, the *"data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay"* where one of the grounds listed in article 17(1)(a) to (f) applies. However, this rule is subject to a number of exceptions, in particular article 17(3)(b) which states that the right to erasure shall not apply *"**for compliance with a legal obligation** which requires processing by Union or Member State law to which the controller is subject …"* [emphasis has been added].

7. In this regard, the controller is subject to legal obligations which require processing of personal data even following the termination of the customer relationship. In terms of regulation 13 of the Prevention of Money Laundering and Funding of Terrorism Regulations, Subsidiary Legislation 373.01, the controller shall retain documents and information for a period of five (5) years which *"**may be further extended, up to a maximum retention period of ten years,** where, after a thorough assessment of the necessity and proportionality of such further extension, it is concluded that the extension is justified as necessary for the purposes of the prevention, detection, analysis and investigation of money laundering or funding of terrorism activities by the Financial Intelligence Analysis Unit, relevant supervisory authorities or law enforcement agencies"* [emphasis has been added].

8. In accordance with the definition of processing as held in article 4(2) of the Regulation, processing "*means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, **storage**, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction*" [emphasis has been added]. This definition demonstrates that the retention of personal data constitutes processing of personal data, therefore the controller shall continue to comply with the requirements and principles until the destruction of the personal data as required by law.

On the basis of the foregoing, the Commissioner concludes that the right to erasure is not absolute, and it does not apply if the processing is necessary for compliance with a legal obligation to which the controller is subject. In such case, the Commissioner concludes that the controller did not infringe article 17 of the Regulation and, consequently the complaint is hereby being dismissed in its entirety.

In terms of article 78 of the Regulation, as further implemented under Part VII of the Data Protection Act (CAP. 586 of the laws of Malta), any party to this decision shall have the right to an effective judicial remedy by filing an appeal in writing before the Information and Data Protection Appeal Tribunal within twenty (20) days from the service of this decision[4].

[redacted] Digitally signed by [redacted]

(Signature) Date: 2022.06.28 10:16:37 +02'00'

[redacted]

Information and Data Protection Commissioner

[4] More information about the Tribunal and the appeals procedure is accessible at https://idpc.org.mt/appeals-tribunal/