Datatilsynet

[redacted]
OSLO

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Your reference	Our reference	Date
	20/01759-12	04.10.2022

Final Decision - Raise Gruppen AS og Raise Norway AS

IMI article 56 entry number:	57051
IMI case register:	62626
National case reference:	NO SA: 20/01759 & 18/02429
Controller:	Raise Gruppen AS and Raise Norway AS
Date of complaint:	29 August 2018

We refer to the abovementioned cross-border case where Datatilsynet (the Norwegian Data Protection Authority, hereinafter "**NO SA**") has been identified as the lead supervisory authority pursuant to Article 56(1) GDPR[1]. Integritetsskyddsmyndigheten (the Swedish Data Protection Authority) has been identified as the sole supervisory authority concerned pursuant to Article 4(22) GDPR.

The NO SA adopts the following decision:

> *The NO SA rejects the complaint submitted against Nikita Hair on 29 August 2018 (Case 18/02429 & 20/01759).*

Factual Background

On 29 August 2018, the NO SA received a complaint (the "**Complaint**") against the chain of hairdressers trading under the names Nikita Hair and Hairshop. The background of the Complaint was that in connection with drop-in hairdresser appointments (i.e. where the complainant tried to get a haircut by simply turning up at the salon) at both Hairshop and Nikita Hair branches in Oslo on 27 August and 28 August 2018 respectively, the complainant had to provide both their full name and telephone number (the "**Requested Personal Data**") before they could get a haircut.

[1] 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) OJ L 119/1.

When the complainant asked an employee at Hairshop what the purpose of requiring the Requested Personal Data was, the employee answered that it was needed in case the complainant complained about the service. When the complainant asked the same question to an employee of Nikita Hair, the employee answered that the information was needed in case of a financial audit. In both cases, the complainant would have paid by way of a bank card.

In the Complaint, the complainant specified that their complaint related to whether:

- Nikita Hair had a real need for, and reasonable grounds to require the provision of, the Requested Personal Data; and
- whether the Requested Personal Data was only used in connection with financial audits, particularly as the complainant had received a text message from Nikita Hair requesting feedback.

On 17 November 2021, the NO SA sent an order to provide information to Raise Gruppen AS, who was specified as Nikita Hair's contact point for information regarding processing of personal data. The NO SA requested Raise Gruppen AS who the controller for the processing is, and if they were the controller to explain how personal data relating to drop-in hairdresser appointments are processed in accordance with the Norwegian Data Protection Act and the GDPR.

On 17 December 2021, Raise Gruppen AS responded to the NO SA's order to provide information dated 17 November 2021. Raise Gruppen AS explained their group company structure, and that its previous wholly owned subsidiaries Nikita Hair Norway AS (trading as Nikita Hair) and Sayso Hair & Style AS (trading as Sayso, previously Hairshop) had now been merged into one wholly owned subsidiary called Raise Norway AS. In addition, the same is true for the wholly owned Swedish subsidiaries Nikita Hair Sweden AB (trading as Nikita Hair) and Sayso Hair & Style AB (trading as Sayso, previously Hairshop) which merged into one wholly owned subsidiary called Raise Sweden AB.

Raise Gruppen AS also confirmed that the booking system for all customers is handled centrally by the administration in Raise Gruppen AS, and that Raise Gruppen AS is therefore largely the controller of processing activities connected to this system. In connection with the restructuring of the group, Raise Gruppen AS stated they were currently reviewing their privacy policy including to make it clear what the processing relationship between the group companies and customer rights is.

Raise Gruppen AS stated that in the case of the complained of processing operation, and in relation to the Requested Personal Data, the legal basis for processing is to fulfil the legal obligations that follow from the requirements of the Norwegian Bookkeeping Act (Nw. Bokføringsloven) and the Norwegian Bookkeeping Regulations (Nw. Bokføringsforskriften). Section 5-15 of the Norwegian Bookkeeping Regulations stipulates what documentation businesses that provide services by appointment must keep, and specified that the time of when the service was carried out, the customer name and as far as possible the name of the person carrying out the service shall be documented. The same provision also specified that it applies to appointments that are not made beforehand (i.e. drop-in appointments). Raise Gruppen AS stated that when implementing a new booking system, they wanted to be able to offer

anonymous drop-in appointments, but they obtained an external legal assessment on the obligations under the Norwegian Bookkeeping Regulations which confirmed that they were not able to offer anonymous drop-in appointments. In addition, the external legal assessment stated that they needed to register "contact details" for drop-in customers in order to fulfil a legal obligation pursuant to Article 6(2) GDPR, Section 5-15 of the Norwegian Bookkeeping Regulations and the Norwegian Bookkeeping Act. Raise Gruppen AS also stated that they were of the understanding that the same rules applied in Sweden.

On 26 January 2022, the NO SA sent a further order to provide information to Raise Gruppen AS ordering them to explain for what purpose, and under which legal basis, they processed the telephone numbers of drop-in customers in Norway, and for what purpose and under which legal basis they processed the name and telephone numbers of drop-in customers in Sweden.

On 21 February 2022, Raise Gruppen AS responded to the NO SA's order to provide information dated 26 January 2022. Raise Gruppen AS explained that, due to their understanding of the intention behind the Norwegian Bookkeeping Act and consequently the Norwegian Bookkeeping Regulations, to prevent a black market and money-laundering through securing auditability of transactions covered by the law, it is necessary to be able to distinguish individual customers in the booking system. Raise Gruppen AS therefore used telephone numbers as an identifier to secure compliance with the Norwegian Bookkeeping Act. The legal basis for processing the name of drop-in customers is therefore Article 6(1)(c) GDPR, and the legal basis for processing the telephone number of drop-in customers is Article 6(1)(f) GDPR as a practical way to implement the requirement to be able to distinguish between customers. The same applies for drop-in customers in Sweden, albeit instead in relation to the Swedish Bookkeeping Act (1999:1078).

Legal Background

Pursuant to Article 6(1) GDPR, as adapted pursuant to Annex XI of the EEA Agreement as amended by the Decision of the EEA Joint Committee No 154/2018 of 6 July 2018:

1. *Processing shall be lawful only if and to the extent that at least one of the following applies:*

    a. *the data subject has given consent to the processing of his or her personal data for one or more specific purposes;*
    b. *processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;*
    c. *processing is necessary for compliance with a legal obligation to which the controller is subject;*
    d. *processing is necessary in order to protect the vital interests of the data subject or of another natural person;*
    e. *processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;*

f. *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, in particular where the data subject is a child.*

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

2. *Member States [and EFTA States] may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing for compliance with points (c) and (e) of paragraph 1 by determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX.*

3. *The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:*

   a. *[the EEA Agreement]; or*
   b. *Member State [and EFTA State] law to which the controller is subject.*

   The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific processing situations as provided for in Chapter IX. The [EEA Agreement, Member State or EFTA State] law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

Findings

The Complaint focuses on why Nikita Hair requires both a drop-in customer's name and telephone number prior to offering a haircut. Therefore the focus of the NO SA's assessment will be on the matter of the legal basis for processing the name and telephone number of drop-in customers at Nikita Hair, as the NO SA deems that this would constitute investigating the complaint to the extent appropriate.

The legal basis allegedly relied upon when processing the name of drop-in customers is Article 6(1)(c) GDPR in order to comply with the Norwegian Bookkeeping Act and Norwegian

Bookkeeping Regulations. The Norwegian Bookkeeping Regulations imposes a duty on those carrying out services by appointment, including by drop-in appointments, to collect and process the name of the customer. The NO SA notes that only the entity under the obligation of the legal obligation may rely on Article 6(1)(c), as such legal obligation would mandate the purpose and means of the processing on the entity under such obligation. As such, the controller for such processing operation must be Raise Norway AS (following the merger of Nikita Hair Norway AS and Sayso Hair & Style Norway AS into one company and renaming such company Raise Norway AS), as that is the entity that carried out the service for the complainant and therefore the entity to which the obligations of the Norwegian Bookkeeping Regulations apply. The NO SA therefore finds that the processing of drop-in customer names can validly be based on Article 6(1)(c) GDPR, but notes that Raise Gruppen AS appears to have misunderstood to which legal entity such legal basis relates and therefore which legal entity is the controller.

The legal basis relied upon when processing the telephone numbers of drop-in customers is Article 6(1)(f) GDPR as a practical way to implement the intention behind the Norwegian Bookkeeping Act and Norwegian Bookkeeping Regulations by distinguishing between customers. The NO SA considers that this interest is a legitimate one, and it is unlikely that such interest is overridden by the interests or fundamental rights and freedoms of the data subject when having regard to the purpose of the processing.

In relation to the processing of the complainant's telephone number for the purpose of sending a text message to the complainant requesting feedback after their haircut, the NO SA notes that Raise Gruppen AS has stated they are normally the controller in relation to processing activities connected to the booking system (i.e. they have determinative influence in deciding the purposes and means of processing). The NO SA further notes that Raise Gruppen AS did not specifically elaborate on the legal basis relied upon for this processing activity. However, the NO SA considers it is unlikely Raise Gruppen AS did not have a legal basis for this specific processing activity, particularly as a customer relationship had been established at the time the processing activity was carried out (i.e. after the complainant had received a haircut). The NO SA deems that it would be disproportionate to investigate this part of the complaint any further.

Based on the above, the NO SA deems this case to be investigated to the extent appropriate and did not identify any infringement of Article 6 GDPR. The NO SA therefore rejects the Complaint, and considers the case closed.

The NO SA nonetheless considers that both Raise Norway AS and Raise Gruppen AS would benefit from being reminded of their obligations under the GDPR. Therefore the NO SA will send a separate letter to them pointing out the same, particularly in relation to identifying who the controller is for a given processing activity, ensuring that transparent information is given to data subjects as to how and why their personal data is processed and a controller's responsibilities generally.

Right of appeal

As this decision has been adopted by the NO SA pursuant to Article 56 and Chapter VII GDPR, it is not possible to appeal it before the Norwegian Privacy Appeals Board pursuant to Section

22 of the Norwegian Data Protection Act. This decision may nevertheless be appealed before the Norwegian courts in accordance with Article 78(1) GDPR.

Kind regards

Tobias Judin
Head of Section

Sebastian Forbes
juridisk rådgiver

This letter has electronic approval and is therefore not signed

Copy to: Raise Gruppen AS and Raise Norway AS