



ANDMEKAITSE INSPEKTSIOON

FOR INTERNAL USE

Holder of information: Data Protection Inspectorate

Indication made: 07.03.2025

The access restriction applies until: 07.03.2100

for p 2 until entry into force of the Decision

Base: Section 35(1)(2), Section 35(1)(12) of the PIA

All SA's

Our 07.03.2025 No. 2.1.-1/24/168-347-27

ARTICLE 60 FINAL ADOPTED DECISION
Reprimand and termination of the proceedings**Circumstances**

On 21 December 2023 and 8 January 2024, [REDACTED] (the Complainant) lodged a complaint with the Hungarian Data Protection Authority (the Hungarian DPA) under Article 77(1) of the General Data Protection Regulation¹ (GDPR) against [REDACTED] ([REDACTED], the Controller). The Hungarian DPA forwarded the complaint to the Estonian Data Protection Inspectorate (DPI) via the European Commission's Internal Market Information System (IMI) on 1 February 2024. Since the main establishment of the Controller is in Estonia, the Estonian DPI agreed to be the lead supervisory authority in the case on the basis of Article 56(1) GDPR.

According to the complaint, on 13 June 2023, the Complainant submitted a request for access to personal data by e-mail to [REDACTED] ([REDACTED]), requesting information on the processing of data relating to the assessment of passengers by drivers. In its replies of 13 June 2023, [REDACTED] referred to points 4.3 and 4.5 of the 'Privacy Notice for Hungarian passengers' as information on data processing related to the assessment of passengers. The Complainant took the view that the information contained therein was not sufficiently detailed and, on 30 June 2023, requested further information on the data processing. More specifically, the Complainant requested that the following questions be answered:

- 1) Under what conditions and according to what rules the driver assesses the passenger (number of points/stars, consequences, etc.). How does the process work? For example, estimating recalcitrant or non-paying passengers (or, conversely, a clean, punctual paying passenger), number of points, consequences, identification of a specific person before the next trips, etc.?
- 2) According to which data processing rules are such data processed and for what purpose are they used (exact purpose of the processing, legal basis, retention period, amount of data processed, etc.)?

On 20 July 2023, [REDACTED] informed the Complainant that [REDACTED] was the controller of the data processing relating to the assessment of passengers. [REDACTED] also indicated that the processing is based on the legitimate interest of the Controller and that the personal data related to the evaluation will be processed for three years. The reply referred to [REDACTED]'s privacy policy in English and the complainant was directed to [REDACTED] by e-mail at [REDACTED] for

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).

further questions. In response, on 20 July 2023, the Complainant expressed his dissatisfaction with having to contact the Controller himself and start an interview in English and asked [REDACTED] to send in Hungarian the data protection conditions and the analysis of legitimate interest in data processing in relation to the assessment of passengers. In addition, the Complainant also requested information on the rules and methods of the rating system. In response to that request, on 26 July 2023, [REDACTED] informed the Complainant that it had forwarded its request to [REDACTED], but that no further substantive developments had taken place on the basis of the exchange of emails annexed to the complaint and that the Complainant had not received any further substantive answer to the questions raised in its request.

Proceedings of the Estonian DPI

The Estonian DPI initiated a supervisory procedure on the basis of clause 56 (3) 8) of the Personal Data Protection Act and sent a proposal to the Controller on 13 February 2024 for better compliance with the requirements for the protection of personal data. The proposal asked the Controller to send the Complainant, by e-mail, the information required under Article 15 GDPR in relation to the assessment of passengers in Hungarian and to send a copy of the reply to the Estonian DPI. In addition, the Estonian DPI specified the questions to which the Complainant wished to have answers. The deadline for implementing the proposal was 28 February 2024.

The Controller replied to the Estonian DPI on 28 February 2024, agreeing with the proposal and explaining how they intend to address it. The main obstacle to answering the Complainant's questions was another supervisory procedure initiated by the Estonian DPI in connection with the assessment of the legal basis for the assessment of passengers. In the above-mentioned procedure, the Controller waited for the necessary feedback from the Estonian DPI in order to make some changes to the analysis of legitimate interest and to translate the document into Hungarian. Therefore, the Controller requested an extension of the deadline for the submission of the proposal. In particular, the Controller indicated that it would be reasonable for them to answer the questions asked by the Hungarian data subject as soon as they receive feedback from the Estonian DPI on the analysis of legitimate interest in the passenger assessment. On 11 March 2024, the Estonian DPI submitted a repetitive proposal to the Controller and set a new deadline of 18 March 2024. The Controller requested an extension of the deadline for the proposal until 05.04.2024 in the context of the parallel proceedings. The Estonian DPI extended the deadline for responding to the proposal until 05.04.2024. On 5 April 2024, the Controller sent the Estonian DPI a confirmation letter concerning the execution of the proposal (i.e. that the Complainant's request had been answered).

Given that the Estonian DPI is conducting parallel proceedings² against the Controller concerning data processing related to the assessment of passengers (including the lawfulness of data processing, prior notification of the data subject), the present proceedings concern the failure to respond to a request submitted on the basis of Article 15 GDPR. Therefore, the present procedure does not deal with the lawfulness of data processing related to the assessment of passengers, nor does it cover compliance with the obligation to provide prior information regarding data processing related to the assessment of passengers. However, in the context of the present proceedings, the Estonian DPI asked the Controller to provide further clarifications concerning the passenger assessment function in Hungary, since, following the inclusion of the draft decision by the Estonian DPI in IMI, the Hungarian DPA objected to the processing of the passenger assessment and to the assessment of the lawfulness of the prior notification of the data subject.

Clarifications by the controller

In the parallel proceedings and also in the present proceedings, the Controller has confirmed to the Estonian DPI that the passenger assessment function has been switched off in the European Union,

² Supervisory procedure No 2.2.-1/23/1109-3956 of the Data Protection Inspectorate; In IMI, Case Register No 359323.

including Hungary, on 31 October 2023 and that the Controller has not collected any new personal data relating to the assessment of passengers since that date.

As of 02.12.2024, the passenger assessment function has not been reactivated in Hungary. The Controller confirmed that before restarting the passenger assessment function, [REDACTED] will first ensure that all necessary requirements are met. Information about the processing of personal data is transparently reflected in the privacy notice for passenger (available in Hungarian at [REDACTED]). This Privacy Notice sets out in a clear and detailed manner the personal data processing practices and any updates or changes. If the Passenger Rating feature is restarted, users will be informed through this Privacy Notice.

In parallel supervisory proceedings, the Controller has assured the Estonian DPI that, as of 28 February 2024, [REDACTED] deleted all assessments and comments collected by the Controller regarding taxi service passengers, which have been collected at least three years ago, and the corresponding deletion to comply with the three-year retention period will take place automatically as of 28 February 2024 on an ongoing basis. In the present proceedings, the Controller emphasised that such a deletion policy has been unequivocally implemented in all EU Member States in which [REDACTED] operates, including Hungary.

The Controller explained that a retention period of 3 years is justified to investigate fraud and safety incidents, resolve disputes and assist passengers in providing clarifications on passenger assessments and access requests. The retention of data for a period of 3 years is in the legitimate interest of the Controller (Article 6(1)(f) GDPR). With regard to the three-year retention period, the Controller has provided the Estonian DPI with explanations in the analysis of legitimate interest submitted in the framework of surveillance procedure No 2.2.-1/23/1109-3956.

In addition, the Controller clarified that the exclusion status of the driver and the passenger will be maintained until the passenger or driver deletes their account (whichever comes first). Maintaining the exclusion status at such a length is justified by the driver's wish not to be connected to a specific passenger anymore. As long as the driver and passenger both use the platform, [REDACTED] cannot delete the exclusion status without endangering the driver. The danger lies in reconnecting with a specific passenger. Maintaining the exclusion status for such a period is consistent with the legitimate interest of [REDACTED] and its drivers in ensuring security under Article 6(1)(f) of the GDPR, as explained in the analysis of the legitimate interest submitted to the Estonian DPI in the context of supervisory procedure No 2.2.-1/23/1109-3956.

Passengers are informed about the data retention criteria (including the 3-year retention period) in the privacy notice applicable to passengers (available in Hungarian at [REDACTED]).

The controller confirmed that, on 5 April 2024, the Complainant had been informed of the information required under Article 15 of the GDPR and attached a copy of the letter, together with the relevant annexes:

- 1) reply to the Complainant (original reply in Hungarian and Estonian translation);
- 2) Annex 1 to the reply to the Complainant: an extract from the passenger privacy policy on data processing related to the assessment of passengers (Hungarian and Estonian translation);
- 3) Annex 2 to the reply to the Complainant: a legitimate interest assessment of the data processing concerning the assessment of passengers (Hungarian and Estonian translation).

The position of the Estonian DPI

Pursuant to Article 12(1) GDPR, the controller shall take appropriate measures to provide the information referred to in Articles 13 and 14 and to inform the data subject of the processing pursuant to Articles 15–22 and 34 in a concise, clear, intelligible and easily accessible form, using

clear and plain language.

Article 15(1) GDPR enshrines the data subject's right of access (including information on the processing of his or her personal data). According to Recital 63 GDPR, the data subject should have the right of access to personal data which have been collected concerning him or her and to exercise that right easily and at reasonable intervals in order to be aware of and verify the lawfulness of the processing. Every data subject should therefore have the right to know and obtain communication in particular of the purposes for which the personal data are processed, where possible, the period for which the personal data are processed, the recipients of the personal data, the logic involved in automatic processing of personal data and the possible consequences of such processing, at least where the processing is based on profiling.

Thus, under Articles 12(1) and 15(1) GDPR, the controller must provide the data subject with the information requested by the data subject (requirement for accuracy) and the information must be provided in an easily intelligible manner, without excessive effort on the part of the data subject to understand that information (requirement for intelligibility). The requirement of intelligibility also affects the language used for the exchange of information. Although the GDPR does not explicitly regulate the use of languages, it is clear that the intelligibility of information is directly linked to the ability of the user to understand the language used. However, it should be considered that the controller is obliged to inform the data subjects to whom it offers its goods or services or whose behaviour it monitors in their own language.³ Therefore, if the service is targeted at residents of a specific country and the service itself is provided in the language of the country of official residence, the controller must be prepared to provide data protection information in the official national language⁴ of that country (in this case Hungarian residents). However, in the present case, the data subject did not have to communicate with the controller in English – ██████████ ██████████ forwarded the data subject's request to the Controller and partially replied to the data subject, and the Controller replied to the data subject's request in Hungarian (albeit only during the supervisory procedure).

Pursuant to Article 12(2) GDPR, the controller shall facilitate the exercise of the rights of the data subject under Article 15–22 GDPR. The controller should facilitate the exercise of the above rights by the data subject. Thus, the controller could have clarified the data subject's request by indicating that the documents requested by the complainant were under review at the time of receipt of the request. In its Guideline 01/2022, the EDPB has stressed that the requirement to specify must not be intended to restrict the response to a request for access and must not be used to conceal data or information about the processing concerning the data subject. In any event, the controller should always be able to demonstrate that the manner in which the request is dealt with is intended to ensure the widest possible exercise of the right of access and is compatible with its duty to facilitate the exercise of the rights of the data subject.⁵

Pursuant to Article 12(3) GDPR, the controller is obliged to respond to requests from the data subject without undue delay and at the latest within one month of receipt of the request. That period may be extended by two months where necessary, taking into account the complexity and number of the request. The controller shall inform the data subject of any such extension and of the reasons for the delay within one month of receipt of the request.

³ General Data Protection Regulation. Article-by-Article Commentary, 14 December 2023, Art. 12, p. 11, pp. 439-440.

⁴ European Data Protection Board. Guidelines 03/2022 on deceptive design patterns in social media platform interfaces: how to recognise and avoid them, 14 February 2023, p. 75, p. 29. - https://www.edpb.europa.eu/system/files/2023-02/edpb_03-2022_guidelines_on_deceptive_design_patterns_in_social_media_platform_interfaces_v2_en_0.pdf

⁵ European Data Protection Board. Guidelines 01/2022 on data subject rights - Right of access, ver 2.1, 28 March 2023, p. 17. -

https://www.edpb.europa.eu/system/files/2024-04/edpb_guidelines_202201_data_subject_rights_access_v2_et.pdf

According to the complaint, on 13 June 2023, the Complainant submitted a request for access to personal data to ██████████ by e-mail (more specifically, to obtain information on the processing of personal data). Although ██████████ partially replied to the Complainant (i.e. explained that the processing is based on the legitimate interest of the Controller and the personal data related to the assessment will be processed for three years) and forwarded the Complainant's request to the Controller, the Complainant did not receive an exhaustive response from the Controller to its request.

Given that the Complainant received a response to its request only after the intervention of the supervisory authority on 5 April 2024, this suggests that the processes of the Controller in handling the data subject's request did not ensure compliance with the data protection regulation and did not work. In doing so, the controller infringed Articles 12(3) and 15(1) of the GDPR.

In the event of a breach of the GDPR, the Estonian Data Protection Inspectorate has various corrective powers, including a reprimand, an injunction, a fine (Article 58(2)(a)(j) of the GDPR). In particular, the measure should be appropriate, necessary and proportionate, taking into account the circumstances of each individual case.⁶ In the case of a minor offence, the Estonian Data Protection Inspectorate may, in accordance with Article 58(2)(b) of the GDPR, issue a reprimand instead of a fine, as stated in recital 148 GDPR. The aggravating and attenuating circumstances of the case must be taken into account.

The Estonian DPI takes into account that:

1. The monitoring procedure shall be based on an individual complaint by one of the data subjects.
2. The Controller has confirmed that the data subject's request has not been answered in accordance with ██████████'s processes and its customer support team has been instructed to do so in order to prevent such errors in the future.
3. According to the Estonian DPI, the Complainant received answers to the questions set out in the complaint (including in Hungarian and not in English).
4. The Controller cooperated with the Estonian DPI.

Since the Controller has infringed Articles 12(3) and 15(1) of the GDPR, the Estonian Data Protection Inspectorate, relying on Article 58(2)(b) of the GDPR, issues a reprimand to ██████████ and draws attention to the following:

1. The controller shall take appropriate measures to inform the data subject of the processing of personal data in accordance with Article 15 of the GDPR in a concise, transparent, intelligible and easily accessible form, using clear and plain language (Article 12(1) GDPR).
2. The controller shall provide the data subject with a report on the action taken on request pursuant to Articles 15 to 22 without undue delay and at the latest within one month of receipt of the request. That period may be extended by two months where necessary, taking into account the complexity and number of requests. The controller shall inform the data subject of such extension and of the reasons for the delay within one month of receipt of the request (Article 12(3) GDPR).

Based on the above, the Estonian Data Protection Inspectorate shall terminate the present supervision proceedings.

This reprimand and notice of termination can be challenged within 30 days by submitting either:

- A challenge to the Director General of the Estonian Data Protection Inspectorate pursuant to the Administrative Procedure Act⁷, or

⁶ Recital 129 of the GDPR.

⁷ <https://www.riigiteataja.ee/en/eli/527032019002/consolide>

- An appeal to the administrative court under the Code of Administrative Court Procedure⁸ (in this case, the challenge in the same case can no longer be reviewed).

Yours sincerely,



Lawyer

By delegation of the Director-General

⁸ <https://www.riigiteataja.ee/en/eli/512122019007/consolide>