

**PRESIDENT  
OF THE PERSONAL DATA  
PROTECTION OFFICE**

Mirosław Wróblewski

Warsaw, 4 February 2025

**DS.523.320.2023.ZS.AS.**

**DECISION**

Pursuant to Article 105(1) of the Act of 14 June 1965 - Code of Administrative Procedure (Journal of Laws 2024, item 572), Article 7(1) and 7(2) of the the Act of 10 May 2018 on the personal data protection (Journal Of Laws 2019, item 1781) and Article 60(8) of 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 (OJ Office EU L 119, 04.05.2016, p. 1, OJ Office EU L 127, 23.5.2018, p. 2 and OJ Office EU L 74, 04.03.2021, p. 35), following the administrative procedure concerning the complaint of [REDACTED] (residing: [REDACTED]) on irregularities in the processing of his personal data by [REDACTED] (registered office: [REDACTED]), consisting in the disclosure of personal data without a legal basis, President of the Personal Data Protection Office

**decides to discontinue the proceedings.**

**Justification**

The Personal Data Protection Office (hereinafter: UODO) received a complaint from [REDACTED] (residing: [REDACTED]) (hereinafter: Complainant), on irregularities in the processing of his personal data by [REDACTED] (registered office: [REDACTED]) (hereinafter referred to as: [REDACTED]), consisting in providing the Complainant's personal data without a legal basis.

In the course of the administrative proceedings, the President of the Personal Data Protection Office (hereinafter: President of UODO) obtained explanations on the circumstances of the case and established the following facts:

1. The complainant complained about irregularities in the processing of personal data by [REDACTED] in connection with the communication to him in writing and to the District Court in Zawiercie of personal data of customers using the services of [REDACTED], such as name and surname, PESEL number, loan amount, start of the loan and its end date (evidence: Complainant's letter of 7 December 2022).
2. By letter of 20 January 2023, the President of UODO asked the Complainant to clarify whether, by his letter, he was notifying the President of UODO of irregularities in the data processing or whether he wanted the President of UODO to take action in the individual case of the Complainant. The Complainant was informed that if it is a notification, the President of UODO may consider taking the actions provided for by law

ex officio, and in such a case the Complainant will not be informed about the actions taken by the President of UODO and their effect. The Complainant was also informed that if he wants the President of UODO to take action in his individual case, the letter initiating it must meet the requirements for applications set out in the Code of Administrative Procedure and was asked to remedy the formal deficiencies identified by the President of UODO (evidence: letter from the President of UODO of 20 January 2023).

3. The complainant then indicated that, in the context of the complaint, he both notified the President of UODO of irregularities in the data processing process and wanted the President of UODO to take action in his individual case. The Complainant submitted that, following the communication by [REDACTED] to him in writing and to the District Court in Zawiercie of the personal data of customers using the services of [REDACTED] such as name, PESEL number, loan amount, start of the loan and its end date, he feared that his personal data might have been transferred to unauthorised persons (evidence: Complainant's letter dated 7 December 2022, received by the UODO on 13 February 2023).
4. By letter of 23 February 2023, the President of UODO asked the Complainant to indicate whether, in the complaint submitted, the Complainant disputes the irregularities consisting in the disclosure of his personal data by the complained entity or personal data of third parties or customers of [REDACTED] (evidence: letter from the President of UODO of 23 February 2023).
5. The complainant explained that he contests the irregularities consisting in the disclosure of his personal data by the complained entity, as well as personal data of third parties - customers of [REDACTED] (evidence: Complainant's letter of 13 March 2023).
6. Due to the fact that [REDACTED] has its registered office in Cyprus, the President of the Personal Data Protection Office, in accordance with Article 4(23) of 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 (OJ Office EU L 119, 04.05.2016, p. 1, OJ Office EU L 127, 23.5.2018, p. 2 and OJ Office EU L 74, 04.03.2021, p. 35) (hereinafter: GDPR), identified the case as being of a cross-border nature and on 23 March 2023, acting on the basis of Article 56(1) GDPR, forwarded the complaint to the European Commission's Internal Market Information System (hereinafter: IMI) to identify the lead authority of the case and the authorities concerned (evidence: printout from IMI: IMI REPORT A56ID 499202.1).
7. 5 June 2023 Swedish Supervisory Authority – Integritetsskyddsmyndigheten (address: Box 8114, 104 20 Stockholm, Sweden) (hereinafter: IMY) indicated that, further to its previous findings under IMI notification A56ID 476705, according to which [REDACTED] [REDACTED] is part of the [REDACTED] of companies, the main establishment of which is located in Sweden, IMY is considered to be the lead supervisory authority in the case (evidence: printout from IMI: LSA-CSA Feedback Report A56ID 499202, letter from the President of UODO of 25 February 2024).

8. On 29 August 2024, IMY, acting on the basis of Article 60 of the GDPR, created a 60IC notification number 679016.1 in the IMI system, under which it asked the President of UODO to forward a letter to the Complainant. In its letter, IMY asked the Complainant whether his complaint was still valid. In addition, IMY asked the Complainant to provide answers to the questions that would allow IMY to deal with the complaint, i.e. '(1) When did [REDACTED] disclose your personal data to unauthorized third parties (day/month/year)? (2) What kind of personal data has [REDACTED] disclosed about you to third parties (for example name, date of birth, financial data and so on)? (3) How did [REDACTED] disclose your personal data)? (4) Which third parties received your personal data? (5) Have you contacted [REDACTED] about the disclosure of your personal data? If so, include a copy of your correspondence with [REDACTED] or describe in detail what [REDACTED] has answered to you." In the context of the letter, IMY further informed that in the absence of a reply from the Complainant within 14 days from the date of service of the letter, IMY would assume that the Complainant no longer wished to deal with the case and would proceed to its closure (evidence: printout from IMI: IMI REPORT 60IC 679016.1 and letter from the President of UODO of 18 September 2024).
9. On 18 September 2024, the President of UODO sent the Complainant IMY's letter of 29 August 2024. The letter was effectively served on the Complainant on 23 September 2024. The Complainant did not reply to IMY's letter (evidence: letter from the President of UODO of 18 September 2024, together with a return acknowledgement of receipt).
10. On 23 October 2024, IMY published a draft decision in the IMI system in the case in which it indicated that, on the basis of the information contained in the complaint submitted to the Polish data protection authority, IMY concludes that it is not clear what happened and whether the issue that the Complainant raised in his complaint could constitute a breach of the GDPR. As IMY did not receive any additional information from the Complainant, IMY finds no reason to further investigate this case (evidence: memo of 4 November 2024 and annexes).
11. Bearing in mind that in the text of the draft decision IMY indicated that "This is therefore not a final decision. The justification and the decision may change in whole or in part depending on the outcome of the Article 60 procedure. Following the conclusion of these proceedings, the Swedish Authority for Privacy Protection will issue a final decision on the matter", while in the notification itself 60DD 697201 IMY indicated that the decision will be adopted on the basis of Article 60(8) GDPR by the authority to which the complaint was lodged, the President of UODO on 4 October 2024 asked IMY to clarify what is the legal basis of the adopted draft decision and, if the basis is Article 60(8) GDPR – presentation of a correct draft decision that does not contain contradictory information and indicates the legal basis for its adoption, i.e. Article 60(8) GDPR (evidence: printout from IMI: A60DD 697201 of 4 November 2024).
12. On 20 October 2024, IMY submitted to the President of UODO a modified draft decision in the case under the same notification 60DD 697201, in which it submitted the original draft decision. In the modified draft decision, IMY indicated " This is therefore not a final decision. The justification and the decision may change in whole or

in part depending on the outcome of the Article 60 procedure. Following the conclusion of these proceedings, either the complaint receiving supervisory authority or the Swedish Authority for Privacy Protection will issue a final decision on the matter.” (evidence: a memo dated 13 December 2024 and annexes).

13. IMY, in its correspondence with the President of UODO by e-mail, informed the President of UODO that the entity concerned by the draft decision, identified in the draft decision only as [REDACTED] in accordance with the Swedish business register available at [REDACTED] is [REDACTED] (registered office: [REDACTED]) (evidence: a memo dated 13 December 2024 and annexes).

After examining all the evidence gathered in the case, the President of UODO considered the following.

Article 60 GDPR governs the cooperation between the lead supervisory authority (hereinafter also as: LSA) and the other supervisory authorities concerned. In accordance with Article 60(1) GDPR, the LSA cooperates with other supervisory authorities concerned. The lead supervisory authority and the supervisory authorities concerned shall exchange all relevant information. In accordance with Article 60(7) the LSA shall adopt and notify the decision to the main establishment or the single establishment of the controller or processor, as appropriate, and shall inform the other supervisory authorities concerned and the European Data Protection Board of the decision, together with a summary of the facts and reasons on which the decision is based. The supervisory authority with which the complaint has been lodged shall inform the complainant of the decision. Art. 60(8) GDPR provides that, by way of derogation to paragraph 7, if the complaint is dismissed or rejected, the supervisory authority with which the complaint has been lodged shall adopt the decision and notify it to the complainant and inform the controller thereof.

With regard to the identification of the lead supervisory authority in the case, it should be pointed out that in accordance with Article 56(1) GDPR, without prejudice to Article 55, the supervisory authority of the main establishment or single establishment of the controller or processor shall be competent to act as lead supervisory authority, in accordance with the procedure provided for in Article 60, in respect of cross-border processing carried out by that controller or processor. Under Article 4(16) of the GDPR, 'main establishment', as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment. According to Article 4(19) of the GDPR, 'group of undertakings' means the controlling undertaking and the undertakings controlled by it. As indicated in paragraph 27 of the European Data Protection Board Guidelines 8/2022 on identifying the controller's or processor's lead supervisory authority (Version 2.0) adopted on 28 March 2023, where processing is carried out by a group of undertakings which has its head office in the EEA, the administrative unit of the undertaking with total control is deemed to be the place where decisions relating to the processing of personal data are taken and should therefore be considered to be the main

establishment of the group, except where decisions as to the purposes and means of processing are taken by another establishment. It is likely that the parent undertaking or the operational head office of a group of undertakings in the EEA will be the main establishment as it is the place of its central administration.

IMY, in the IMI notification A56ID 499202, informed that, following previous findings made by that authority in the context of the IMI notification A56ID 476705, according to which, due to the fact that [REDACTED] Cyprus is part of the [REDACTED] of companies, the main establishment of which is located in Sweden, IMY is considered to be the lead supervisory authority in the case. On the basis of that communication, the President of UODO took the view that, on the basis of the information already in its possession, IMY was could conclude that, within the [REDACTED] the controlling undertaking within the meaning of Article 4(19) of the GDPR was an entity established in Sweden. Following further communication between IMY and the President of UODO, IMY indicated that this entity is [REDACTED] (registered office: [REDACTED] [REDACTED]). Consequently, that entity must be regarded as the main establishment the controller, in accordance with Article 4(16) of the GDPR.

In view of the above, IMY, acting as the lead supervisory authority in the case, adopted a draft decision dismissing the complaint and acting pursuant to Article 60(8) GDPR, forwarded it to the President of UODO, as the body to which the complaint was lodged. Consequently, the President of UODO adopts a decision in this case.

The President of the Personal Data Protection Office, acting on the basis of the provisions of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws 2024, item 572), (hereinafter: CAP), assesses on the basis of all the evidence whether a given circumstance has been proven. Evidence in proceedings may include, in particular, documents, witness statements, expert opinions and inspections (Article 75(1) of the CAP). The public administration body may consider the facts of the case to be established only on the basis of clear evidence and may not confine itself to probabilities in this respect unless the provisions of the CAP provide otherwise.

In the present case, the Complainant indicated that, following the transmission by [REDACTED] Cyprus of the personal data of customers using the services of [REDACTED] Cyprus, such as name, PESEL number, loan amount, start of the loan and its end date, for its information in writing and for the information of the District Court in Zawiercie, he fears that his personal data may have been transferred to unauthorised persons.

IMY, acting within the scope of its competence as the lead supervisory authority in the case, requested the Complainant to provide information regarding the provision of his personal data by [REDACTED] Cyprus, including the date and manner of the provision of personal data.

The President of UODO sent the Complainant a request for additional information by letter of 18 September 2024, which was effectively served to the Complainant on 23 September 2024. The Complainant did not provide any reply to it.

The Supreme Administrative Court in its judgment of 26 October 1984 (ref. II SA 1205/84, ONSA 1984, No 2, item 98) stated that: 'It follows from Articles 7 and 77(1) of the

Code of Administrative Procedure that it is for the authority conducting the administrative proceedings to examine and examine all the evidence exhaustively. This does not mean that a party is exempted from complicity in the fulfilment of this obligation, especially since failure to prove a specific fact may lead to results unfavourable to the party.' The Supreme Administrative Court reiterated this position in its judgment of 12 July 2017, file ref. II GSK 2757/15, adding that (quote): 'Neither can it be inferred from those provisions that the administrative authorities are required to seek evidence to support a party's claims where that party does not itself take the initiative in taking evidence. In the event of inaction on the part of a party, the authority cannot be expected to be required to prove facts intended to militate against its findings.'

In the present case, the Complainant indicated that he feared that his data had been made available following the transmission by ██████████ Cyprus to him in writing and to the District Court in Zawiercie of personal data of customers using the services of ██████████ Cyprus. At the same time, IMY, as the lead supervisory authority in the case, found that the information provided by the Complainant was insufficient to assess whether there had been a breach of the Complainant's personal data.

In the light of the above, it must be concluded that the investigation carried out did not provide clear evidence that the Complainant's personal data had been made available to third parties.

In accordance with Article 105(1) of the CAP, where proceedings have become devoid of purpose for any reason, the administrative authority shall issue a decision to discontinue the proceedings. Determination by a public authority of the existence of the condition referred to in Article 105(1) of the CAP obliges it, as emphasised in legal literature and case-law, to discontinue the proceedings, as there are no grounds for resolving the case on the merits if that condition is present, and the continuation of the proceedings in such a case would constitute its defectiveness, having a significant impact on the outcome of the case.

As is apparent from the evidence gathered in the case, there is no evidence to support the allegations made by the Complainant, and therefore the processing of personal data contested by the Complainant cannot be considered to have taken place, with the result that the proceedings have become devoid of purpose.

In this factual and legal situation, the President of UODO decided, as in the operative part.

Under the authority of the President  
of the Personal Data Protection Office  
Head of the Cross-border Proceedings Unit  
International Cooperation Department

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The decision is final. On the basis of Article 7(2) of the Act of 10 May 2018 on the protection of personal data (Journal of Laws 2019, item 1781) in conjunction with Article 13(2), Article 53(1) and Article 54 of the Act of 30 August 2002 - Proceedings before Administrative Courts (Journal of Laws 2024, item 935, as amended), a party dissatisfied with this decision has the right to lodge a complaint with the Voivodship Administrative Court in Warsaw within 30 days from the date of its delivery to the party. The complaint is submitted via the President of the Personal Data Protection Office (address: Personal Data Protection Office, ul. Stawki 2, 00-193 Warsaw). The entry from the complaint is 200 zlotys. A party has the right to apply for exemption from court costs or the right to assistance.