

LDA Brandenburg - Stahnsdorfer Damm 77 - 14532 Kleinmachnow

Legal area

██████████
Managing Director

Date: **21 February 2024**

Processor: ██████████

Phone: ██████████

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(Please indicate character in reply)

Standardised recording of credit card data for future transactions - Closing message

-Your statement of 26 August 2021 Dear

██████████,

Thank you for your comment above.

We would like to inform you that, following consultation with other European supervisory authorities, we have conclusively assessed the facts of the case and your comments from a factual and legal perspective.

I. Facts of the case

On 1 February 2021, we received a complaint from Mr ██████████ (hereinafter: the complainant). He pointed out to us that when making a purchase on ██████████, the tick for the option "Enregistrer cette carte pour de futurs achats" is pre-selected and leads to ██████████ storing credit or bank details for future purchases.

In a letter dated 26 August 2021, ██████████ commented on our hearing of 15 July 2021 regarding this matter. In this statement, ██████████ argues that the legal basis for the storage is a legitimate interest pursuant to Art. 6 para. 1 letter f GDPR. This essentially consists of offering a pleasant shopping experience and minimising the processing effort for transactions. Conflicting interests of the data subjects are not apparent, as ██████████ protects the payment data from unauthorised access through comprehensive, unspecified security measures. EDSA Recommendation 02/2021 does not take sufficient account of the individual case.

As can be seen from the screenshots attached to the statement, the checkbox for saving the credit card data was activated by default ("Remember card for future purchases", page 6 of the statement), as the complainant also stated. ██████████ informed us that these settings applied to the websites ██████████. In addition, ██████████ offered on

██████ offers another payment method called "direct debit". The checkbox for saving this payment data was also activated by default ("Remember payment data", page 6).

On page 7 of the statement, ██████ announced that it would delete the preselected box at its own discretion by mid-September 2021.

We have checked these changes on ██████ and ██████ several times and found that the box was no longer ticked. We assume that the changes in the were made in the 4th quarter of 2021.

II. Legal assessment

We expressly point out that, in our legal opinion, a pre-filled checkbox for payment data does not meet the legal requirements for consent in accordance with Art. 6 para. 1 letter a of the General Data Protection Regulation (GDPR) .¹

According to Art. 4 No. 11 GDPR, "consent" of the data subject is any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her. In addition, the data subject must be informed of their right to withdraw consent in accordance with Art. 7 para. 3 sentence 3 GDPR at the time consent is given.

In the recommendations of the European Data Protection Board (EDPB) 02/2021 on the storage of credit card data for online transactions² , the EDPB states that the storage of credit card data for future transactions can only be considered on the basis of consent within the meaning of Article 6(1)(a) GDPR. We agree with this recommendation. The EDPB's considerations can easily be applied to bank data. In the present case, too, against the background of the EDPB's explanations, no other legal basis seems to come into consideration than consent.

██████ cannot therefore rely on a legitimate interest within the meaning of Article 6(1)(f) GDPR for the storage described above. The original practice of ██████, on which this complaint is based but which has since been superseded, of activating the checkbox for saving credit card data by default was not GDPR-compliant. For the period from the introduction of the pre-ticked box until the change by ██████ in the 4th quarter of 2021, there was therefore a violation of Art. 6 and 7 GDPR.

However, we will not take any measures in this procedure. This decision is based on the rapid change in ██████ procedures in the 4th quarter of 2021 and is made after consultation with other European supervisory authorities within the meaning of Art. 60 GDPR.

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, 4.5.2016, p. 1), as last amended by OJ L 074, 4.3.2021, p. 35.

² EDPB, Recommendation 02/2021 on the legal basis for the storage of credit card data for the sole purpose of facilitating further online transactions, adopted on May 19, 2021.

Finally, we would like to point out that we assume in this decision that the voluntary changes will be maintained in the future and that the credit card and bank data stored during the infringement period, i.e. without a legal basis, have already been deleted in accordance with data protection regulations.

The procedure is concluded with this letter.

Yours sincerely

A solid black rectangular redaction box covering the signature area.