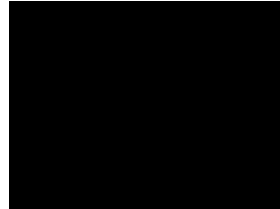


The President



Registered letter with acknowledgement of receipt

N°AR: 2015190282758

File processing:

Paris, le **14 JAN. 2025**

Ref. no.: MLD/SGR/ROL241040

Referral no.

(To be included in all correspondence)

Madam President,

I am following up on the various exchanges that have taken place between the services of the Commission Nationale de l'Informatique et des Libertés (hereinafter "CNIL") and the company [REDACTED] as part of the investigation of complaint no. [REDACTED]. As a reminder, this complaint was forwarded to the CNIL by the German data protection authority of the Land of Baden-Württemberg pursuant to Article 56.1 of the General Data Protection Regulation (hereinafter "GDPR").

The processing of personal data in question is cross-border within the meaning of Article 4 of the GDPR and therefore falls within the scope of the European cooperation mechanism (known as the "one-stop shop") pursuant to the provisions of Articles 56 et seq. of the GDPR. The CNIL acts as lead supervisory authority for this processing carried out by the company [REDACTED].

I. Background to the claim and the facts

The CNIL received a complaint from [REDACTED] concerning the receipt of a "canvassing" e-mail following an application to the company [REDACTED].

In particular, the complainant explained that, at the end of 2021, she had applied as a freelance artist with a view to being included in the company's database of artists, but that her application had been rejected. On 13 October 2021, she said she had received an email from the company entitled "*A new opportunity for cooperation!*" inviting her to join a [REDACTED], defined as "*a platform that connects ambitious artists with a new generation of art collectors*".

The receipt of this e-mail was the source of her complaint. The complainant considered that she had not consented to the storage of her personal data relating to her application after it

had been rejected, nor to the transmission of such data to the alleged [REDACTED]

On 14 October 2021, the complainant replied to the above-mentioned e-mail, objecting to the processing of her personal data and their transmission to third parties.

II. Analysis of the facts

In the course of investigating the complaint, the CNIL questioned [REDACTED] on several occasions in order to obtain information on the processing of the complainant's personal data, and in particular on the processing of her data for canvassing purposes, on the transmission of her data to a third party and on the processing of her objection request.

Firstly, the evidence gathered leads us, with the agreement of the European supervisory authorities concerned, to reject [REDACTED] complaint for the following three reasons:

- Firstly, with regard to the lawfulness of the aforementioned e-mail of 13 October 2021, it appears that the complainant, by registering and applying on the company's platform to be included in a database of artists, consented to the processing of her personal data in this context and that she was subsequently contacted because the [REDACTED] was a follow-up to this application. In this respect, the company stated that the complainant had filled in an application form stating that she would be contacted by the company's departments to discuss her application.
- Secondly, as regards the lawfulness of the transmission of the complainant's personal data to the alleged [REDACTED], it appears that this e-mail of 13 October 2021 was not sent by a third-party company (allegedly [REDACTED]) but by the company [REDACTED] regarding a project it was implementing and which it had [REDACTED]. The company also confirmed that the complainant's personal data had not been transferred to a third party.
- Lastly, with regard to the company's handling of the complainant's objection request, it is clear from the information provided in the complaint that the company responded favourably to her request on the same day. When questioned on this subject by the CNIL, the company stated that it no longer held any personal data relating to the complainant.

Secondly, despite the above-mentioned rejection of the grievances raised by the complainant in her complaint, it is clear from the investigation carried out by the CNIL's departments that certain elements lead me, with the agreement of the supervisory authorities concerned, to identify shortcomings.

1. Failure to comply with the obligation to provide information and transparency

Pursuant to Article 12 of the GDPR, the controller is required to take appropriate measures to provide any information referred to in Articles 13 and 14 in a concise, transparent, comprehensible and easily accessible manner, in clear and simple terms.

Where personal data relating to a data subject are collected from that person (Article 13 of the GDPR), the controller must in particular provide the data subject, at the time the data in question are obtained, with the following information:

- the identity and contact details of the data controller;

- the purposes of the processing for which the personal data are intended and the legal basis for the processing;
- where processing is based on the individual's consent, the existence of the right to withdraw consent at any time;
- the recipients or categories of recipients of personal data ;
- the data retention period or the criteria for determining it ;
- the existence of data subjects' rights: the rights of access, rectification, erasure and restriction apply to all processing operations;
- the existence of the right for data subjects to lodge a complaint with the CNIL.

Article 13 of the GDPR lists all the information to be communicated.

In this case, with regard to the way in which the complainant was informed when her personal data was collected, I note first of all that [REDACTED] indicated that this information was not provided "*explicitly in the outsourced form set up to collect this data on the German version in 2021*". It did, however, state that the terms of use, which contain a paragraph on data protection, were made "*available for consultation by the complainant from the site leading to this form*" at the URL address [REDACTED]

In order to ensure that the information is accessible, the data controller must allow people to access it actively, by redirecting them to the location of the information. In this way, people do not have to search for the information or encounter difficulties in finding it.

If the data controller provides information relating to several personal data processing operations, it is recommended that this information be centralised in a dedicated area of the company's website, so that individuals can easily access all the information relating to the personal data processing operations carried out.

This can be achieved by including a link directly to the data protection policy. This must be clearly visible on every page of the website, clearly labelled ("Personal data" or "Confidentiality", for example) and its content must be separate from the website's general terms and conditions of sale (GTCS) or general terms and conditions of use (GTU).

It follows from the above that the data controller did not provide information that was easily accessible to the complainant, insofar as this information was not directly accessible from the data collection form and was contained in a document not dedicated to data protection, namely the website's terms of use, which can be consulted by returning to the website's homepage from the URL address [REDACTED]

Secondly, with regard to the completeness of the information provided, I would point out that it is incomplete, as it does not include all of the items listed in Article 13 of the GDPR. These include, in particular, the full contact details of the data controller, the legal basis for the processing and the purpose(s) of the processing for which the data collected is intended.

On this last point, I would like to draw your attention to the fact that if candidates' personal information is re-used for a new purpose, provided that this purpose is compatible with the initial purpose, new information must be provided prior to this new use of the

information so that candidates understand how their data will be used and are able to exercise their rights (opposition, access, rectification, etc.).

In light of all of the above, I believe that [REDACTED] has breached the provisions of Articles 12.1 and 13 of the GDPR by failing to provide accessible and complete information to data subjects.

Although the data controller has confirmed that the platform through which the complainant applied no longer exists, these facts justify a reminder to [REDACTED] of its legal obligations.

For your information, the CNIL provides professionals with a practical information sheet on its website entitled "GDPR compliance: how to inform individuals and ensure transparency", which can be accessed at the following URL address: <https://www.cnil.fr/fr/conformite-rgpd-information-des-personnes-et-transparence>.

2. Failure to cooperate with CNIL services

Under article 18 of the Act of 6 January 1978 on Data Processing, Data Files and Individual Liberties, *"the managers of public or private companies, [...] and more generally the holders or users of personal data processing or files, may not oppose the action of the Commission nationale de l'informatique et des libertés or its members and must, on the contrary, take all useful measures to facilitate its task"*.

The data controller must therefore respond to all requests from the CNIL within the deadlines set.

In this case, a first instruction e-mail was sent to [REDACTED] on 6 December 2022, giving it one month to respond. In the absence of a response within this period, this letter was followed by an initial reminder by e-mail on 14 February 2023 and then a second reminder by registered letter with acknowledgement of receipt on 23 March 2023 (received on 27 March 2023). A response was finally received from the company on 4 April 2023, almost 4 months after the initial letter was sent.

A second letter of instruction was sent by the CNIL to the company on 6 June 2023 and a response was received on 27 June 2023.

Finally, a third letter was sent on 28 July 2023, but no response was received within the one-month period. A reminder was therefore sent on 27 March 2024 by registered letter with acknowledgement of receipt, giving the company ten days to reply. This letter was received by the company on 3 April 2024, and a reply was received by e-mail on 17 April 2024, i.e. after the ten-day deadline.

A total of three reminders were necessary to obtain answers from [REDACTED].

Consequently, I consider that [REDACTED] has breached Article 18 of the French Data Protection Act of 6 January 1978 in that it has not responded to the CNIL's letters within the time limit set.

These facts justify a reminder to [REDACTED] of its legal obligations.

III. Corrective measures ordered by the CNIL

In view of all these factors, and in agreement with the other data protection authorities concerned by this processing operation, the following corrective measure should therefore be imposed on [REDACTED]:

- **A REPRIMAND**, in accordance with the provisions of article 58.2.b) of the GDPR and 20.II of the amended Act of 6 January 1978, concerning the obligation to inform individuals and to be transparent, and the obligation to cooperate with the CNIL.

Please note that in accordance with Article 77 of the GDPR, the person who lodged the complaint will be informed of this decision.

This decision, which closes the investigation into complaint no. 22015086, does not preclude the CNIL from making use, particularly in the event of new complaints, of all the other powers conferred on it by the GDPR and by the amended Act of 6 January 1978.

In any event, I would like to add that it is up to [REDACTED] to ensure that it complies with all of the aforementioned provisions relating to all of the processing operations that the company implements.

The CNIL ([REDACTED], Legal Officer, Rights and Complaints Department, [REDACTED]) will be happy to provide any further information you may require.

This decision may be appealed to the Conseil d'État within two months of notification.

Yours faithfully

[REDACTED]