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Decision under the General Data Protection Regulation – Nobina Europe AB

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Decision of the Privacy Protection Authority

The Privacy Protection Authority finds that Nobina Europe AB processes personal data in breach of Article 5(1)(e) of the GDPR¹ by storing personal data in a form that enables the identification of the data subjects for a longer period than is necessary for the purposes for which the personal data is processed.

The Privacy Protection Authority gives Nobina Europe AB a reprimand pursuant to Article 58(2)(b) of the GDPR.

On the basis of Article 58(2)(d) of the GDPR, the Privacy Protection Authority orders Nobina Europe AB to take measures to ensure that the storage period for personal data processed through “the Green Journey” (DGR) amounts to a maximum of three months. The measures must be taken no later than four weeks after this Decision has become final.

Presentation of the supervisory case

The case, procedure and scope of supervision

The Privacy Protection Authority (IMY) has initiated supervision of Nobina Europe AB (Nobina or the company) due to information from a complaint from the Norwegian trade union Yrkestrafikkforbundet (YTF) concerning personal data processing in the context of Nobina’s project DGR .

The complaint has been submitted to IMY, as the lead supervisory authority under Article 56 GDPR, by the Norwegian supervisory authority where the complaint was lodged. The processing was carried out by exchange of letters. In view of the cross-border complaint, IMY has used the cooperation and consistency mechanisms provided for in Chapter VII of the GDPR. The relevant supervisory authorities have been the data protection authorities of Norway, Spain, Denmark, Austria, Finland and Hungary.

IMY’s supervision has aimed to investigate whether the personal data processing in question includes data on breaches of law. Furthermore, the IMY has assessed in the context of the case whether the personal data processing in question has legal support in one of the legal bases of the GDPR in Article 6 and whether the processing complies with the provisions on data and storage minimisation in Article 5. The supervision has also covered the question of whether the company informed the data subjects of the retention period in accordance with Article 13.

The complaint

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).

In the complaint, YTF essentially states the following. Nobina has initiated the project "The Green Journey" (DGR) with the aim of establishing a safer, more customer-friendly and more environmentally friendly driving behaviour. The initiative involves monitoring employees while driving, through a device that records, among other things, each bus driver's speed, energy consumption and usage of brakes. The data is sent to Nobina's database, where it is stored centrally. The information is also available to business managers who will monitor and talk to non-compliant bus drivers. YTF considers the project to be too intrusive, as the aim of the project can be achieved by using other and less restrictive methods. YTF considers that Nobina's interest in the processing by DGR does not weigh enough to undermine the interests of employees in the protection of their personal data. Furthermore, YTF considers that the processing is too extensive in relation to the purpose, contrary to the principle of data minimisation. The bus drivers' right of access and information may also be questioned because they do not have information about the period during which the personal data will be stored.

Nobina's response

In its responses to IMY, Nobina stated, inter alia, the following on DGR.

The implementation of DGR began in 2013, after which the concept has been updated and implemented in larger parts of the Nobina Group. A relaunch of DGR took place in 2017, after which a regular review of the processing of data took place in 2020, 2021 and 2022. DGR collects data on fuel consumption, use of brakes, idling and driving distances. The data is compiled to obtain a value that is then measured against Nobina's thresholds. This is the basis for the share of "green" environmental driving. Through DGR, the company does not process data on infringements of the law either by measuring or monitoring speed. A so-called crossing indicator lights up when the bus's speed exceeds 90 kilometres per hour. However, this is only a measurement of the fuel consumption of the bus, and does not mean that the speed is recorded in relation to the current speed limits. It may be mentioned that Nobina Sverige AB has made an application to IMY for a permit to process data relating to criminal convictions and offences (case no DI-2022-253).

The purpose of the data processing in DGR is to increase the proportion of environmental driving in order to achieve Nobina's environmental goals. The processing of data is done to, among other things, reduce emissions from fuels and use energy resources efficiently and thus work towards a more environmentally sustainable society. Climate change and lack of natural resources are a major problem in the world and therefore environment and sustainability are one of the most important issues right now. Nobina strives to contribute to a sustainable society by transporting passengers as environmentally as possible. The company also has environmental requirements to comply within contractual contexts. One example is the agreement between Nobina and Region Stockholm (SL). In addition, Nobina, as a public transport company with high environmental objectives, has a self-interest in being an environmentally sustainable company. With increased fuel costs and electricity prices,

there is also an economic aspect to consider as reduced energy consumption leads to reduced costs.

Measuring the driver's driving behaviour through DGR is one of the most effective factors in reducing energy consumption and increasing comfort for drivers and travellers. Dgr needs to be measured at the individual level because it is not effective, long-term and durable to follow up and change behaviors at the group level. Data from DGR is only used to develop drivers towards a more environmentally friendly driving mode, through conversations and training, and not to in any way provide retaliation if results deviate from the set limit values.

Under the sections *Lawfulness of the processing*, *The principles of data minimisation and storage limitation* and *Information to the data subjects about the retention period*, there are further descriptions of what the company has stated in relation to the respective substantive issues.

Miscellaneous

Nobina Sverige AB has been granted a permit (case no. DI-2022-253) with the conditions of the IMY to process personal data relating to criminal convictions and offences in the context of the processing of data on measurement of speed as described in that case.

Statement of reasons for the decision

Is personal data relating to criminal convictions and offences being processed?

YTF's complaint submits that *Nobina* records, inter alia, data on the speed of the drivers. In regards to those circumstances, IMY inquired whether *Nobina* processes data relating to criminal convictions and offences pursuant to Article 10 of the GDPR. *Nobina* has replied that the company does not process such data. The speed indicator that lights up when the bus's speed exceeds 90 kilometres per hour only measures the bus's fuel consumption and does not mean that data on the speed is recorded in relation to the applicable speed limits.

IMY's assessment

IMY does not question *Nobina's* claim that the company does not process data on speeding offences within DGR.

Lawfulness of the processing

Legal Basis

In order for *Nobina's* personal data processing through DGR to be permitted,

compliance with the provisions of the General Data Protection Regulation is required. This means, among other things, that Nobina must have a legal basis for the processing. Nobina has stated that processing of personal data is necessary for the purposes of the company's legitimate interests pursuant to Article 6(1)(f) of the GDPR.

Article 6(1)(f) GDPR states that the processing of personal data is lawful if it is necessary for the purposes of the legitimate interests of the controller or of a third party, unless the interests or fundamental rights and freedoms of the data subject outweigh the processing of personal data.

That provision thus lays down three cumulative conditions which must be met in order for the processing of personal data to be permitted.²

The first condition is that the interests which the processing intends to protect must constitute the *legitimate interests* of the controller or a third party. A legitimate interest is an interest which, in general, enjoys the protection of the legal order or is otherwise regarded as legitimate, ethical or justifiable. For example, an interest protected by EU legislation or relevant national legislation must be regarded as justified.³ A legitimate interest must be sufficiently clear to be balanced against the interests and fundamental rights of the data subject. The interest at stake must also be an interest that the controller wants to achieve. This implies a requirement of genuine and actual interest, which corresponds to the current business or the benefits expected shortly. The interest must not be too vague or speculative.⁴ If a controller acts not only in his own legitimate interest (e.g. their business interest), but also in the interests of society as a whole, this interest generally outweighs that interest.⁵

The second condition is that the processing is *necessary* for a purpose relating to the legitimate interest. This means that the legitimate interest cannot reasonably be protected as effectively by other means which less prejudice the fundamental rights and freedoms of data subjects, in particular the right to privacy and the right to the protection of personal data as enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (EU Charter of Rights).⁶ At the same time, it follows from the case-law that the criterion of necessity can be regarded as satisfied if it contributes to efficiency.⁷ It also follows from the case-law that the necessity requirement must be examined in conjunction with the principle of data minimisation laid down in Article 5(1)(c) of the GDPR, which provides that the personal data collected must be adequate, relevant and not excessive in relation to the purposes for which they are processed.⁸

² see judgment of the Court of Justice of the European Union, M.I.C.M., C-597/19, EU:C:2021:492, paragraph 106.

³ See Öman, General Data Protection Regulation (GDPR) etc. (JUNO ed. 2A), the comment on Article 6(1)(f), under the heading 'Eligible interests'.

⁴ Opinion 6/2014 of the European Data Protection Board (EDPB) on the concept of the controller's legitimate interests in Article 7 of Directive 95/46/EC, WP 217, adopted on 9 April 2014, p. 25.

⁵ EDPB Opinion 6/2014, p. 37.

⁶ Judgment of the Court of Justice of the European Union in Case C-708/18 TK, paragraph 47.

⁷ Judgment of the Court of Justice of the European Union in Case C-524/06 Huber, paragraph 62.

⁸ Judgment of the Court of Justice of the European Union in Case C-708/18 TK, paragraph 48.

The third premise is that the fundamental rights and freedoms of data subjects (the interest of privacy) do *not outweigh* the legitimate interest the processing intends to protect.

First, in order to carry out the balancing assessment, it is important to determine the nature and source of the legitimate interest and whether the processing is necessary to satisfy that interest and, on the other hand, the consequences of the processing for data subjects. This initial assessment should consider the measures, such as increased transparency or limited data collection, that the controller intends to adopt.⁹ Furthermore, the position of the controller and the data subject shall be considered, including the balance of power between the data subject and the controller.¹⁰ Other important factors to consider are the nature of the data and the additional safeguards taken by the controller. These may include technical and organisational measures to ensure that data cannot be used to make decisions or take other measures relating to individuals ("function separation"), extensive use of de-identification methods, aggregation of data, privacy by design and increased transparency.¹¹

In addition, account must be taken of the nature and specific nature of the processing of personal data, taking into account, in particular, the number of persons who have access to the personal data and the forms of access thereto.¹² The balance between the privacy interest and the legitimate interest of the controller shall also take into account the reasonable expectations of the data subject at the time and in connection with the processing of its personal data.¹³

Individuals have a fundamental right to the protection of personal data relating to them. This follows, inter alia, from Article 8(1) of the EU Charter of Rights. Restrictions, taking into account the principle of proportionality, may only be imposed if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others (Article 52(1) of the EU Charter of Rights).

IMY's assessment

Does Nobina have a legitimate interest in reducing emissions from fuels and using energy resources efficiently?

Nobina has stated that the purpose of the processing of personal data through DGR is to increase the share of environmental driving. This is to achieve the company's environmental objectives to reduce emissions from fuel and use energy resources efficiently and thus work towards a more environmentally sustainable society. IMY

⁹ EDPB Opinion 6/2014, p. 53.

¹⁰ See also the Opinion of the European Data Protection Board (EDPB) e2/2017 on the processing of personal data in the workplace, WP 249, adopted on 8 June 2017, p. 23.

¹¹ EDPB Opinion 6/2014, p. 54.

¹² Judgment of the Court of Justice of the European Union in Case C-708/18 TK, paragraph 57.

¹³ Recital 47 of the GDPR and CJEU judgment in Case C-708/18 TK, para. 58.

considers that environmental work and sustainability is a legitimate interest provided that it is an actual interest and not an interest that is fictitious or speculative.

Nobina has explained, among other things, the following. Climate change and lack of natural resources are a major problem in the world and therefore environment and sustainability are one of the most important issues right now. Nobina strives to contribute to a sustainable society by moving residents as environmentally as possible. The company also has environmental requirements to comply with in contractual contexts. One example is the agreement between Nobina and Region Stockholm (SL). In addition, Nobina, as a public transport company with high environmental objectives, has a self-interest in being an environmentally sustainable company. With increased fuel costs and electricity prices, there is also an economic aspect to consider as reduced energy consumption leads to reduced costs.

Against this background, IMY considers that Nobina has an actual legitimate interest in reducing emissions from fuels and using energy resources efficiently.

Is the processing necessary?

The question then is whether Nobina's processing of personal data through DGR is necessary to achieve the company's environmental objectives of reducing emissions from fuels and using energy resources efficiently. Nobina has presented alternative and less intrusive measures that the company has considered, including training and processing of data at group level.

Nobina submits, inter alia, the following. Economical, sustainable and environmental driving is today fundamental in driving licence training and a module within the CPCs required to carry out passenger transport. Dgr needs to be measured and saved at the individual level and followed up by the driver's closest manager because it is not effective, long-term and durable to change behaviour if only the driver sees his information or if data is saved at group level. Without the immediate manager gaining insight into how environmentally a driver drives, there is no way to follow up and influence the proportion of environmental driving by encouraging training. Using group level alone does not provide good visibility as driver groups can be as large as more than 100 people. Since its inception, Nobina's work with DGR has resulted in a measurable reduction of 85 734 tonnes of CO₂ equivalent or equivalent to the annual emissions of 30 000 cars. Nobina has always had environmental work, but such clear improvements have not been achieved until the methodology of training, coaching and measurement that DGR entails was introduced.

To use DGR only as a time-limited project, Nobina is not able to achieve the objective of effectively, long-term and lastingly reducing the company's impact on the environment. There is also no basis for following the NobinaGroup's environmental performance as a whole and during the same periods. Carrying out the processing of data within DGR on a voluntary basis has not been considered to be sufficiently effective as those likely to consent are not the ones most in need of encouragement to increase their share of environmental driving. Nobina further believes that it is

important that DGR is applied to the entire company. It is also difficult to use consent as a basis for processing because it can be seen as non-real consent due to the uneven balance of power between employer and employee.

IMY considers that the investigation in the case provides support that the purpose of the processing of the data cannot reasonably be achieved in an equally effective manner through alternative measures. Furthermore, as IMY notes below on the principle of data minimisation, the processing is limited to personal data that are adequate, relevant and not too extensive in relation to the purpose of the processing.

Against this background, IMY assesses that the processing of personal data through DGR is necessary for the purposes of legitimate interests in reducing emissions from fuels and using energy resources efficiently.

Balancing of interests

The IMY will then examine whether the data subject's fundamental rights and freedoms (the privacy interest) outweigh Nobina's legitimate interest in achieving environmental objectives by reducing emissions of fuels. Thus, IMY goes on to assess the factors which, according to the Court of Justice of the European Union, affect the gravity of the infringement and, on the other hand, the legitimate interest which the processing is intended to protect.

IMY notes that the purpose of the processing of the data is to ensure that drivers increase their share of environmental driving. The information about drivers' driving patterns is stored and can be read by the driver's closest manager, who will also review the information from DGR during regular follow-up conversations with drivers.

Although Nobina states that the information provided by DGR is not used in any way to provide retaliation if results deviate from the set limit values, IMY notes that the regular follow-up of drivers' journeys may nevertheless lead to concerns among drivers about possible consequences. This is due to the general imbalance between workers and employers. The processing of personal data by DGR can thus constitute a significant infringement of the driver's privacy. The processing of the data can lead to stress, concerns about possible negative consequences and a feeling of being under supervision during working hours. The complaint from YTF shows, among other things, that the drivers experience DGR as distracting and stressful, and that they are concerned that the information may be misused and lead to negative consequences for them. Those factors suggest that the interest in the protection of the personal data of individual drivers weighs heavily in the balancing of interests to be carried out.

However, IMY notes that Nobina has stated that, since the introduction of DGR, it has reduced emissions by equivalent to the annual emissions of 30 000 cars. Furthermore, Nobina has described that the company has contractual obligations to achieve certain specific environmental objectives. IMY further notes that environmental and sustainability issues are interests that benefit society at large¹⁴. Against this

¹⁴ CF. EDPB Opinion 6/2014, p. 25 and p. 37.

background, IMY considers that Nobina's legitimate interest in reducing emissions from fuels and using energy resources effectively weighs heavily.

IMY has concluded that Nobina has a legitimate interest in achieving environmental objectives by reducing emissions from fuel. However, the fact that the personal data processed by Nobina in the context of that purpose constitute a marked interference with the privacy of the individual drivers, together with the fact that there is an unequal relationship between the employed drivers and the employer, weighs heavily in the second balance.

In its observations, Nobina has provided a detailed description of how the company handles personal data within the framework of DGR. The company has, among other things, described the following.

DGR data is only loaded for the purpose of "green driving". Data published by DGR can thus only be used to monitor green driving. For example, DGR does not contain data that can be used to check whether employees fulfil their employment contract. The information provided by DGR does not contain any information on possible infringements. The information does not contain data that can be used to see if the employee has driven where they should or if they arrive on time, nor does it contain any data on for instance customer care or mobile phone use.

Access to DGR information at driver level is strictly regulated. This means that only the closest manager, instructor and senior manager (usually a HR manager) for each area of activity can see to what extent the individual driver is driving environmentally friendly. There is no other information that can be used to check whether drivers have fulfilled their obligations or not. It is possible to see which bus the driver has driven and at what time. However, it is not possible to see where the bus has gone or any other information on the driving, except if the driving style is red, yellow or green within the specified time interval, with the color coding only being linked to the proportion of environmental driving.

Nobina Norway also has a specific agreement on the use of DGR, which shows that DGR data may not be used in any context in connection with a termination. The purpose of DGR is to improve driving behaviour and not to use it in connection with personnel issues.

All managers receive introduction and training on DGR when they start at Nobina. Managers receive information on the purpose of DGR, how DGR may be used and on divisions of responsibilities.

Only managers who need to use the personal data to follow up and evaluate the environmental driving programme have access to the information. Access is limited through a role-based authorisation system, as well as established processes for assigning and deleting user permissions, to ensure that only authorised persons have access to the personal data. Since the authorisation assignment is based on Nobina's

personnel register, the assignment is removed when a staff member with authorisation leaves Nobina or changes his post.

The collected personal data is encrypted to protect it against unauthorised access and when transferring from the respective bus to Nobina's IT environment. Pseudo-anonymisation is used as an additional protection as far as possible during processing (through employment number) and the direct link to an employee only occurs when results on the share of green driving are shared with the respective employee and team manager. All access and use of personal data is logged to enable monitoring and detection of unauthorised access, and the technical and organisational security-measures are regularly updated. If unauthorised use is detected, steps are taken to correct it and prevent it from being repeated.

IMY believes that it is clear from Nobina's descriptions how personal data is processed within the framework of DGR. Among other things, Nobina states which persons are authorised to access the personal data in question, including their roles within the organisation. It appears that the data is not shared to more than is necessary for the purpose. Furthermore, it is clear from the investigation that essentially only the driver can monitor how his or her driving mode affects the proportion of environmental driving in real time. It is only during a driver's training in environmental driving, when a so-called "environmental instructor" accompanies the driver on the bus, that someone else can follow the driver's driving during the journey. This is only possible when the instructor is physically next to the driver.

IMY also finds that it is clear from Nobina's descriptions that it has taken both organisational and technical measures to ensure that the personal data processed by DGR is not used for purposes other than evaluating the proportion of environmentally friendly driving, within the framework of its objective of reducing emissions of fuel.

IMY further finds that drivers can reasonably expect in regards of their training and employment contracts that their personal data will necessarily be processed by Nobina for the purpose of increasing the share of environmentally friendly driving. The limitation of drivers' right to the protection of their personal data appears proportionate and responds to a recognised public interest in reducing emissions that are hazardous to the environment (compare with Article 52(1) of the Charter of EU Fundamental Rights).

Overall, IMY considers that Nobina's legitimate interest in reducing emissions and energy consumption outweighs the interests of the individual drivers interest of protection of their personal data. Therefore Nobina is lawfully processing the personal data in order to reduce emissions.

The question is therefore whether Nobina also otherwise processes the personal data in accordance with the provisions of the General Data Protection Regulation.

Data minimisation and storage minimisation principles

Principle of data minimisation

The principle of data minimisation is set out in Article 5(1)(c) of the GDPR. It states that personal data shall be adequate, relevant and not excessive in relation to the purposes for which they are processed.

The documents in the file show, in essence, the following: During a drive, Nobina collects data on fuel consumption, use of brakes, idle running, speed over 90 kilometres per hour and the distance driven. The data is compiled to obtain a value that is then measured against the thresholds set by Nobina. These values form the basis for the share of "green" environmentally friendly driving. The information on the share of "green" driving data is then linked to the employee and is presented together with name, employment ID, place of employment and driver's group membership.

IMY's assessment

In an overall assessment of the findings of the case, IMY considers that the personal data that Nobina processes within the framework of DGR is adequate, relevant and not too extensive in relation to the purpose of increasing the proportion of environmentally friendly driving. Nobina has justified why data on fuel consumption, brake use, idle running, speed over 90 kilometres per hour and distance driven are relevant to the purpose as these factors affect the amount of fuel consumed. Furthermore, the information on employees linked to the driving mode is justified and not too extensive in relation to Nobina's purpose.

The principle of storage minimisation

The principle of data minimisation is closely linked to the principle of data minimisation, as set out in Article 5(1)(e) of the GDPR. It states that personal data may not be kept in a form that allows the data subject to be identified for a longer period than is necessary for the purposes for which the personal data are processed. Personal data may be stored for longer periods to the extent that the data are processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1), provided that the appropriate technical and organisational measures required by this Regulation are implemented to safeguard the rights and freedoms of the data subject.

The personal data collected through DGR is stored for 13 months.

In that regard, Nobina submits, in essence, as follows. Storage is motivated by being able to see positive and negative trends over a year and to compare with the same time in the previous year to see a possible seasonal behaviour as driving differs between seasons. Storage time of 13 months is the least intrusive method that still meets a purpose that balances the yearly variations in weather impact, the annual employee evaluations and the need for continuity for long-lasting behavioral changes.

The main purpose of DGR is to achieve a long-term and continuous improvement within sustainability. It is necessary to follow a driving pattern over time to bring about real improvements through behavioral change that leads to continuous upward trends. It is not possible to obtain the same effects from the sustainability work without maintaining a continuous individual development of the drivers. There are clear examples of how the driving trends are affected by a lack of follow-ups with a good comparative basis. In its measurements Nobina sees that this primarily happens by the deterioration of the driving performance over time if the initial contribution is not continuously worked on on the basis of individually measurable trends.

IMY's assessment

IMY makes the following assessment as to whether the retention for 13 months of the personal data in question complies with the principle of storage minimisation.

The purpose of the personal data processing is to ensure that drivers increase their share of environmental driving. For that purpose, information about drivers' driving patterns needs to be measured and saved at the individual level, as a basis for regular follow-up conversations with drivers in order for drivers to adjust their driving behaviour towards a more environmental driving. It is clear from the file that the follow-up with the drivers based on their collected data is ongoing; through conversations and training with the drivers. This allows driving patterns to be continuously evaluated. In the light of the investigation in the case, IMY therefore considers that a retention period of the employees' data for as long as 13 months is not necessary to achieve the purpose of the processing. According to IMY, it can only be considered justified to keep the data in question in a form which allows the data subject to be identified for a maximum period of three months.

Nobina has further described a need for a storage period for 13 months in order to see positive and negative trends in driving patterns over a year and to compare with the same time in the previous year to see possible seasonal behaviour because driving differs between seasons, and to follow the Nobina Group's environmental driving as a whole over time. IMY notes that it is possible to save data on driving patterns that cannot be directly or indirectly linked to a natural person for a long period of time to follow patterns in driving modes based on different seasons, and to follow the Group's driving behaviour during different periods. Therefore, IMY does not see a need to save data at the individual level for a long period of time. Thus, according to IMY's assessment, Nobina's purpose with regard to the processing in question can be achieved equally effectively by less intrusive means, that is to say, by a shorter retention period of personal data.

In an overall assessment, IMY therefore considers that, through DGR, Nobina retains personal data for a longer period than is necessary for the purposes for which the personal data are processed.

IMY therefore notes that Nobina's processing of personal data in this regards is contrary to Article 5(1)(e) of the GDPR.

Information to data subjects on the retention period

In its complaint, YTF also claims that Nobina did not inform data subjects of the period of storage of their personal data in the context of DGR.

Have the data subjects been informed of the retention period?

Article 13 of the GDPR requires that the data subject shall be provided with certain information when the personal data is collected from the data subject, such as information on the period for which the data will be stored (Article 13(2)a).

Nobina has stated that the data subjects have received information about the retention period when they received information about Nobina's privacy policy at the time of their respective employment. According to the company the policy is updated on an ongoing basis and is available to the data subjects throughout the period of employment. The Privacy Policy, from which Nobina's opinions to IMY included clipboards, includes information about the storage time of DGR data.

Nobina has stated that when the company hires new staff, information meetings about DGR for future drivers take place. Training for new drivers includes information that Nobina monitors the share of environmental driving, how DGR works and how the driver sees his/her own information linked to DGR. In connection with the employment, the employee receives employment contracts and information about Nobina's processing of personal data. This information is available throughout the period of employment. Furthermore, Nobina informs how the company works with follow-ups between the employee and their immediate manager and that they will have feedback conversations about DGR. All drivers have access to Nobina's driver manual, which includes information on DGR.

IMY's assessment

In the light of the investigation in the case, IMY finds no reason to question Nobina's claims that the data subjects have been informed about the retention period in accordance with the provisions of the GDPR. Therefore IMY finds that it has not been established that the company has breached Article 13 of GDPR.

Choice of intervention

It follows from Article 58(2)(i) and Article 83(2) of the GDPR that the IMY has the power to impose administrative fines pursuant to Article 83. Depending on the circumstances of the case, administrative fines shall be imposed in addition to or in place of the other measures referred to in Article 83(2), such as injunctions and prohibitions. In addition, it is clear from Article 83(2) which factors must be taken into account when imposing administrative fines and in determining the amount of the fine. In the case of a minor infringement, the IMY may, as stated in recital 148, instead of imposing a pecuniary penalty, issue a reprimand under Article 58(2)(b). Account must

be taken of aggravating and mitigating circumstances of the case, such as the nature, gravity and duration of the infringement and previous relevant infringements.

IMY has found that Nobina has infringed Article 5(1)(e) of the GDPR by storing personal data of drivers in a form that allows the identification of data subjects for a longer period than is necessary for the purposes for which the personal data are processed. An infringement of that provision may give rise to a fine.

IMY notes the following relevant circumstances. The processing of data concerned workers who are in a position of dependence because of the general imbalance between workers and employers. In addition, the processing of data has involved a large number of employees and has been going on for several years. There has also been a relatively large amount of personal data linked to the driving behaviour of employees. However, IMY takes into account that the company has taken into account appropriate technical and organisational measures regarding e.g. authorisation management and logging. Nobina has also reviewed the storage period earlier, reducing it from two years to 13 months, which indicates that the company has had procedures for evaluating and following up on the processing of its data.

In an overall assessment of the facts, in particular in view of the difficult balance between the fundamental rights and freedoms at issue, IMY considers that there is such a minor infringement within the meaning of recital 148 that it is necessary to refrain from imposing a fine on Nobina for the infringements found.

Therefore, on the basis of Article 58(2)(b) of the GDPR, Nobina should instead be reprimanded for the breach found.

According to IMY, it is important that Nobina takes steps to ensure that the personal data processed through DGR is not stored for longer than three months. It is therefore necessary, on the basis of Article 58(2)(d) of the GDPR, to order Nobina to take measures to ensure that the retention period is up to a maximum of three months. The measures must be taken no later than four weeks after this Decision has become final.

This decision was taken by Head of Unit [REDACTED] following a presentation by legal counsel [REDACTED].

Copy to

Data Protection Officer, Nobina Europe AB

How to appeal

If you want to appeal the decision, write to the Privacy Protection Authority. Please indicate in the letter the decision you are appealing and the amendment you are requesting. The appeal must have been received by the Swedish Integrity Protection Authority no later than three weeks from the date on which you received the decision. If the appeal has been received in due time, the Swedish Integrity Protection Authority will forward it to the Administrative Court in Stockholm for review.

You can e-mail the appeal to the Privacy Protection Authority if it does not contain any privacy-sensitive personal data or information that may be covered by confidentiality. The authority's contact details are shown in the first page of the decision.