



Our reference: LDA-1085.1-919/20-F

Reference Sweden: IMY-2023-15273

IMI Art. 56: 185306

IMI draft decision: 758623

Controller: [REDACTED] (publ)

On the basis of the draft decision of the Swedish Integritetsskyddsmyndigheten (SE DPA) No. 758623, the Data Protection Authority of Bavaria for the Private Sector (BayLDA) pursuant to Article 60(8) of the GDPR issues the following

### **Final Decision:**

The complaint is rejected.

#### **Justification:**

The complaint was received by the BayLDA on 27 January 2020 and was forwarded via IMI to the SE DPA as the lead data protection supervisory authority for the controller.

In April 2025 the SE DPA submitted the draft decision no. 758623 to the concerned supervisory authorities with the following contents:

### **Decision of the Data Protection Authority**

The Swedish Authority for Privacy Protection (IMY) finds that the investigation does not show any infringements of Article 6(1) or Article 15 of the General Data Protection Regulation (GDPR)<sup>1</sup> in the manner alleged in the complaint.

The case is closed.

### **Presentation of the supervisory case**

#### **Proceedings**

IMY has initiated supervision of [REDACTED] ([REDACTED] or the company) due to a complaint. The complaint has been submitted to IMY, as the lead supervisory authority for the company's activities under Article 56 of the General Data Protection Regulation. The handover has been made from the supervisory authority of the country where the complainant has lodged their complaint (Germany). The transfer has taken place in accordance with the provisions of the regulation on cooperation in cross-border processing.

The investigation in this case has been carried out through written procedure. In view of the cross-border nature of the processing, IMY has made use of the cooperation and consistency mechanisms provided for in Chapter VII of

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<sup>1</sup> 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).

the GDPR. The supervisory authorities concerned have been the data protection authorities of Germany, Ireland, Norway, Estonia, Italy, Finland, Denmark, France and Spain.

IMY's investigation has focused firstly on whether [REDACTED] disclosed the complainant's data to a debt collection agency without a legal basis under Article 6 of the GDPR and secondly on whether the [REDACTED] handled the complainant's access request in breach of Article 15 of the GDPR.

IMY has communicated [REDACTED]'s response to the relevant national supervisory authority in the country where the complainant lodged the complaint. The German Data Protection Authority has replied that the complainant has not responded.

### **What the complainant has stated**

The complainant states that she ordered goods from a company but never received the goods or, for that matter, received an invoice or first reminder in connection with the order. Despite this, the complainant received a payment claim from [REDACTED] on 2 November 2019. The complainant contested the claim on 4 November 2019 and, in doing so, informed [REDACTED] that they could not transfer her personal data.

As the complainant did not receive any feedback from [REDACTED], she sent a reminder to them on 28 November 2019. According to the complainant, [REDACTED] transferred her data to debt collection despite her contestation.

The complainant has attached a letter from [REDACTED] to the complaint. The letter is dated 3 December 2019 and in letter, [REDACTED] states that they has paused their claim against the complainant in order to investigate the matter. [REDACTED] states that their policy department will contact the complainant by e-mail and that she needs to respond to their message, otherwise the claim will be reactivated. [REDACTED] further explains that the complainant also has the option to pause the claim herself in their application. In this case, [REDACTED] will cancel the claim and contact the complainant and the seller in order to investigate the issues raised by the complainant. [REDACTED] also clarifies in the letter that they are only responsible for their invoices. In case of problems with the seller's goods or their delivery, [REDACTED] encourages the complainant to contact the seller.

The complainant wrote to [REDACTED] again on 6 December 2019, requesting that [REDACTED] withdraw the debt from collection and that she be given access to her personal data. The complainant has stated that [REDACTED] never replied. The complainant sent a reminder to [REDACTED] regarding her request for access on 30 December 2019. According to the complainant, the reminder also remained unanswered by [REDACTED].

The complainant has attached copies of the letters to [REDACTED]. IMY has requested proof of delivery through the German Data Protection Authority, but the complainant has not responded.

### **What [REDACTED] has stated**

[REDACTED] is the data controller for the processing in question.

### **The purchase in question**

The information provided by the complainant is not correct. In connection with the order, the complainant provided an e-mail address that [REDACTED] had reason to believe was correct. [REDACTED] has sent e-mails in connection with the order, when the deadline for payment was approaching and when the due date of the invoice had passed. [REDACTED] has also sent a push notification to the mobile phone number provided by the complainant in connection with the payment.

The claim was submitted for collection only after it had fallen due and the complainant had not made payment in accordance with her contract with [REDACTED]. Before handing over the debt for collection, [REDACTED] made several attempts to contact the complainant, as described above. The information provided by [REDACTED] to the debt collector has consisted of the complainant's contact and identification details, information on the goods purchased and information on the use of [REDACTED]'s services, i.e. information on the purchase and the debt.

From what ██████ can see, the complainant has made a return after the due date of the invoice. ██████ has subsequently withdrawn the case from the collection agency and the collection agency has ceased processing the complainant's data. The complainant has since been reimbursed for the order and ██████ has written off the order amount.

### **Legal basis for processing**

██████ has based the processing on a balancing of interests under Article 6(1)(f) of the GDPR. The purpose of the processing has been to collect the debt by outsourcing to a third party, a debt collection company.

██████ has assessed that they have a legitimate interest in collecting debts. According to ██████, the processing was necessary for the debt collection agency to be able to collect the debt, identify the debt and contact the complainant. If the debt collection agency did not receive the information from ██████, it would not be clear which debt was involved or who the complainant was.

██████ has designed their process in a way that balances the interests of the complainant against the interests of ██████. In their balancing of interests, ██████ has taken into account that the debt has passed the due date, that the customer has not paid in accordance with the agreement, that ██████ has attempted to collect the debt on their own, that the purpose of the processing was to collect the debt and that the processing ceased when the case was withdrawn from the debt collection company. In light of this, ██████ has concluded that the complainant's interests do not outweigh their interests in collecting the debt.

### **Handling of the complainant's request for access**

██████ has not received any request for access from the complainant.

## **Reasons for the decision**

### **Applicable provisions etc.**

Article 5 of the GDPR sets out principles for the processing of personal data, such as that the data must be processed lawfully, fairly and in a transparent manner in relation to the data subject. It also states that the controller is responsible for and must be able to demonstrate compliance with Article 5.

Article 24 of the GDPR states that it is the responsibility of the controller to implement appropriate technical and organisational measures to ensure that processing is carried out in accordance with the regulation, taking into account the context and purposes of the processing and the risks of varying likelihood and severity for the rights and freedoms of natural persons.

Article 57(1)(f) of the GDPR requires IMY to deal with complaints from data subjects who consider that their personal data are processed in a manner contrary to the GDPR. The provision further states that IMY shall, where appropriate, investigate the substance of the complaint. The CJEU has stated that the supervisory authority shall investigate such complaints with due diligence.<sup>2</sup>

According to Article 6(1) of the GDPR, the controller must be able to support the processing of personal data on a lawful basis in order for the processing to be authorised. The controller may process personal data on the basis of Article 6(1)(f) of the GDPR if the controller (1) has a legitimate interest, (2) the processing of personal data is necessary to fulfil the legitimate interest pursued and (3) the interests or fundamental rights and freedoms of the data subject do not override the legitimate interest.<sup>3</sup>

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<sup>2</sup> See judgement of the Court of Justice of the European Union, Schrems II, case C-311/18, EU:C:2020:559, paragraph 109

<sup>3</sup> See CJEU judgement TK, C-708/18, EU:C:2019:1064, paragraph 40

According to Article 15 of the GDPR, the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning them are being processed. If such data is being processed, the controller must provide the complainant with additional information and a copy of the personal data processed by the controller.

### **IMY's assessment**

The first issue to be considered by IMY is whether █████ disclosed the complainant's data to a debt collection agency without a legal basis under Article 6 of the GDPR. The second issue for the IMY to consider is whether █████ has handled the complainant's request for access in breach of Article 15 of the GDPR.

Based on the complaint in the case, IMY has only examined █████'s behaviour in the individual case and whether the processing in question can be supported by a legal basis. The supervision does not cover whether █████'s personal data processing is otherwise compatible with the GDPR.

### **IMY's obligation to investigate**

IMY has asked █████ questions in relation to the complaint. The complainant has subsequently been given the opportunity to comment on █████'s answers to the questions. IMY has thus investigated the matter to the extent required by Article 57(1)(f) of the GDPR and Section 23 of the Swedish Administrative Procedure Act.

### **Legal basis for the processing**

█████ has stated that they transferred the complainant's personal data on the basis of a balancing of interests for the purpose of collecting the debt with the help of a debt collection agency.

IMY does not question whether debt recovery can in itself constitute a legitimate interest, whether the transfer of the data was necessary to fulfil the stated purpose or whether the interest of █████ in being able to recover debts is overriding. However, IMY considers that it is unclear how the purchase in question took place and when the transfer of the complainant's personal data to debt collection actually took place.

The complainant's position is that she has ordered goods from a company, but never received the goods or, for that matter, any invoice or reminder regarding the purchase. The company's position is that they sent an order confirmation as well as an invoice and reminders regarding the purchase and that the complainant made a return after the invoice fell due for payment.

The complainant has further stated that █████ transferred her data to debt collection despite her written objection. For their part, █████ has stated that the claim was transferred only after it fell due for payment and the complainant did not make payment in accordance with the agreement. In █████'s letter to the complainant dated 3 December 2019, █████ stated that the complainant either needed to reply to the e-mail from their policy department in order for the claim not to be reactivated, or that the complainant herself needed to pause the claim in their application in order for it to be cancelled. It is not clear whether the complainant got back to █████'s policy department or paused the claim in the application.

Finally, █████ has stated that they have withdrawn the case from the collection agency, that the processing of the complainant's data by the collection agency has ceased, that the debt has been written off by █████ and that the complainant has been reimbursed for the amount of the order. The complainant's position on the allegation is unknown.

IMY has on two occasions given the complainant the opportunity to comment on █████'s replies, but the complainant has not responded. In addition, █████ has given brief answers to IMY's questions. IMY notes that █████ certainly has an obligation under Article 5(2) and Article 24 of the GDPR to demonstrate compliance with the regulation, but in light of the fact that the incident occurred in 2019, IMY considers it understandable if the company cannot account for all the circumstances of the case. The fact that the incident took place in Germany also makes it difficult for IMY to investigate the case further.

IMY therefore concludes that the matter has been investigated to the extent appropriate in the circumstances and that the investigation does not support that the company has processed the complainant's personal data in violation of Article 6 of the GDPR in the manner alleged in the complaint.

### **The handling of the complainant's request for access**

IMY has received a copy of the complainant's letter containing her request for access. [REDACTED] states that they never received the request.

IMY has communicated [REDACTED]'s response to the complainant through the German DPA, requesting proof of delivery of the complainant's access request letters dated 6 December 2019 and 30 December 2019 respectively. The German DPA has informed that the complainant has not responded.

IMY has thereby investigated the matter to the extent required by Article 57(1)(f) of the GDPR and Section 23 of the Swedish Administrative Procedure Act.

IMY finds that the investigation in the case does not show that [REDACTED] has failed to comply with Article 15 of the GDPR in the manner alleged in the complaint.

### **Overall assessment**

Overall, IMY concludes that the investigation does not show that the company has failed to comply with the GDPR in the manner alleged in the complaint.

The case should therefore be closed.

As the concerned supervisory authorities (including BayLDA) did not object to this draft decision, the BayLDA hereby adopts this draft decision as final decision in accordance with Article 60(8) of the GDPR.

Ansbach, 05.05.2025