Summary Final Decision Art 60

Inspection

Main Finding

EDPBI:LSA:OSS:D:2024:1455

Background information

Date of final decision:	26 September 2024
LSA:	FR
CSAs:	SE, SI, RO, PT, PL, NL, MT, LU, IT, EL, ES, DK, HR, BE, AT, DE SAs
Legal Reference:	Article 5(1)(c) GDPR (Data minimisation), Article 5(1)(e) GDPR (Storage limitation), Article 9 (Special categories of data)
Decision:	Administrative fine, violation identified
Key words:	Data minimisation, Data retention, sensitive data, consent, Retention time

Summary of the Decision

Origin of the case

The controller is a clairvoyance company, which offers fortune telling services by phone. Additionally, the controller publishes multiple websites and mobile apps. Those websites and apps offer chat services provided by the company's partner. There is a processing agreement in place between the controller addressed in this case and the company that manages the websites and the phone apps. The only establishment of the company is located in France. Customers are located in different European countries. As the investigation of the LSA found, the company kept full and systematic recordings of phone conversations between fortunetellers and customers, switchboard operators and fortunetellers and between switchboard operators and customers or prospective customers. The company retains customers' data for a period of six years from the end of the last service. Additionally, on one of its websites, the company offered a 'prediction of love compatibility service', which required sensitive data about sex life, health, religious beliefs, etc.

Findings

The LSA concluded that **the full and systematic recording of calls** between the fortune tellers, customers and switchboard operators **did not comply with the principle of data minimisation (Article 5(1)(c) GDPR)**. According to the LSA, the fact that the company was regularly deleting 50% of its recordings does not imply that there is no personal data processing. The LSA first found that the company recorded calls for different purposes, namely for training and quality control, obtaining evidence of conclusions of a contract, complying with judicial requisitions and safeguarding human lives. However, such retention was found excessive in relation to each of these purposes. For example, the LSA noted that the company did not provide any evidence to justify data retention for the purposes of quality control. In addition, in relation to some of these purposes, it could have been sufficient according to the LSA to only record part of the calls (e.g. to preserve a piece of evidence regarding the conclusion of the contract; or only the parts where a person's life was in danger in order to safeguard human lives).

The LSA then concluded that the **company violated the principle of storage limitation (Article 5(1)(e) GDPR)**. Specifically, the LSA found that the 6-year retention period applied to customers' data for marketing purposes was disproportionate. The LSA recalled that, when the personal data are no longer used, the controller might retain the data in order to meet a legal obligation in an archive to which only authorised personnel should have access. Moreover, the LSA noted that it has recommended a three-year retention period for marketing purposes, but the company retained the data for twice that period. Furthermore, the LSA noted that the company was using the retained data to send in average one email per day to its previous customers.

The last violation that the LSA found was relating to the conditions for **processing special categories of personal data under Article 9 GDPR**. The LSA highlighted that, even if the data collected by the company do not reveal the sexual orientation of the data subject directly, these data might still be sensitive if they disclose the sexual preferences of a person *indirectly*. Then the LSA observed that the data subjects did not give their explicit and prior consent to the processing of such data, which is one of the exceptions to be able to process special categories of personal data.

Decision

The LSA imposed a fine of 200,000 euros on the controller for the infringement of Articles 5(1)(c), 5(1)(e) and 9 of the GDPR. The LSA also decided to publish the final decision on its website and on the Légifrance website for two years, after which the company will not be identifiable anymore. In order to impose the fine according to the GDPR, the LSA also took into account, the multiplicity of breaches as an indicator of negligence, the vulnerability of the clients of fortune telling services and the intrusive character of phone recordings.