



ANDMEKAITSE INSPEKTSIOON

FOR INTERNAL USE

Holder of information: Data Protection Inspectorate

Notation made: 12.05.2025

The access restriction applies until: 12.05.2100 and for p 2 until entry into force of the Decision

Basis: Section 35(1)(2), Section 35(1)(12) of the PIA

All SAs

Our 12.05.2025 No. 2.1-12/24/1081-2661-9

ARTICLE 60 FINAL ADOPTED DECISION**Reprimand and termination of supervision proceedings**

Through the cross-border procedural system IMI, the Estonian Data Protection Inspectorate (DPI) received a complaint from the Lithuanian data protection authority, [REDACTED] (the applicant), according to which the applicant received electronic direct marketing offers from [REDACTED] [REDACTED] ([REDACTED]), from which the applicant had not been able to withdraw (IMI reference: 61VMN 695198.1; SA Lithuania's national reference number: 2.1.-1/21/3959).

According to the complaint, the applicant has not consented to receiving direct marketing offers, but [REDACTED] has repeatedly sent marketing emails to its email address [REDACTED]. The applicant does not wish to use the opt-out link because it does not consider it safe. In addition, it did not work in practice. By clicking on the link, confirmation of the cancellation of the order appeared on the computer screen, but the applicant continued to receive direct marketing emails 'in connection with the order'. The applicant also used the "unsubscribe" solution offered by Gmail. But he said it didn't work either. In addition, the applicant sent a written complaint to [REDACTED]'s email address [REDACTED] on 1 August 24 concerning direct marketing, in which it requested, inter alia, that its personal data no longer be used for any purpose. The applicant also sent [REDACTED] a reminder of 9 September 24 in order to respond to its complaint, but [REDACTED] did not reply to either of those two letters.

On the basis of Section 56(3)(8) of the Personal Data Protection Act, we commenced a supervisory procedure and sent an inquiry to the controller.

Clarifications by the controller

According to [REDACTED], they sent bids to the applicant on the basis of a legitimate interest, relying on the presumptions laid down in Paragraph 103¹(3) of the Electronic communications Act² (ESS).

In a situation where [REDACTED] cannot rely on a legitimate interest, they send offers/newsletters on the basis of consent, pursuant to Paragraph 103¹(1) of the ESS.

The applicant's bids were cancelled following the identification of the problem (05.12.2024), i.e. the applicant no longer receives direct marketing offers from [REDACTED].

¹ [REDACTED] is [REDACTED]'s main data processor (also in the case of direct marketing).

² [Electronic Communications Act–Riigi Teataja](#)

All offers/newsletters sent by [REDACTED] contain an opt-out link that allows the customer to opt out of receiving direct marketing/unsubscribe.

Users can opt out of receiving direct marketing in the [REDACTED] app under profile settings. If a user contacts [REDACTED] regarding an opt-out link issue, customer support will instruct them to use the direct marketing opt-out option under the profile settings. If the user is still unable to cancel the subscription, the [REDACTED] customer support team will manually cancel the direct marketing subscription.

[REDACTED] has published an article on opting out of direct marketing. The article is available on the page: [REDACTED].

They carried out an internal investigation into the applicant's failure to engage in direct marketing.

Internal investigation by the controller

On 28 February 2025, [REDACTED] sent the DPI the results of an internal investigation in which they ascertained the reasons why the applicant had problems in withdrawing from direct marketing.

Profiles related to the applicant

The [REDACTED] investigation identified four active profiles linked to the applicant in the [REDACTED] system:

1. [REDACTED] Profile, e-mail [REDACTED] and phone number [REDACTED];
2. [REDACTED] Food Profile, e-mail [REDACTED] and phone number [REDACTED];
3. [REDACTED] Profile, e-mail [REDACTED] and phone number [REDACTED];
4. [REDACTED] Profile, email [REDACTED] and phone [REDACTED].

The applicant's attempts to cancel the order

1. [REDACTED] Profile

The applicant cancelled the order in the 'Marketing and Recommendations'³ and 'Products'⁴ categories for all communication channels (e-mail, push notifications, SMS) on 8 October 2021. The second order cancellation request for the same categories was made on 08.04.2022. [REDACTED] does not know the exact reason why the applicant decided to submit a second request to cancel the order. Their data confirms that 1. No direct marketing offers were sent to [REDACTED] profile after 08.10.2021.

2. [REDACTED] Food Profile

The applicant cancelled the order for all marketing channels under the communication preferences settings of the [REDACTED] Food profile on 06.10.2024. [REDACTED] asserts that the cancellation of the order worked and that no direct marketing messages were sent to the applicant's [REDACTED] Food profile following the cancellation request.

3. [REDACTED] Profile

The applicant cancelled the order via a link in the e-mail on 07.09.2024. The applicant's request was successfully resolved. The applicant cancelled its orders for other communication channels (push notifications, SMS) under the communication preferences settings of the [REDACTED] profile on 23 September 2024.

³ In English „Promotions and Tips“

⁴ In English „[REDACTED] Products“

The applicant contacted the █████ helpdesk on 6 October 2024, as it continued to receive direct marketing offers despite previous requests for cancellation. The contact person for █████'s helpdesk informed the applicant that he had several profiles and that direct marketing orders had not been cancelled from all profiles. The helpdesk contact person manually removed complainant 3. █████'s profile from all direct marketing channels and checked that the applicant's direct marketing subscription had also been cancelled for other profiles.

Refusal to review request for cancellation of order

█████'s internal investigation established that the applicant had submitted a data subject's request (DSR)⁵ to █████ on 1 August 24 and on 9 September 24, in which it objected to direct marketing. Due to human error, █████'s privacy team inadvertently rejected these requests.

Confirmation of cancellation of the order

█████ confirms that, as of 06.10.2024, the applicant's direct marketing subscription has been successfully cancelled in all its █████ profiles and no direct marketing messages have been sent to it since then.

The position of the DPI

The processing of personal data and the protection of privacy in the electronic communications sector are governed by Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 (the ePrivacy Directive).

According to Article 95 of the General Data Protection Regulation (GDPR), the GDPR does not impose any additional obligations on natural or legal persons in relation to the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in the ePrivacy Directive.

However, according to recital 173 of the GDPR, the GDPR should apply to all cases concerning the protection of fundamental rights and freedoms in relation to the processing of personal data, which are not subject to specific obligations with the same objective set out in the ePrivacy Directive, including the obligations of the controller and the rights of natural persons.

According to Article 2(f) of the ePrivacy Directive, consent given by a user or subscriber corresponds to the data subject's consent as defined in Directive 95/46/EC. Pursuant to Article 94(2) of the GDPR, references to the repealed Directive 95/46/EC are to be construed as references to the GDPR.

In the light of the foregoing, the provisions of both the ePrivacy Directive and the GDPR apply to the consent to a direct marketing offer in the present case.⁶

Article 13(1) of the ePrivacy Directive provides that the use of electronic mail for direct marketing is permitted only in respect of subscribers who have given their prior consent. Paragraph 2 of that article provides that, notwithstanding the provisions of paragraph 1, where a natural or legal person obtains from its customers their electronic contact details for electronic mail in connection with the sale of a product or a service in accordance with Directive 95/46/EC,

⁵ In English „Data Subject Request“ („DSR“)

⁶ See also the judgment of the Court of Justice of 1 October 2019 in Case C 673/17 (Planet49).

the same natural or legal person may use those electronic contact details for the direct marketing of its own like products or services, provided that customers are given a clear and comprehensible opportunity to object, free of charge and in an easy manner, to such use of electronic contact details at the time they are provided and for each message, unless the customer has initially objected to such use.

Under Article 4(11) GDPR, the data subject's consent is any freely given specific, informed and unambiguous indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.

Article 7(3) GDPR requires the controller to ensure that the data subject can withdraw his or her consent at any time with the same ease as if he or she had given it. Therefore, the data subject should be able to withdraw consent through the same electronic interface (e.g. e-mail, application) and not switch to another interface merely to withdraw consent, as this requires unnecessary effort. If the right to withdraw consent does not comply with the requirements of the GDPR, the controller's consent mechanism is not in compliance with the GDPR.⁷

According to the complaint, and according to ■■■■, there was an opt-out link in the direct marketing offer sent to the applicant. However, according to the applicant, that did not work and he continued to receive direct marketing emails. During an internal investigation by ■■■■, it became apparent that the applicant had several profiles and that no direct marketing orders had been cancelled under all of those profiles. Since the applicant had the impression that the opt-out link was not working because it continued to receive offers from ■■■■, it no longer wished to use the link. On 1 August 25, the applicant wrote to ■■■■ to withdraw its offers, but did not receive a reply from ■■■■. According to ■■■■'s explanations, those requests were inadvertently rejected by ■■■■'s privacy team due to human error. Thus, the applicant was not guaranteed a simple withdrawal of consent (Article 7(3) of the GDPR), as there was no response to the applicant's requests. **In the view of the DPI, the controller thereby infringed Article 7(3) GDPR.**

The complaint lodged by the applicant with ■■■■ on 1 August 24 also corresponds to the objection raised by the data subject under Article 21(2) of the GDPR with regard to the processing of his personal data for direct marketing purposes. It follows from paragraph 3 of that article that, where the data subject objects to the processing of data for direct marketing purposes, the personal data may no longer be processed for such purposes. Pursuant to Article 12(2) GDPR, the controller shall facilitate the exercise of the rights of the data subject under Articles 15 to 22. The controller should facilitate the exercise of the above rights by the data subject. Pursuant to Article 12(3) GDPR, the controller is obliged to respond to requests from the data subject without undue delay and at the latest within one month of receipt of the request. That period may be extended by two months where necessary, taking into account the complexity and number of the request. The controller shall inform the data subject of any such extension and of the reasons for the delay within one month of receipt of the request. ■■■■ did not respond to the objection raised by the applicant, did not stop processing his personal data following the applicant's request and did not assist the applicant in withdrawing from direct marketing offers. **According to the DPI, the controller thereby infringed Article 12(2) and (3) of the GDPR.**

⁷ European Data Protection Board. Guidelines 05/2020 on consent under Regulation (EU) 2016/679, p. 114, 116, pp. 24-25.

Since the DPI did not receive any feedback from the applicant as to whether the receipt of direct marketing offers had ended at its e-mail address, the DPI assumes that the applicant has not received any offers from the controller after 06.10.2024.

The DPI takes into account that, according to the controller's confirmation, all direct marketing offers from [REDACTED] have an opt-out link. The controller manually cancelled the applicant's order for direct marketing offers after receiving a new request from the applicant. However, [REDACTED] did not respond to the objection sent by the complainant on 1 August 24 and the reminder sent on 9 September 24, nor did it cancel the assistance provided to the complainant in withdrawing from direct marketing offers.

In view of the above, and on the basis of Article 58(2)(b) GDPR, the Data Protection Inspectorate issues a reprimand to [REDACTED] for breach of Article 7(3) and Article 12(2) and (3) GDPR and terminates the present supervision proceedings.

This reprimand and termination of supervision proceedings can be challenged within 30 days by submitting an appeal to the administrative court under the Code of Administrative Court Procedure⁸.

Yours sincerely,

[REDACTED]

Lawyer

Under the authority of the Director-General

⁸ [Code of Administrative Court Procedure–Riigi Teataja](#)