

Ref: D130.1948
2026-0.099.673

Case contact: [REDACTED]

Data protection complaint
[REDACTED]

FINAL DECISION

VERDICT

The Austrian Data Protection Authority decides on the data protection complaint lodged by [REDACTED] (complainant), represented by [REDACTED], of 6 June 2024 against [REDACTED] (respondent), established in Ireland, due to infringements of Article 5(1) and (2), Article 6(1), Article 9(1), Article 12(1) and (2), Article 13(1) and (2), Article 17(1)(c), Article 18(1)(d), Article 19, Article 21(1) and Article 25 of the GDPR, as follows:

- The complaint is dismissed as unfounded

Legal bases: Articles 4, 51(1), 56, 57(1)(f), 60 and 77(1) of Regulation (EU) 2016/679 (General Data Protection Regulation; 'the General Data Protection Regulation'): GDPR), OJ L 119, 4.5.2016, p. 1; Sections 18(1) and 24(1) and (5) of the Austrian Data Protection Act (DSG), BGBl. I No 165/1999 as amended.

REASONING

A. Arguments of the parties and course of the proceedings

1. The complainant lodged a complaint against the respondent on 6 June 2024, arguing, in summary, that the respondent had announced that it would irrevocably collect datasets of more than 400 million data subjects (including those of the complainant) in the EU and EEA for the purposes of artificial intelligence technology, without specifying the purpose of such systems. The respondent hereby allegedly infringes a number of provisions of the GDPR. In addition, a request for the imposition of a provisional ban and the initiation of an urgency procedure before the European Data Protection Board has been requested in this matter.
2. By partial decision of 9 August 2024, the Austrian Data Protection Authority rejected the request to impose interim measures in the context of an urgency procedure before the European Data Protection Board. With regard to the remaining parts of the complaint, the Austrian Data Protection Authority initiated a procedure under Article 56 GDPR on 27 August 2024 to determine the lead supervisory authority and the supervisory authority(ies) concerned.
3. The Irish Data Protection Commission (hereinafter: 'DPC') declared itself to be the lead supervisory authority with regard to the complaint and initiated the investigations.
4. By letter of 25 April 2025 from the Austrian Data Protection Authority, the complainant was granted the right to be heard on the findings of the investigations and on the preliminary draft decision of the DPC. In summary, the DPC found that the processing operations at issue described in the complaint had not (yet) taken place at the time the complaint was lodged and that the complaint should therefore be dismissed.
5. In its submission of 6 May 2025, the complainant commented on this and disputed the statements of the respondent and the DPC, since the complainant argued that protection granted by the GDPR also applies to intended data processing activities in the future. Furthermore, the complaint was re-submitted by the complainant from the date of the first processing by respondent.
6. By letter of 29 July 2025 from the Austrian Data Protection Authority, the complainant was informed that the DPC still intended to dismiss the complaint.
7. By submission of 8 August 2025, the complainant provided a statement in that regard and, in summary, criticised that neither the original complaint nor the re-submitted complaint have been dealt with by the DPC in accordance with Article 57(1)(f) of the GDPR.

8. On 22 August 2025, the DPC adopted a draft decision pursuant to Article 60(3) of the GDPR, proposing the complete dismissal of the complaint.

9. On 28 August 2025, the Austrian Data Protection Authority lodged a relevant and reasoned objection pursuant to Article 60(4) of the GDPR against the draft decision of the DPC.

10. Subsequently, on 8 January 2026, the DPC submitted, in accordance with Article 60(5) of the GDPR, a revised draft decision proposing that the complaint shall be dismissed only in relation to the alleged infringements at the time when the complaint was lodged and that the alleged infringements in relation to a later date shall be further dealt with in separate proceedings. The revised draft decision has not been objected by any supervisory authority concerned and thus became binding pursuant to Article 60(6) of the GDPR.

B. Subject-matter of the complaint

The subject of the complaint is the question whether, at the time the initial complaint was lodged (6 June 2024), the respondent has infringed the complainant's data protection rights by processing the complainant's personal data in connection with the training and development of AI technologies and the implementation of AI technologies in the respondent's products.

C. Findings

The course procedure described under point A, which is documented in the administrative file, constitutes the basis for the findings of the Austrian Data Protection Authority.

Evidence assessment: *The findings on the course of the proceedings are based on the administrative file at issue.*

D. Legal assessment

D.1. The role of the respondent

According to Article 4(7) of the GDPR, a controller is *'the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by*

Union or Member State law, the controller or the specific criteria for its designation may be provided for in Union or Member State law’.

In the present case, there was no doubt that in the light of the processing operations alleged by the complainant the respondent had to be qualified, at first glance, as the controller within the meaning of Article 4(7) of the GDPR.

D.2. Competence

Pursuant to Article 56(1) of the GDPR, *‘the supervisory authority of the main establishment or the sole establishment of the controller or processor shall, in accordance with the procedure referred to in Article 60, be the competent lead supervisory authority for the cross-border processing carried out by that controller or processor’.*

Under Article 4(16) of the GDPR, the main establishment of a controller *‘... is the place of its central administration in the Union’*, where *‘decisions on the purposes and means of the processing of personal data are taken’*.

In the present case, there was no doubt that the respondent had its main establishment within the meaning of Art. Article 4(16) of the GDPR at the relevant time in Ireland.

According to Article 4(23) of the GDPR, a cross-border processing is either *‘(a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or (b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State’.*

In the present case, there was no doubt that the complaint constituted an alleged cross-border processing within the meaning of Art. 4(23) of the GDPR.

For the reasons set out above, the DPC, as the lead supervisory authority in accordance with Article 56 of the GDPR, was competent to deal with the complaint.

D.3. Investigations of the DPC

Prior to the submission of the complaint to the DPC on 27 August 2024, the DPC worked intensively with the respondent with regard to the implementation of envisaged changes in the latter’s privacy

policy, which were made available to users of platforms of the respondent and which, according to the respondent, would enter into force on 26 June 2024.

In June 2024, the DPC requested the respondent to suspend the training of its AI by using personal data of EU/EEA users in order to give the DPC and other supervisory authorities concerned time to assess the legitimate interests relied upon by the respondent as a legal basis for AI training purposes and other related issues.

Following the cooperation with the DPC, the respondent agreed to voluntarily suspend the processing announced in its amended privacy policy, which in turn resulted in the respondent not using EU/EEA user data for AI training purposes at the time the complaint at issue has been lodged.

Upon receipt of the present complaint, DPC examined the extent of possible overlaps (if any) between the time the complaint was lodged and the processing activity was suspended by the respondent. In this context, the DPC concluded that:

- a. The suspension of the introduction of respondent's AI model has led to the fact that the processing of the complainant's personal data referred to in respondent's communication to the complainant, which is the subject of the complaint, has not taken place. Since this processing did not take place, an examination on the basis of Articles 5 and 6 of the GDPR was not necessary.
- b. Since no processing of the complainant's personal data took place at the time relevant to the proceedings, there was also no processing for which certain information had to be provided to the complainant. Therefore, the obligations under the GDPR, including the right to transparent information, communication and modalities for the exercise of a data subject's rights under Article 12 of the GDPR, were not applicable.
- c. Since no processing of the complainant's personal data took place at the time relevant to the proceedings, there was also no processing for which the complainant should have been provided with information when personal data is collected from the data subject. Since this processing did not take place, the rights under Article 13 GDPR invoked in this complaint were not applicable.
- d. Since no processing of the complainant's personal data took place at the time relevant to the proceedings, there was also no processing under which the complainant could have requested the erasure of its data or its data had to be deleted, which is why the Right to erasure under Article 17 GDPR was not applicable.
- e. Since no processing of the complainant's personal data took place at the time relevant to the proceedings, there was also no processing under which complainant could have requested the

rectification of its data, which is why the Right to rectification under Article 18 GDPR was not applicable.

f. Since no processing of the complainant's personal data took place at the time relevant to the proceedings, there was also no processing to which complainant could object, which is why the Right to object under Article 21 GDPR was not applicable.

g. Since no processing of the complainant's personal data took place at the time relevant to the proceedings, there was also no processing that should have been examined in the light of Article 25 of the GDPR with regard to Data protection by design and by default.

D.4. On the merits

The processing announced in the respondent's privacy policy and objected to by the complainant was suspended before the start announced by the respondent (26 June 2024) and did not take place at the time relevant to the proceedings, so that the complainant's personal data were not processed at the time the complaint was lodged.

Taking into account the obligation of a supervisory authority laid down in Article 57(1)(f) of the GDPR, i.e. to deal with complaints from a data subject and to investigate the subject matter of the complaint to the extent appropriate, the DPC as the competent lead supervisory authority considered that there has been no infringement of the GDPR in the period relevant to the proceedings and that the present complaint shall therefore be dismissed.

If a complaint is dismissed, the supervisory authority with which the complaint has been lodged shall, by way of derogation from paragraph 7 leg. cit., issue the decision in accordance with Article 60(8) of the GDPR. In the present case, the Austrian Data Protection Authority therefore had to adopt the final decision on the basis of the DPC's revised draft decision which had become binding.

The present decision, including the findings and analyses contained therein, is without prejudice to further investigations or examinations in connection with the assessment of the legal bases on which the respondent relies regarding the development and implementation of AI models in its products in order to fulfil its obligations under the GDPR in connection with the processing of personal data of registered users on the respondent's platforms in the EU/EEA.

Finally, it should be noted that the concerns raised by the complainant regarding the alleged processing of its personal data by respondent after the period relevant for the proceedings at issue will be examined and handled in a separate procedure.

Against this background, it had to be decided according to the verdict.

EXPLANATION ON RIGHTS OF APPEAL

This decision may be appealed in writing to the Federal Administrative Court within **four weeks** of delivery. The complaint **must be submitted to the Austrian Data Protection Authority** and must contain:

- the name of the contested decision (Ref., subject)
- the name of the respondent authority;
- the grounds on which the allegation of illegality is based;
- the desired result and
- the information necessary to assess whether the complaint has been lodged in a timely manner.

The Data Protection Authority may, within two months, either amend its decision by **means of a preliminary decision on the complaint** or **submit the complaint with the files of the proceedings to the Federal Administrative Court**.

The complaint against this decision is **subject to a fee**. The fixed fee for such an entry, including supplements, shall be **EUR 50**. The fee must be paid to the account of the Austrian Tax Office, stating the intended purpose.

In principle, the fee must be paid electronically using the 'Finance Office payment' function. The recipient must be the Austrian Tax Office - Service for Special Responsibilities (IBAN: AT83 0100 0000 0550 4109, BIC: BUNDATWW). In addition, the tax number/tax account number 10 999/9102, the tax type 'EEA-complaint fee', the date of the decision must be indicated as the period and the amount.

If the e-banking system of your credit institution does not have the function 'Finance Office payment', the eps procedure can be used in FinanzOnline. An electronic transfer can only be excluded if no e-banking system has been used so far (even if the taxpayer has an internet connection). Then the payment must be made by means of a payment order, paying attention to the correct allocation. Further information can be obtained from the tax office and from the manual '*Electronic payment and notification of payment of self-assessment levies*'.

The payment **of the fee** must be **demonstrated** when the complaint is lodged **with the Austrian Data Protection Authority** by means of a proof of payment to be attached to the submission or a print-out of the payment order issued. If the fee is not paid or not paid in full, a **notification will be sent to the competent tax office**.

A timely and admissible appeal to the Federal Administrative Court shall have **suspensive effect**. The suspensive effect may have been excluded in the ruling of the decision or may be excluded by a separate decision.

13 February 2026

For the Head of the Austrian Data Protection Authority:

[REDACTED]