

Summary Final Decision Art 60

Complaint

EDPBI:IE:OSS:D:2022:360

Reprimand, Compliance order

Date of summary: 04/10/2022

Background information

Date of complaint:	02 July 2019
Draft decision:	06 January 2022
Revised draft decision:	07 April 2022
Date of final decision:	27 April 2022
LSA:	IE
CSAs:	All SAs
Legal Reference(s):	Article 5 (Principles relating to processing of personal data), Article 6 (Lawfulness of processing), Article 12 (Transparent information, communication and modalities for the exercise of the rights of the data subject), Article 17 (Right to erasure ('right to be forgotten'))
Decision:	Reprimand, Compliance order
Key words:	Right to erasure, Legitimate interest, Data minimisation, Identity verification, Data retention, Exercise of data subject rights, Social media.

Summary of the Decision

Origin of the case

The complainant claimed that, on submitting a request for erasure pursuant to Article 17 GDPR, the data controller asked him to provide for a copy of his photographic ID in order to verify his identity. The complainant contended that the controller did not have legal basis to request and process these documents in so far as a user can create an account just submitting an email address and a phone number. The controller asserted that it can rely on its legitimate interest (to avoid fraudulent requests in order to guarantee the safety of all users of the platform) to process a copy of the complainant's photographic ID. The complainant also claimed that the controller didn't reply to his erasure request within the statutory timeframe laid down in Article 12(3) GDPR and continued to retain his phone number and email address associated with his account without a valid legal basis. The controller denied having replied late and stated that email address and phone number associated to permanently

suspended accounts are retained indefinitely for the purpose of maintaining the safety and security of the platform (controller's legitimate interest).

As part of the cooperation procedure based on Article 60 GDPR, a draft decision was submitted on 6 January 2022. The PL and PT SAs raised relevant and reasoned objections to the draft decision and the FI and IT SAs made comments on it. A revised draft decision was submitted on 7 April 2022 on which consensus has been reached.

Findings

The LSA considered that making the provision of photographic ID a mandatory requirement in order for the data subject to exercise their right to erasure constitutes a processing (in terms of collection) of personal data for which the data controller did not identify any legal basis under **Article 6(1)** GDPR. Moreover, the LSA considered that the legitimate interest cannot be deemed a valid legal basis to process the photographic ID, even in special circumstances (in the case at stake, account suspended), as the request is neither necessary or proportionate in the extent to the provision of a copy of such data was not a requirement at account opening stage and less data-driven solutions are available to verify the data subject's identity (e.g. by way of confirmation of email address or verification of telephone number). For these reasons the LSA found an infringement of the principle of data minimisation, pursuant to **Article (5)(1)(c)** GDPR.

The LSA also found that the controller has not sufficiently demonstrated that it had reasonable doubts concerning the complainant's identity that would have necessitated the application of **Article 12(6)** GDPR.

With reference to the handling of the complainant's erasure request, the LSA noted that the complainant lodged a number of separate complaints with the controller in relation to the matter of his erasure request, but nevertheless the controller failed to provide him with information on action taken within one month of receipt of the request. For these reasons the LSA found an infringement of **Articles 17(1)** GDPR as there was an undue delay in handling the complainant's erasure request and **Articles 12(3)** by failing to inform him of the action taken within one month.

Concerning the retention of the complainant's email address and phone number following his request for his account erasure, the LSA considered that the controller's legitimate interest to ensure integrity of its platform and to protect the safety and security of its users overrides the complainant's legitimate interest so it has to be deemed a valid legal basis under **Article 6(1)(f)** GDPR. Nevertheless, the LSA highlighted that, in order to comply with the principle of storage limitation under **Article 5(1)(e)** GDPR the controller is obliged to keep personal data for no longer than is necessary for the purposes for which they are processed and it put the onus on the controller itself to determine, based on its business needs and legitimate interests, the appropriate retention period in the case at stake.

Decision

The LSA issued a reprimand to the data controller. The LSA found that an administrative fine would not be necessary, proportionate and dissuasive in the case at stake taken into account that i) the controller does not generally seek for a copy of photographic ID in order to deal with erasure requests from data subjects, ii) the delay in handling the erasure request in the case at hand does not appear to have arisen from a systemic set of issue and iii) the data subject's personal data has been erased (no order to comply with the data subject's request needed). The controller was ordered to bring its data processing operations into compliance with Article 5(1)(c) GDPR by revising its internal policies and procedures for handling erasure requests without seeking a copy of photographic ID unless it can demonstrate a legal basis for doing so within a specified period (3 months).