

## data protection - legal changes published in August 2020

### EUROPEAN UNION

#### 1. DENMARK. DANISH COMPANY PRIVATBO WAS FINED FOR VIOLATING THE PROVISIONS OF THE GDPR.

On August 4, 2020, the Danish Data Protection Agency announced that it proposed that a fine of DKK 150,000 for breaching the provisions of data protection law, according to a statement.

It was concluded that, in 2018, the Danish company PrivatBo assisted a housing fund with an intended sale of three properties. On that occasion, PrivatBo provided material for the properties in question, which was distributed to the occupants of the properties on a total of 424 USB keys. However, PrivatBo was not aware that some of the documents contained personal information of a confidential nature which should not have been disclosed.

The Danish Data Protection Agency assessed the case and found that PrivatBo has not complied with the requirements of Article 32 of the Data Protection Regulation **to implement appropriate technical and organizational security measures.**

The Danish DPA has therefore chosen to report PrivatBo to the police for the unintentional disclosure of personal information and proposed a fine of DKK 150,000.

#### 2. SPAIN. SEVERAL FINES WERE APPLIED FOR VIOLATING THE PROVISIONS OF THE GDPR.

The Spanish Data Protection Authority (AEPD) imposed several fines to certain companies for them breaching the GDPR, as detailed below:

##### 2.1 A fine of EUR 70,000 was imposed on XFERA MOVILES for disclosing a customer's personal data to a third party.

The claimant was informed by another customer of Masmovil (which is the group entity who owns XFERA MOVILES) that, because of a company's mistake, they had been charged with a claimant's bill, and thus had access to their personal data (name, surname, ID card number, and personal phone number).

The AEPD considered that this constitutes a breach of the principle of confidentiality, as established by Article 5(1)(f) of the GDPR, thus imposing the fine mentioned above.

##### 2.2 A fine of EUR 75,000 was imposed on VODAFONE ESPAÑA for processing the claimant's telephone number for marketing purposes after they had exercised their right to erasure in 2015.

The above sanction was applied by the AEPD for the detailed breach, as the claimant was sent advertising SMS in spite of exercising its right to erasure.

In their defense, the controller stated that the claimant number, being easy to remember, had been used as a "dummy number" by its employees.

However, the AEPD considered that VODAFONE ESPAÑA violated Article 6(1) of the GDPR, by processing the claimant's personal data without any lawful basis.

### **2.3 A fine of EUR 1,200 was imposed on a company for not complying with advertisement exclusion.**

The AEPD imposed said fine on a company for calling the data subject, offering them a deal on hotels, while they were included in an advertisement exclusion system. By joining this system, the data subject exercised their right to object to processing for marketing purposes under Article 21 GDPR.

However, the company did not comply with its obligation of consulting the advertisement exclusion system before making a telephone call with marketing purposes in order to avoid processing their personal data.

The data subject received a call from the data controller's number, stating that a friend of them had provided the company with their telephone number so that they offer them a hotel voucher, naming other friends of theirs and declaring that they had joined the promotion.

In this context, the AEPD considered that this constitutes a breach of Article 48(1)(b) of the Spanish Law 9/2014 on General Telecommunications.

### **3. BELGIUM. TELECOM OPERATOR PROXIMUS WAS FINED EUR 20,000 FOR SEVERAL DATA PROTECTION INFRINGEMENTS DURING THE PROCESSING OF PERSONAL DATA FOR THE PURPOSE OF PUBLISHING PUBLIC TELEPHONE DIRECTORIES.**

In fact, a Belgian citizen (*i.e.* the plaintiff, having his name pseudonymized) had requested Proximus – which is the publisher of a public directory – to retract the publication of his personal data in Proximus' public directory, as well as the publication of the personal data in the directory of other publishers.

Proximus, as publisher of its own public directory, had confirmed towards the plaintiff it would no longer publish the personal data, and would also inform other publishers of a public directory to proceed in a similar manner (not to publish the personal data of the plaintiff).

However, a few months later, the plaintiff discovered that his personal data had not only been published in the directory of Proximus, but also in the ones of other publishers of a public directory.

In this context, the Belgian Data Protection Authority upheld, *inter alia*, that:

- (a) Proximus, as a controller for several relevant processing activities, has a responsibility to align the withdrawing of the data subject's consent with the actual processing activities.

It is apparent that Proximus did not take the appropriate measures to ensure and be able to demonstrate that the personal data of the complainant was not unlawfully processed after the withdrawal of the consent. Thus, Proximus had not appropriately fulfilled its obligations as a controller and therefore infringed article 6 GDPR read in conjunction with article 7 GDPR, as well as articles 24 and article 5.2 GDPR.

- (b) Proximus did not provide the data subject with transparent information during and after the handling of his request, nor did it appropriately facilitate the exercise of his data subject rights, and therefore infringed article 12 and article 13 GDPR.

#### **4. POLAND. SEVERAL FINES WERE APPLIED FOR VIOLATING THE PROVISIONS OF THE GDPR**

The Polish Data Protection Authority (UODO) imposed several fines to certain entities for them breaching the GDPR, as detailed below:

##### **4.1 A penalty of a reprimand was imposed for the processing of students' personal data without legal basis in connection with survey carried out by a school in the school year 2019/2020.**

The survey mentioned above was entitled "Diagnosis of student's home and school situation" and was aimed to examine personal situation of students.

In connection with the survey, the school processed personal data of students, including minors, such as: names and surnames, attended class, indication of legal guardians, family status, the number of people in the household, financial situation, health condition, and information on social benefits.

During the inspection from the UODO, it was established that the survey was conducted to identify students who require psychological support from the school they attend. The survey was carried out by class teachers in classes 7-8 of elementary school and in high school classes and it was conducted in the form of in *blanco* paper forms on direct instruction from school principal. All returned copies of the survey were destroyed by an official commission.

According to the findings of the inspection, personal data included in the surveys were not entered into electronic telecommunication systems, were not recorded on electronic data carriers or other information carriers, including in paper form. After collecting the surveys, the teachers did not make any scans or paper copies of them, nor did they make other additional documents containing personal data concerning the surveys. As of the date of the inspection, students' personal data obtained in connection with the surveys were no longer processed.

Moreover, the surveys were conducted in a way that excludes the possibility of unauthorized disclosure of the data contained in them.

In this context, it was concluded that, by conducting a survey among students, the school has violated the principle of lawfulness of data processing, developed in the content of Article 6(1)(c) of the GDPR.

The school, as a public entity, may process personal data within the scope of its tasks imposed by law.

However, the legal acts regulating the functioning of educational institutions do not specify such tasks and obligations of schools that would justify the processing of students' personal data in the way described above, in connection with the conducted survey.

In terms of sanctions, UODO's President considered that a reprimand was sufficient. The unintended nature of the infringement was considered an attenuating circumstance.

##### **4.2 A fine of PLN 100,000 was imposed on the Surveyor General of Poland.**

The above sanction was applied to the Surveyor General of Poland (GGK) for the infringement of the principle of lawfulness of personal data processing and for making intentionally available, without a legal basis, on the GEOPORTAL2 (geoportal.gov.pl), of personal data in the form of land register numbers obtained from the land and property registers.

In fact, the UODO decided to carry out inspection activities at the Surveyor General of Poland. However, GGK prevented the possibility of examining the legality of publishing information on the land register numbers on GEOPORTAL2.

During the inspection, GGK made available only documentation specifying the organizational measures applied to ensure the data security and the evidence proving the appointment of the Data Protection Officer. As a result, the UODO's President imposed an administrative fine. However, despite the refusal to carry out an inspection, GGK gave testimony which served as evidence in the present proceedings.

According to the testimony submitted, GGK publishes information obtained from land and property registers (including land register numbers) from 90 *poviat starosties* (which are a sort of district administrators) only on the basis of agreements concluded with them.

In accordance with Article 5(1)(a) of the GDPR, personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject. The data is processed lawfully only in cases where at least one of the conditions indicated in Art. 6 GDPR is met.

During the proceedings, GGK did not indicate a provision of law which would constitute the legal basis for its activity. Moreover, none of the legal provisions governing matters related to the activities of the Surveyor General of Poland allows it to make available data obtained from the *starosties* within the framework of GEOPORTAL2. In the opinion of the UODO's President, the Surveyor General of Poland, aware of the lack of a clear legal basis for the processing of land registers numbers, concluded agreements with the *starosties* on the basis of which it obtained information from the land and property registers (including land registers numbers) kept by the *starosties* for the purpose of their publication on GEOPORTAL2.

The supervisory authority considered that these agreements concerned the creation and maintenance of common elements of the technical infrastructure intended to store and make available certain data filing systems, but did not constitute a legal basis for making available the data, including land register numbers. Such a basis must result from commonly binding legal provisions.

Having regard to the above, UODO's President considered that personal data were made available in the form of land register numbers on GEOPORTAL2 without a legal basis, resulting in infringement of Article 5(1)(a) and Article 6(1) of the GDPR.

The scope of data disclosed in the land register of natural persons includes, among others, names, surnames, parents' names, PESEL number (personal identification number), property address. The publication of such data allows the identification of the person whose data is contained in the land register. By publishing land register numbers on Geoportal2, access to the information contained in them can be obtained by any interested Internet user. This type of situation may expose a very large number of people (data subjects) to theft of their identity.