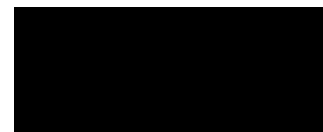


To Ms Jekaterina Macuka
Director
Data State Inspectorate of Latvia



Report
on the inspection findings
due to JSC "Mintos Marketplace" on the processing of personal data
by sending to the data subject an e-mail containing the personal data of the data subject in
case No. L-2-6/4880

Riga
30 March, 2021

No.2-5.1/77

Data State Inspectorate of Latvia (hereinafter - DSI), based on information provided by the Hessian Commissioner for Data Protection and Freedom of Information (*Hessischer Beauftragter für Datenschutz und Informationsfreiheit*) (hereinafter - HBDI) in the framework of international cooperation (IMI case No.166358) on the processing of personal data performed by JSC "Mintos Marketplace" (hereinafter - *Mintos Marketplace*) by sending an unwanted (unsolicited) e-mail to [REDACTED], a German citizen (hereinafter - Data Subject), containing personal data of the Data Subject (an information about his residence address - street and house number), in accordance with Article 55(1), Article 57(1) (a) and (h) of the General Data Protection Regulation¹ (hereinafter - GDPR), Article 4, Paragraph one, Clause 1 of the Personal Data Processing Law (hereinafter - PDPL) initiated and performed an inspection of the compliance of the *Mintos Marketplace* activities with the GDPR in Case No. L-2-6/4880 (hereinafter - Case).

HBDI notified that controller (*Mintos Marketplace*) has sent an unwanted e-mail to the Data Subject, containing personal data of the Data Subject (an information about his residence address -street and house number) thereby, in Data Subject's point of view, it has transmitted his personal data in an unprotected manner. It was mentioned, in addition, that the phone number would have been sent as well if it was at the disposal of *Mintos Marketplace*. HBDI also informed that the Data Subject has written an email to *Mintos Marketplace* informing of the circumstances of the occasion, which has led the Data Subject to conclude that *Mintos Marketplace* had committed an infringement which, in the opinion of the Data Subject, had occurred, and still was not aware of its possible consequences.

The DSI official in accordance with its competence, performing the tasks specified in Article 57(1) (a) and (h) of the GDPR, Article 4, Paragraph one, Clause 1 of the PDPL and exercising the rights specified in Article 58(1) (e) of the GDPR, Article 5, Paragraph one, Clause 3 of the PDPL, addressed to *Mintos Marketplace* by requesting to provide the information necessary for the

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

inspection², and *Mintos Marketplace*, responding to the request of the DSI, has submitted to the DSI its explanations³ in the Case.

It follows from the explanations of *Mintos Marketplace* that Data Subject is a *Mintos Marketplace*'s customer who has signed up as a customer on the *Mintos Marketplace*'s website <https://www.mintos.com/lv/> on July 23, 2020, has signed the General terms and conditions of platform user agreement with *Mintos Marketplace* and receives the services provided by *Mintos Marketplace*.

Mintos Marketplace stated in its explanations that the personal data of the Data Subject, which *Mintos Marketplace* has, were collected from the Data Subject when he filled in the required fields during his registration, as well as they have been obtained by performing remote customer identification of the data subject with the service provider Veriff OU and performing a verification of the customer's data in the Accuity database in order to establish whether the customer qualifies as a politically significant person or an authorised person with the service provider Reed Business Information Limited.

Additionally, *Mintos Marketplace* also stated in its explanations that *Mintos Marketplace* is aware of a potential case of personal data processing of the Data Subject, i.e., by sending to the Data Subject an e-mail containing his personal data. *Mintos Marketplace* sent an e-mail letter to the Data Subject asking him to update the contact information, which was incomplete. On November 10, 2020, an e-mail letter was sent asking to verify and/or update the contact information provided by the Data Subject when he registered on the *Mintos Marketplace*. The current contact information was provided in the e-mail. In the case of the particular customer (Data Subject), it was only the street name and number of the place of residence. The e-mail letter was sent to the Data Subject in the German language to the e-mail indicated by the Data Subject in the profile registered on the *Mintos Marketplace*. According to the *Mintos Marketplace* General terms and conditions of platform user agreement (paragraphs 13.5 and 16.3) and the Privacy Policy (paragraph 4), an e-mail has been specified as one of the communication channels for sending any notifications and collecting information from the *Mintos Marketplace* customer (Data Subject), which allows to use the e-mail specified by the *Mintos Marketplace* customer (Data Subject) for this purpose. *Mintos Marketplace* pointed out that the Data Subject contacted *Mintos Marketplace* in the German language by sending an e-mail to *Mintos Marketplace* e-mail address support@mintos.com, which was also used to send the e-mail, for the received e-mail from *Mintos Marketplace*, considering that his data were not securely transmitted and could be available to third parties. *Mintos Marketplace* uses the Zendesk platform for processing e-mails. *Mintos Marketplace* provided a written reply in the German language to the Data Subject's request, indicating which technologies are used to ensure the security of the data and the e-mail does not reach third parties. It should be noted that there was only indicated the street name and number in the e-mail letter addressed to the Data Subject. *Mintos Marketplace* shall not assume responsibility if any data subject grants access rights to third parties to his/her e-mail.

Mintos Marketplace stated in its explanations that the purpose of data subject's personal data processing in *Mintos Marketplace* by sending an e-mail message containing personal data of the Data Subject to the Data Subject was to update the contact information about the *Mintos Marketplace* customer - the data subject. If the contact information is out of date, inaccurate or missing, *Mintos Marketplace* cannot communicate with the customer and provide the necessary

² Letter of the DSI (20 January, 2020) No.2-4.2/81-N "About information request"

³ Reply letter from the Mintos Marketplace (17 February, 2020) No. LVMM/08-01-2021-24 "Reply to the request (21 January, 2021) No 2-4.2/81-N" with appendixes (registered in the DSI on 18 February, 2021 with No.2-4.2/240-S)

services, including contacting the customer about the state of his account or dealing with other service-related issues, as well as complying with regulatory requirements. The legal basis for the processing of the personal data of the data subject is Article 6(1)(b) of the GDPR - processing is necessary for the performance of a contract to which the data subject is party; (c) - processing is necessary for compliance with a legal obligation to which the controller is subject; (f) - processing is necessary for the purposes of the legitimate interests pursued by the controller. In accordance with Article 5(1)(d) of the GDPR, personal data shall be accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy').

Mintos Marketplace stated in its explanations that TLS (Transport Layer Security) encryption is used in the delivery of e-mails, which makes sure that the recipient of the message is only that person which *Mintos Marketplace* has specified, and also ensures that the received message is identical to what *Mintos Marketplace* has sent, i.e., this email cannot be intercepted and read or altered by third parties. In addition, *Mintos Marketplace* also uses SPF and DKIM validation so that unauthorized people cannot send messages from the mintos.com domain. *Mintos Marketplace* reported that it has developed Data Protection Policy (available in English), Internal Common Data Processing Rules, Incident Management Procedure (available in English), Mintos Group Information Systems Security Policy (available in English).

Mintos Marketplace stated that it only sends commercial communications to Data Subjects who have freely given written consent in electronic form for the use of their e-mail address for the purpose of sending commercial communications. The arrangements for sending commercial communications are regulated in accordance with the *Mintos Marketplace* Procedure for sending commercial communications which is available in Latvian and English. The legal basis for the personal data processing of the data subjects by *Mintos Marketplace* for the purposes of sending commercial communications is Article 6(1)(a) of the GDPR - the data subject has given consent to the processing of his or her personal data for one or more specific purposes. Commercial communications shall also be sent in compliance with the provisions of the Law On Information Society Services, PDPL and Electronic Communications Law.

In addition, *Mintos Marketplace* drew attention to the fact that the e-mail letter sent on November 20, 2020 is not a commercial communication within the meaning of the Law On Information Society Services and in accordance with the *Mintos Marketplace* Procedure for sending commercial communications. The purpose of sending the e-mail was solely to update the contact information of the customer (Data Subject) held by *Mintos Marketplace* so that this information is accurate, true and to the extent necessary.

Mintos Marketplace supported its explanations by attaching the following documents: 1) Annex No.1 - Personal data on the data subject held by Mintos; 2) Annex No.2 - An e-mail letter in German (a letter in Latvian is also attached for the information); 3) Annex No.3 - General terms and conditions of platform user agreement (in English); 4) Annex No.4 - Privacy Policy; 5) Annex No.5 - Exchange of correspondence with the Data Subject; 6) Annex No.6 - Data Protection Policy (in English); 7) Annex No.7 - Internal Common Data Processing Rules (in English); 8) Annex No.8 - Incident Management Procedure (in English); 9) Annex No.9 - Mintos Group Information Systems Security Policy; 10) Annex No.10 - Procedure for sending commercial communications (in Latvian and English).

According to Article 1(2) of the GDPR, the GDPR protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.

Article 2(1) of the GDPR stipulates that the GDPR applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system. The processing of personal data by automated means includes the processing of data in information systems where it is possible to select a person by specific identifiers. Whereas personal data filing system means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis.⁴

According to Article 4(1) and (2) of the GDPR, ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’), whereas ‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Based on the information above, in conjunction with the information available to the DSI and the *Mintos Marketplace* Privacy Policy⁵, *Mintos Marketplace* processes different categories of personal data within the meaning of Article 4(1) and (2) of the GDPR. Similarly, it should be indicated that the name, surname, address, e-mail address of a natural person, if the person is identifiable by it, is considered as personal data and any actions performed with these data are processing of personal data within the meaning of Article 4(2) of the GDPR.

According to Article 4(7) of the GDPR, the controller (a natural or legal person, public authority, agency or other body which alone or jointly with others determines the purposes and means of personal data processing [...])⁶ is responsible for the compliance of the processing of personal data with the GDPR. Subject to the above, in conjunction with the information held by the DSI and the information contained in the *Mintos Marketplace* Privacy Policy, in this case, the controller for the processing of personal data referred to by the Data Subject is *Mintos Marketplace*.

According to the provisions of Article 6 of the GDPR, the processing of personal data is lawful only to the extent and only if at least one of the grounds referred to in this Article applies - consent of the data subject, conclusion or performance of a contract, legal obligation of the data controller, performance of a task based on in the interests of official authority or the public interest, the protection of the vital interests of the data subject or of a third party and the observance of the legitimate interests of the controller or of a third party. In addition to providing a legal basis, in accordance with Article 5 of the GDPR, the controller must also comply with the principles of personal data processing, according to which any processing of personal data must be lawful, fair, transparent (lawfulness, integrity, transparency). The processing of data must be carried out only for the purpose for which it was intended (purpose limitation) and the data must be kept only for as long as is necessary for that purpose (storage limitation). Data processing should be limited to what is necessary (data minimization) and should be accurate and up-to-date as necessary (accuracy). Finally, the security (integrity and confidentiality) of personal data must be ensured during the processing. Observing the principle of accountability specified in Article 5(2) of the GDPR, it is the controller who is obliged to ensure such a personal data processing process, which allows proving that the processing of personal data by the controller complies with the requirements of data protection regulations.

The controller is entitled to process the personal data of the data subject if it complies with

⁴ Article 4(6) of the GDPR.

⁵ <https://www.mintos.com/en/privacy-policy/>

⁶ Article 4(7) of the GDPR.

the requirements set by the GDPR. If these conditions are not met, the processing of personal data is not in accordance with the GDPR and cannot be carried out.

Article 5(1)(d) of the GDPR stipulates that personal data “*accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay*” (‘accuracy’).

Article 6(1)(b) of the GDPR provides a legal basis in circumstances where *processing is necessary for the performance of a contract to which the data subject is party* [...].

It can be noted that in the General terms and conditions of platform user agreement concluded between *Mintos Marketplace* and the Data Subject, in the section “User's Personal Data” paragraph 13.2. states that the purpose of processing the User's personal data is to identify the User, enter into and execute the Agreement, maintain customer records, offer, provide and maintain services, financial and statistical analysis, implement and protect *Mintos* and / or the User's rights under the Agreement, with the Privacy Policy. In its turn, paragraph 13.5 stipulates that *Mintos Marketplace* is authorized to call and send text messages (SMS) to the mobile phone number specified in the User's profile, send e-mails to the e-mail address specified in the User's profile, as well as send letters to the User's postal address. Section “Other terms and conditions” of the General terms and conditions of platform user agreement (paragraph 16.3) provides that all notices of the parties must be submitted in writing and sent to the other Party on the platform by post or e-mail to the postal and / or e-mail address specified in the User's profile. [...].

In view of the above, it can be stated that *Mintos Marketplace*, in accordance with the General terms and conditions of platform user agreement concluded between *Mintos Marketplace* and the Data Subject, has sent the Data Subject an e-mail containing his personal data (street name and number of residence) in order to update the incomplete *Mintos Marketplace* customer information (Contact details of the Data Subject) in order to fulfill the agreement to which the Data Subject is a party (contact the Client and provide the necessary services, including contacting the Client about the status of his account or resolving other service-related issues, as well as comply with regulatory requirements).


In the specific case, observing the provisions of the General terms and conditions of platform user agreement, as well as taking into account that personal data, the accuracy of which was specified by *Mintos Marketplace* by e-mail, is the residential address and telephone number, it is acknowledged that the chosen communication channel is appropriate. In addition, taking into account the General terms and conditions of platform user agreement concluded between the parties, it can be concluded that the Data Subject could reasonably expect that the communication between *Mintos Marketplace* and the Data Subject could take place via e-mail.

As indicated in the *Mintos Marketplace* explanations, as well as in the e-mail addressed to the Data Subject on November 19, 2020, *Mintos Marketplace* uses the Transport Layer Security (TLS) encryption protocol for e-mail communication, which prevents information interception and alteration, as also provides authentication for connection end devices and encrypts transmitted data. In addition, as specified by *Mintos Marketplace*, *Mintos Marketplace* uses e-mail authentication methods (Sender Policy Framework (SPF) and DomainKeys Identified Mail (DKIM)) to detect fake sender addresses in e-mail so that unauthorized persons cannot send messages from the mintos.com domain. In view of the above, it can be concluded that *Mintos Marketplace*, by sending an e-mail to the Data Subject containing the personal data of the data subject (street name and number of residence), has taken appropriate measures to ensure a level of security commensurate with the risk.

Taking into account the materials in the Case and the information available to the DSI, the DSI does not find that the e-mail sent to the Data Subject by the *Mintos Marketplace* containing the data subject's personal data (street name and number of residence) has been intercepted or otherwise made available to third parties.

In addition, the Official, evaluating the information provided in the Explanations and its annexes, finds that in the e-mail of *Mintos Marketplace* dated 19 November 2020, the Data Subject was informed that the *Mintos Marketplace* customer notification procedure has been updated and personal information will be replaced by a link to *Mintos Marketplace* User profile.

On the basis of the above, given that it has not been established that the e-mail sent by Mintos Marketplace to the Data Subject or other data subjects was made available to third parties and that the set of information obtained leads to the conclusion that the transfer was legally justified, as well as a level of security corresponding to the risk was ensured, it cannot be established that there has been a breach of the obligations set forth in Articles 24 and 32 of the GDPR (on behalf of *Mintos Marketplace*). Following the above-mentioned the Official proposes to close the Case, adopt a resolution on this incident as completed and forward the information to the Prevention Division for further action in the framework of international cooperation.

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