

National File Number: **E/04570/2019 - E/09399/2019 – A56ID 66050**

### FINAL DECISION

To discontinue proceedings carried out upon the reception in the Spain supervisory authority (hereinafter, AEPD) of a complaint describing an alleged infringement of the 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 (from now on, the GDPR) and based on the following:

### FACTS

**FIRST:** On 15<sup>th</sup> of March of 2019 and with registry number 013831/2019, a complaint was lodged at the AEPD regarding a cross-border processing carried out by **GOODGAME STUDIOS** (the controller), for a potential breach of art. 17 of GDPR.

The complaint relies on the following points:

- The claimant, consumer of the online videogames offered by the defendant, requested by e-mail the removal of all his accounts, as well as his personal data. He chose e-mail because it was apparently the only channel available to communicate with the data controller.
- However, his petition was not attended, since he kept on receiving e-mail communications from the defendant.
- Although a mere e-mail address is enough to open an account, the data controller stores also bank account numbers and payment method data. This information is necessary to pay for accessories that are needed through the game, due to the nature of the videogames offered.

Together with the complaint, the following evidence was provided:

- A screenshot of the e-mail sent on 27/05/2018 by the claimant to the data controller, as a reply to a communication received from it to inform him about the changes implemented in personal data protection matters, on the occasion of the imminent coming into force of the GDPR.
- A screenshot of the upper part of a response obtained from the defendant on 16/07/2018.
- A screenshot of an advertising e-mail received on 15<sup>th</sup> of March of 2019.

**SECOND:** According to the privacy policy available in the **GOODGAME STUDIOS** website, the data controller is **ALTIGI GmbH**, which has its main or single establishment in Hamburg (Germany)

THIRD: Taking into account the cross-border nature of the complaint, on 7<sup>th</sup> of October of 2019 it was agreed to provisionally discontinue the proceedings and inform Hamburg supervisory authority (SA) – *the Hamburgische Beauftragte für Datenschutz und Informationsfreiheit*, or, in English, *the Hamburg Commissioner for Data Protection and Freedom of Information* – about the complaint, so that it could handle it as lead supervisory authority (LSA), pursuant to Article 56(1) of the General Data Protection Regulation (GDPR).

FORTH: The complaint was communicated through the Internal Market Information System (IMI) to the Hamburg data protection authority. The supervisory authorities concerned (CSA) were Italy, France, Denmark, Slovakia, Sweden, Norway and Germany-Saarland.

The Hamburg SA did not answer within IMI system. After being contacted by the Spanish SA, Hamburg SA accepted the case via an e-mail dated on 19<sup>th</sup> of September of 2019, and requested the documents of the case, whose access had got blocked in the system after the corresponding period had expired. The material was handed over to the LSA in a new assistance request, with number 82273.

FIFTH: In accordance with the procedure provided in Article 60 GDPR, the Hamburg SA has broadcasted among the concerned SAs the draft decision, which has been accepted.

## LEGAL GROUNDS

### I – Competence

Pursuant to Article 60(8) of GDPR, the Director of the Spain-SA shall have competence to adopt this decision, in compliance with both the art. 12(2)(i) of the Royal Decree 428/1993, of 26<sup>th</sup> of March, which approves the Charter of the Spanish Agency for Data Protection, and the First Transitory Provision of the Organic Law 3/2018 of 5 December on Personal Data Protection and safeguard of digital rights (hereinafter, LOPDGDD).

### II – The Internal Market Information System (IMI)

The Internal Market Information System is regulated by Regulation (EU) N° 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation'). It helps competent authorities of Member States to fulfil their cross-border administrative cooperation, mutual assistance and information exchange.

### III – Determination of the territorial scope

The art. 66 of LOPDGDD specifies that:

*“1. Except for the cases referred to in article 64.3 of this organic law, the Spanish Data Protection Agency shall, prior to the execution of any other action, including the admission for processing of a complaint or the commencement of preliminary*

*investigation proceedings, examine its competence and determine the national or cross-border nature of the procedure to be followed, in any of its forms.*

*2. If the Spanish Data Protection Agency considers that it does not have the status of lead supervisory authority for handling the procedure, it shall, without any further delay, refer the complaint submitted to the lead supervisory authority deemed competent, so that it may be properly addressed. The Spanish Data Protection Agency shall notify this situation to the person who has submitted the complaint, as the case may be.*

*The agreement which resolves the referral mentioned in the preceding paragraph shall imply the provisional filing of the procedure, without prejudice to the Spanish Data Protection Agency issuing, as appropriate, the resolution referred to in paragraph 8 of article 60 of Regulation (EU) 2016/679."*

#### IV – Main establishment, cross-border processing and lead supervisory authority

Article 4(16) of GDPR defines «main establishment»:

- “(a) as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment;*
- (b) as regards a processor with establishments in more than one Member State, the place of its central administration in the Union, or, if the processor has no central administration in the Union, the establishment of the processor in the Union where the main processing activities in the context of the activities of an establishment of the processor take place to the extent that the processor is subject to specific obligations under this Regulation;”*

According to Article 4(23) of GDPR «cross-border processing» means 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.*

Pursuant to Article 56(1), regarding the competence of the lead supervisory authority, and without prejudice to Article 55, the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60.

In the case under examination, as outlined above, **ALTIGI GmbH** has its main or single establishment in Hamburg (Germany) and, therefore, the Hamburg supervisory authority is the competent authority to act as lead supervisory authority.

#### V – Concerned Supervisory Authorities (CSAs)

In accordance with Article 4(22) of GDPR, ‘concerned supervisory authority’ means a supervisory authority which is concerned by the processing of personal data because:

- (a) the controller or processor is established on the territory of the Member State of that supervisory authority;
- (b) data subjects residing in the Member State of that supervisory authority are substantially affected or likely to be substantially affected by the processing; or
- (c) a complaint has been lodged with that supervisory authority;

In this procedure, the supervisory authorities concerned are those enumerated in the fourth fact.

#### VI – Cooperation and consistency procedure

In the present case, the complaint has been handled according to the procedure established in Article 60.8, which states the following:

*“8. By derogation from paragraph 7, where a complaint is dismissed or rejected, the supervisory authority with which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof.”*

#### VII – Subject-matter of the complaint and legal reasoning

The complaint has been lodged at the AEPD in connection with a cross-border data processing carried out by **ALTIGI GmbH** because of an alleged infringement of the following provisions: art. 17 GDPR.

The complaint was transferred to the supervisory authority of Hamburg as the competent to act as lead supervisory authority within the meaning of Article 56 (1) GDPR. In accordance with the procedure laid down in Article 60 of the GDPR, the Hamburg Supervisory Authority has communicated to the authorities concerned the draft decision, which has been accepted.

In the draft decision, the LSA commented that the screenshots provided by the claimant did not reflect accurately the events which took place. The data controller stated that the first e-mail was sent by the complainant to a “no reply” mailbox of the company. It was in July of 2018 when the petitioner contacted the data controller by e-mail and was referred to a support webform, which featured a verification process put in place to request the information needed to consume the online service. He was also

informed about how he could unsubscribe from the newsletter, if that was what he wanted.

The defendant went on explaining that the claimant did not follow its instructions, so the removal process did not finish, and he received a commercial communication on 15<sup>th</sup> of March of 2019. Nevertheless, after learning about the complaint, the defendant has proceeded to remove the claimant's personal data, except for those whose conservation is necessary to comply with legal duties.

The LSA concluded that no data protection infringement was apparent in this specific case. Indeed, if a data controller offers services through Internet, whose consumption needs an identifier created by the own user and, possibly, a password, these identity proofs can be used as part of the authentication process.

After reviewing the draft decision presented by the lead authority, this Agency takes into account that the defendant, **ALTIGI GmbH**, has granted the petitioner his right to erasure and, consequently, considers that it is opportune to dismiss the complaint.

Consistently with the conclusions described, it is agreed by the Director of the Spanish SA:

FIRST: TO DISCONTINUE the proceedings and dismiss the complaint.

SECOND: NOTIFY this decision to the CLAIMANT.

THIRD: INFORM **ALTIGI GmbH** about the decision adopted.

Pursuant to Article 50 of LOPDGDD, this resolution shall be published after the notification of the parties concerned.

This resolution finalizes the administrative procedure pursuant to Article 114 (1) (c) of the Act 39/2015 of 1 October on Common Administrative Procedure of Public Administration. According to Articles 112 and 123 of the aforementioned Act 39/2015, it is possible to appeal this decision before the Director of the Spanish SA within a month starting the day which follows the receipt of this notification. In accordance with Article 25 and Additional Provision 4(5) of the Act 29/1998 of 13 July regulating the Jurisdiction for Judicial Review, it is also possible directly appeal before the contentious-administrative division of the Spanish National High Court. Pursuant to Article 46 (1) of the Act 29/1998, the period for filing for judicial review shall be two months long, counting from the day following the date of this notification.

Mar España Martí  
Director of the Spanish SA

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