

Serious criticism of Alstrøm - Din Isenkræmmer ApS' processing of personal data about website visitors

Date: 20-10-2021

Decision

Private companies

Serious criticism

Supervision / self-management case

Basis of treatment

Cookies / processing of personal data about website visitors

In a case of its own initiative, which was started on the basis of a specific complaint, the Danish Data Protection Authority has expressed serious criticism of Alstrøm - Din Isenkræmmer ApS' processing of personal data about website visitors on the website www.alstrom.dk.

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The Danish Data Protection Authority hereby returns to the case where, on 28 January 2021, on the basis of a specific complaint, and as a follow-up to the Danish Data Protection Authority's guidance on the processing of personal data about website visitors from February 2020, the Danish Data Protection Authority chose to examine the website www.alstrom.dk in more detail on its own initiative .

The Danish Data Protection Authority notes that the supervisory authority has found that Alstrøm has subsequently changed the consent solution on www.alstrom.dk, so that the consent solution, which was implemented on the website at the beginning of January 2021, no longer appears on www.alstrom.dk.

In this decision, the Danish Data Protection Authority has not taken a position on the amended consent solution, which now appears on www.alstrom.dk. The Danish Data Protection Authority will therefore only take a position on the consent solution that appeared on the website until the beginning of January 2021, as well as the consent solution that was implemented on www.alstrom.dk at the beginning of January 2021.

Summary

In the case in question, the Danish Data Protection Authority took a position on two consent solutions which were used on www.alstrom.dk, when Alstrøm – Din Isenkræmmer ApS changed the consent solution when the Danish Data Protection

Authority launched the case.

The first consent solution that Alstrøm – Din Isenkræmmer ApS used presented the website visitor with information that information was collected and processed in connection with the visit to www.alstrom.dk. The website visitor then had the option to choose "Read more about cookies" or "Close".

The information was collected for several different purposes, and it was not possible for the website visitor to refuse to give consent.

The Danish Data Protection Authority found that Alstrøm – Din Isenkræmmer ApS, when using the first consent solution, did not obtain a valid consent to process information about website visitors. The reason for this was that the website visitor could not choose between the different processing purposes and that the website visitor did not have the opportunity to refrain from giving consent.

Based on this, the Danish Data Protection Authority expressed serious criticism that the processing of personal data had not taken place in accordance with Article 6 of the Data Protection Regulation.

The second consent solution, which was used on www.alstrom.dk, gave the website visitor more information about the processing carried out by Alstrøm – Din Isenkræmmer ApS, just as the website visitor had the opportunity to opt in or out of various purposes and to choose between "Accept " or "ACCEPT ALL".

However, the Data Protection Authority found grounds to express criticism of the consent solution. The criticism was based on the fact that the visual design of the consent solution pushed the website visitor in the direction of the "ACCEPT ALL" button, and that it was therefore not as easy to refrain from giving consent as it was to give consent.

The Danish Data Protection Authority also expressed serious criticism of the second consent solution, as information about the website visitor was already collected when the website visitor accessed www.alstrom.dk for use, e.g. statistics and marketing, despite the fact that the website visitor had not consented to this.

1. Decision

After a review of the case, the Danish Data Protection Authority finds that there are grounds for expressing serious criticism that Alstrøm's processing of personal data about website visitors at www.alstrom.dk until the beginning of January 2021 has not been done in accordance with the rules in the data protection regulation[1] article 6.

The Danish Data Protection Authority also finds occasion to express criticism that Alstrøm's processing of personal data about

website visitors to www.alstrom.dk after the start of January 2021 has not been done in accordance with Article 6 of the Data Protection Regulation.

Furthermore, the Danish Data Protection Authority finds grounds for expressing serious criticism that Alstrøm's implementation of the consent solution at the beginning of January 2021 has not taken place in accordance with Article 5 and Article 6 of the Data Protection Regulation.

Below follows a closer review of the case and a rationale for the Data Protection Authority's decision.

2. Case presentation

It appears from the case that the website www.alstrom.dk, which is managed by Alstrøm – Din Isenkræmmer ApS (hereafter Alstrøm), used a consent solution until the beginning of January 2021, from which the following appeared:

"Alstrøm - Din Isenkræmmer ApS uses cookies to collect statistics that can help improve the user experience. Cookies are important for our website to display correctly in your browser. If you click on a link on our website, you also accept our cookie policy. [Read more about cookies](#)"

The consent solution also contained a button with the wording "Close", which closed the consent solution when the home visitor pressed it.

A registered contact addressed to Alstrøm regarding www.asltrom.dk's use of cookies. The citizen in question received the following response in relation to this:

"In order to anticipate the situation, I must inform you about why Alstrøm - Din isenkræmmer ApS has sent the email below. First of all, I must make it clear that you are in no way subject to our trading conditions if you are not a trading customer, and the conditions stated herein relate solely to the trading relationship entered into in connection with a purchase. You have received the email below on the basis of a cookie that has been placed in connection with a visit to our website. The first time you visit our website, you are presented with our Cookie Policy and asked to decide on it. In connection with acceptance of this, information is provided in the form of cookies. Of course, this could also have been done by another person, if there are several people using the same login on your computer.

On the basis of this information, which can be collected and must be connected with all our business partners, and in connection with your acceptance of our cookie policy, you also accepted that you agreed to receive marketing material for us and our business partners. I link to the Cookie Policy [here](#), and refer to the chapter on marketing and targeted advertising:

<https://alstrom.dk/cookie-information/>

We always recommend that you thoroughly read an agreement before accepting it, but in the same document it is also described how you can delete these cookies from your computer's browser if you should have accepted the agreement without having read its entire content. Our customer service will also be happy to help you in this regard."

At the beginning of January 2021, Alstrøm implemented a new consent solution, from which the following appeared:

"The website uses cookies

In order to make this page and our marketing more relevant to you, we use our own cookies and third-party cookies to create statistics, analyze visits and remember your preferred settings. By giving your consent, you allow us to use cookies and to process personal data collected via cookies. Read more in our cookie policy.

You always have the option to withdraw your consent.

Read more about cookies"

The website user was then presented with the options "Necessary/Technical", "Functional", "Statistical" and "Marketing", where the last three had to be actively selected.

In addition to the various additional options, the website user could also press "Accept" or "ACCEPT ALL".

By pressing "ACCEPT ALL", the website user allowed the placement of all cookies. If the website user clicked on "Accept", the user only allowed the placement of cookies for the purposes actively selected by the website user - functional, statistical and marketing.

The "Accept" button was in orange text on a white background, which matched the white background of the consent solution, while the "ACCEPT ALL" button was in white text on an orange rectangular background.

The Danish Data Protection Authority found during a visit to the website www.alstrom.dk on 28 January 2021 that 18 different cookies were placed before the website visitor had consented to this. There were, among other things, placed cookies from the following domains: google.com, trustpilot.com and addwish.com.

Based on this, the Danish Data Protection Authority informed Alstrøm on 28 January 2021 that the Danish Data Protection Authority started a case on its own initiative, and that in this connection the Danish Data Protection Authority requested Alstrøm for an opinion on the case.

On 22 March 2021, Alstrøm submitted a statement on the matter. The Danish Data Protection Authority requested a

supplementary opinion on 20 April 2021, which the Danish Data Protection Authority received on 21 April 2021.

The statement gave rise to further questions, which is why the Danish Data Protection Authority requested further information on 28 May 2021. The Danish Data Protection Authority received additional information on 31 May 2021.

On 23 June 2021, the Danish Data Protection Authority requested Alstrøm for a new opinion on the case, which Alstrøm provided on 23 July 2021.

2.1. Alstrøm's remarks

Alstrøm has initially explained that at the beginning of January 2021, Alstrøm updated the consent solution, which appeared on www.alstrom.dk.

Furthermore, Alstrøm has explained that Alstrøm processes personal data about website visitors, i.a. in connection with purchases made via www.alstrom.dk.

The processing of personal data carried out by Alstrøm via www.alstrom.dk takes place pursuant to Article 6, paragraph 1 of the Data Protection Regulation. 1, letter a, letter b and letter c.

By consent solution until the beginning of January 2021

In relation to the consent solution, which was used on www.alstrom.dk until the beginning of January 2021, Alstrøm has generally stated that the consent solution took into account the data protection rules, including Article 4, No. 11, and Article 7 of the Data Protection Regulation.

However, there was one difference compared to the subsequent consent solution, that in the consent solution until January 2021 no distinction was made between cookies for different purposes. The website visitor thus accepted cookies for all the stated purposes, and it was not possible to opt in or out of the various purposes.

Ad consent solution implemented at the beginning of January 2021

In relation to the consent solution, which was implemented on www.alstrom.dk at the beginning of January 2021, Alstrøm has generally stated that Alstrøm processes personal data covered by Article 2, subsection of the Data Protection Regulation. 1, in connection with a website user's visit to www.alstrom.dk.

In Alstrøm's view, the personal information is processed in accordance with Article 5 of the Data Protection Regulation and on the basis of the website user's consent, cf. Article 6, subsection of the Data Protection Regulation. 1, letter a.

The information is processed on behalf of Alstrøm for statistics with Google Analytics, while the information collected via

functional cookies is processed with Scannet, Hello Retail and Trustpilot. Hello Retail also processes information for Alstrøm for marketing purposes.

Alstrøm has also stated that Alstrøm does not pass on or make available personal data to the data processors for the purpose of the data processors' independent use, and that collected personal data is thus only made available to Alstrøm's data processors to the extent necessary in relation to the fulfillment of the data processor agreements. In this connection, Alstrøm has presented data processing agreements for Scannet and Hello Retail, while Alstrøm has forwarded links to the data processing agreement with, respectively. Trustpilot and Google Analytics.

Finally, Alstrøm has stated that the 18 different cookies which, the Data Protection Authority was able to ascertain, were set in connection with the website visitor's visit to www.alstrom.dk without consent, were set due to an error in the setup of the consent solution.

The error occurred during the transition from the previous consent solution to the consent solution that was implemented at the beginning of January 2021, and Alstrøm became aware of this error due to the Data Protection Authority's inquiry.

3. Reason for the Data Protection Authority's decision

3.1. Legal basis

Processing of personal data must in all cases comply with the general principles for processing personal data, which appear in Article 5 of the Data Protection Regulation. This means, among other things, that personal data must be processed legally, fairly and in a transparent manner in relation to the data subject ("legality, fairness and transparency").

This appears from the data protection regulation's article 6, subsection 1, letter a, that the processing of personal data is lawful if the data subject has given consent to the processing of his personal data for one or more specific purposes.

Article 4, No. 11 of the Data Protection Regulation states that consent means any voluntary, specific, informed and unequivocal statement of intent from the data subject whereby the data subject consents by declaration or clear confirmation to personal data relating to the person concerned being processed subject to treatment.

Furthermore, the following appears from recital 32 of the data protection regulation:

"Consent should be given in the form of a clear confirmation, which implies a voluntary, specific, informed and unequivocal declaration of intent from the registered person, by which the person concerned accepts that personal data about the person concerned is processed, e.g. by a written statement, including electronic, or an oral statement. This can e.g. take place by

ticking a box when visiting a website, when choosing technical settings for information society services or another statement or action that clearly indicates in this connection the data subject's acceptance of the proposed processing of his/her personal data. Silence, pre-ticked boxes or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose(s). When processing serves several purposes, consent should be given for all of them. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily interfere with the use of the service for which consent is given."

Finally, the following appears from paragraph 62 of the EU Court of Justice's decision of 1 October 2019[2]:

"Active consent is thus now expressly stipulated by regulation 2016/679. In this regard, it should be noted that, according to recital 32 of this regulation, consent may be expressed, among other things by ticking a box when visiting a website. The aforementioned recital, on the other hand, expressly excludes that silence, pre-ticked boxes or inactivity can constitute consent."

3.2. Consent solution until the beginning of January 2021

The Danish Data Protection Authority assumes that Alstrøm processed personal data about data subjects who visited the website www.alstrom.dk.

Furthermore, based on the wording of the consent solution and the response to the data subject, the supervisory authority assumes that the personal data was processed for several different purposes, including statistics and marketing.

Based on this, the Danish Data Protection Authority finds that Alstrøm's processing of personal data about data subjects via the website www.alstrom.dk has not taken place in accordance with Article 6, paragraph 1 of the Data Protection Regulation. 1, letter a.

Emphasis has been placed on the fact that in connection with the data subject's visit to www.alstrom.dk before and until the beginning of January 2021, a valid consent was not obtained in accordance with the data protection rules.

Consent presupposes voluntariness, cf. the data protection regulation, article 4, no. 11. Consent cannot be considered voluntary when it is not possible to refrain from giving consent for the purposes in question. Data subjects who visited www.alstrom.dk did not have the option of refusing to give consent to the processing of personal data.

A valid consent also requires that the data subject can freely choose between several processing purposes. This follows from the requirement for granularity. On www.alstrom.dk it was not possible for the data subject to select the various processing

purposes, and the consent was furthermore not given voluntarily as a result.

In addition, a consent must be an expression of an unequivocal expression of will from the registered person. An unequivocal expression of will presupposes an active action, and silence or inactivity cannot therefore constitute consent.

The registrant's further use of www.alstrom.dk could not be considered a valid consent, as this did not involve an active action, and the consent could therefore not be considered to be an expression of an unequivocal expression of intent.

Based on the above, the Danish Data Protection Authority therefore finds grounds to express serious criticism of Alstrøm's processing of personal data about data subjects at www.alstrom.dk until the beginning of January 2021.

3.3. Consent solution after the start of January 2021

Alstrøm has stated that after the change to the consent solution at www.alstrom.dk at the beginning of January 2021, personal data about website visitors continued to be processed.

The Danish Data Protection Authority assumes that the personal data collected was processed for several different purposes, as it appeared from the consent solution that the purposes of the collection were, among other things, was statistics and marketing.

The Danish Data Protection Authority then finds that Alstrøm's processing of personal data about data subjects at www.alstrom.dk has not taken place in accordance with Article 6, paragraph 1 of the Data Protection Regulation. 1, letter a.

The Danish Data Protection Authority has emphasized that it is clear from the Danish Data Protection Authority's guidance on the processing of personal data about website visitors[3] that it must "...be as easy to refrain from giving consent to the processing of one's personal data as it is to give it. It places particular demands on the structure of the mechanism or solution for obtaining consent, including the visual appearance and how the request is formulated. Overall, the option to opt out must have the same notification effect as the option to give consent." [The Norwegian Data Protection Authority's emphasis].

The options "Accept" and "ACCEPT ALL" leave a misleading impression as to whether the data subject has the opportunity to refrain from giving consent for the various purposes.

There is also a significant difference between the visual design of the "Accept" and "ACCEPT ALL" buttons, as the "ACCEPT ALL" button appears clearly and distinctly, while the visual design and appearance of the "Accept" button leaves an almost inactive expression.

The visual design of the consent solution thus means, in the Data Protection Authority's view, that the registered person is

"pushed" in the direction of pressing the "ACCEPT ALL" button.

Overall, the "Accept" button does not have the same message effect as the "ACCEPT ALL" button, and it is therefore the authority's assessment that it cannot be considered as easy to refrain from giving consent as it is to give it .

Based on the above, the Danish Data Protection Authority finds grounds to express criticism of Alstrøm's processing of personal data in connection with the data subject's visit to www.alstrom.dk after the start of January 2021.

3.4. Implementation of the consent solution at the beginning of January 2021

Alstrøm has stated that when implementing the new consent solution at www.alstrom.dk at the beginning of January 2021, information about website visitors continued to be processed.

The processing took place with the placement of 18 cookies and on the basis of the data subject's consent.

The Danish Data Protection Authority finds that Alstrøm's implementation of the consent solution at the beginning of January 2021 – and the subsequent processing of personal data – has not taken place in accordance with the data protection regulation's article 5, subsection 1, letter a, and Article 6, subsection 1, letter a.

Emphasis has been placed on the fact that 18 cookies are already placed when the website user accesses www.alstrom.dk - and thus personal data is processed for use in statistics and marketing. This is not consistent with the requirements for a valid consent according to the regulation's Article 4, No. 11, as the website user did not have the option to refrain from giving consent, just as the website user did not have the option to select or deselect the various purposes.

This was also contrary to the principle of transparency, as the data subject did not have the opportunity to find out about and relate to the processing of personal data that took place about the person in question at www.alstrom.dk.

As a result, the Danish Data Protection Authority finds grounds to express serious criticism of Alstrøm's implementation of the consent solution at the beginning of January 2021.

When choosing a sanction, emphasis has been placed on the fact that Alstrøm only became aware of the error when the Data Protection Authority contacted Alstrøm on 28 January 2021. It cannot lead to any other result that the placement of cookies - and the subsequent processing of personal data - was due to a technical error and that the error persisted for a relatively short period of time.

4. Concluding remarks

The Data Protection Authority's decisions cannot be appealed to another administrative authority, cf. Section 30 of the Data

Protection Act. The Data Protection Authority's decisions can, however, be brought before the courts, cf. the Basic Law, Section 63, subsection 1.

The Danish Data Protection Authority notes that the Danish Data Protection Authority has noted that Alstrøm i.a. uses Google Analytics to generate statistical information about the website visitors, and that Google Analytics acts as a data processor in this connection.

In this decision, the supervisory authority has not considered whether Alstrøm has configured the use of the analysis tool Google Analytics in such a way that it is ensured that information about the website visitors at www.alstrom.dk is not passed on to third parties, including Google. However, the Danish Data Protection Authority must encourage Alstrøm to do this if Alstrøm has not already done so.

The Norwegian Data Protection Authority expects to publish the decision.

The Danish Data Protection Authority hereby considers the case closed and will not take any further action in the matter.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free exchange of such data and on the repeal of Directive 95/46/EC (general regulation on data protection).

[2] Case C-673/17, Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband eV v Planet49 GmbH

[3] The Danish Data Protection Authority's guidance on the processing of personal data about website visitors from February 2020, section 2.4.5, page 17.

<https://www.datatilsynet.dk/Media/F/8/Behandling%20af%20personspregnings%20om%20hemmesidebes%c3%b8gende.pdf>