

Supervision of Matas A / S 'processing of personal data

Date: 20-04-2021

Decision

Private companies

The Danish Data Protection Agency expresses serious criticism following a planned inspection of the processing of personal data that takes place in connection with Club Matas and associated sub-clubs, where there was a focus on processing basis and personal data security.

Journal number: 2018-41-0012

Matas A / S (hereinafter Matas) was among the companies that the Danish Data Protection Agency in the autumn of 2018 chose to supervise in accordance with the Data Protection Ordinance [1] and the Data Protection Act [2].

The Data Inspectorate's planned supervision of Matas was aimed at the processing of personal data that takes place in connection with Club Matas and associated sub-clubs (hereinafter Club Matas), and the focus was on the topics processing basis and personal data security.

Decision

The Data Inspectorate finds - after this has been discussed at a meeting of the Data Council - a basis for expressing serious criticism that Matas' processing of personal data about members of Club Matas has not taken place in accordance with the rules in Article 6 (1) of the Data Protection Regulation. 1.

In addition, the Danish Data Protection Agency finds grounds for criticizing the fact that Matas has processed personal data about members of Club Matas without being able to demonstrate that the processing has taken place taking into account the risks that the processing poses to data subjects' rights and freedoms in accordance with Article 5 of the Data Protection Regulation. , PCS. 2, cf. Article 32 (1) (f) 1 and 2.

Below is a review of the circumstances of the case and a more detailed justification for the Danish Data Protection Agency's decision.

2. Case presentation

In August 2018, the Danish Data Protection Agency announced an inspection visit to Matas to be held in October 2018.

Together with the notification letter, the Danish Data Protection Agency sent a questionnaire and asked Matas to send lists of

processing activities concerning Club Matas.

Matas then submitted i.a. the completed questionnaire as well as additional attachments in the form of a copy of a statement of consent, emails to the members and a written risk assessment dated 11 September 2018.

The inspection visit to Matas was completed on 4 October 2018.

Following the inspection visit, the Danish Data Protection Agency became aware that Matas has subsequently updated the terms and conditions for Club Matas, and that these came into force on 1 September 2020. Matas submitted the new consent text and the updated terms and conditions upon request.

2.1. Matas' remarks

It appears from Matas' "Terms & Conditions for Club Matas" of 1 September 2020 that Matas processes personal information about members of Club Matas on the basis of e.g. Article 6 (1) of the Data Protection Regulation 1, letters a [3] and f.

The consent text that the members are presented with is (click on the image to see it in larger size):

Regarding the purpose of processing personal data about members on the basis of consent, Matas has stated that the purpose is to target marketing to the members and offer special benefits, including more advantageous prices and earning points on purchases. Earning points, profiling the members and using beacons [4] etc. are thus only means which, according to Matas, are used to be able to achieve targeted marketing.

Matas has further stated that if Matas did not have the ability to process members' personal information for direct and targeted marketing to members, Club Matas would have no value to Matas. It is Matas' opinion that it does not make sense to split up the treatment activities by separately obtaining the member's acceptance for several purposes. Matas considers the customer's overall acceptance to be the most appropriate and transparent way to handle the membership, including the members' personal information.

Matas has stated that Club Matas is constantly evolving in line with new trends for customer clubs and marketing and to reflect technological developments. In this connection, it is crucial for Matas that the applicable legislation at all times, including the rules on data protection, is complied with. Matas therefore regularly reviews the consent text and the privacy policy to assess whether there is a need for an update.

Matas has also stated that the update of the consent solution in September 2020 only consisted of minor adjustments, which is due to the fact that the Club Matas program no longer includes the possibility for Matas to market "partners", which is why this

part of the consent text has been deleted.

Matas has stated about processing security that the company did not have a written documentation of their risk assessment in connection with the processing of personal data before 11 September 2018. Matas had assessed that it was most important to prioritize security in practice, which is why the actual formulation of the risk assessment would take place at a later date.

Justification for the Danish Data Protection Agency's decision

During the proceedings, Matas has updated the consent solution. In the following, the Danish Data Protection Agency only takes a position on the updated consent solution, given that this is a minor adjustment and that the original consent solution is no longer relevant.

3.1. Basis for treatment

Article 6 (1) of the Data Protection Regulation 1, letter a, it follows 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.

Consent of the data subject is defined in Article 4 (11) of the Data Protection Regulation as:

"Any voluntary, specific, informed and unequivocal expression of will, whereby the data subject by declaration or clear confirmation agrees that personal data relating to the person in question be made the subject of processing."

Matas has stated that the processing of personal data about members of Club Matas takes place primarily on the basis of consent, cf. Article 6 (1) of the Data Protection Regulation. 1, letter a.

It must then be assessed whether the consent meets the requirements for a valid consent.

3.1.1. Voluntary

By basing a processing on a consent, the data controller must give the data subject a free choice and control over personal data about themselves, which is why a consent must be voluntary. A consent will not be given voluntarily if the data subject does not have a real or free choice. Any form of inappropriate pressure or influence on the data subject's free will results in the consent being invalid.

A data controller can to some extent motivate a data subject to give consent by saying that there is an advantage associated with the consent, as long as it will not have negative consequences if the consent is withdrawn [5]. In the opinion of the Danish Data Protection Agency, the fact that the registered person may possibly obtain an advantage by joining Club Matas does not in itself imply that the consent cannot be considered voluntary.

Furthermore, a consent can not be considered voluntary if the procedure for obtaining consent does not give the data subject the opportunity to give separate consent for different processing purposes concerning personal data and thus be forced to consent to all purposes. A consent must therefore be granulated (divided) [6].

If a processing of data serves several purposes, the data controller must therefore obtain separate consent for each individual purpose for which personal data is to be processed on the basis of the data subject's consent. The data controller must thus offer the data subject the opportunity to consent to one purpose, but fail to consent to other purposes.

Regardless of the fact that Matas' business purpose with Club Matas is generally marketing, it is the Data Inspectorate's opinion that Matas in the context of data protection law processes the members' personal data for more and other purposes than this one purpose.

The purpose must also be well-defined and delimited, so that sufficient clarity and openness is created about the processing and the indication of marketing as the only purpose implies in the Data Inspectorate's opinion an inaccurate description of the purposes associated with the treatments that Matas carries out using members' information [7].

The design of the consent text as a single text thus does not meet the condition of voluntariness, as the member cannot make a real and free choice in relation to the various treatment purposes.

The fact that it appears from the consent text that the member can subsequently go in and deselect one or more of the contact forms he or she will receive marketing by, does not change in the Data Inspectorate's opinion in that the consent text is not sufficiently granulated.

3.1.2. Specifically

A consent must also be specific, which means that the consent must be concretized in such a way that it is clear what consent is given for. This condition must be seen in the light of the principle of purpose limitation [8], so it must be stated exactly for what specific purposes the treatment will take place. Furthermore, it must be stated what information will be processed for each purpose.

The Danish Data Protection Agency is of the opinion that there are several parts of the processing activities in Matas' consent solution that are not described sufficiently clearly, including the description of the use of cookies and beacons, just as it is unclear what is meant by "contact for updating consent" to partners and products ". Furthermore, information on which companies are part of the Matas group does not appear [9].

3.1.3. Informed

A consent must also be informed so that the data subject is aware of what he or she agrees to. The information provided must be easily accessible and in a clear and simple language so that the data subject is aware of what is being consented to.

The data on the processing of personal data must - in order to make the data easily understandable and easily accessible - be separated from other data which do not relate to the processing of personal data, such as contractual provisions or general conditions of use [10]. Furthermore, the data subject must not have to look for information, as it must be clear where and how the information is found, for example by giving it in the consent text or by a direct link or the like. [11]

It is the Data Inspectorate's assessment that the consent given by Matas' consent solution is not sufficiently informed, as it is not sufficiently clear in the text that a number of important information appears in the document "Terms and Conditions for Club Matas", which can be accessed via a link from the consent text. Furthermore, the information about Matas' processing of personal data appears in the relevant terms and conditions mixed with general terms. It is thus not clear to the data subject where he or she can find the information and what information concerns the processing of personal data.

In the opinion of the Danish Data Protection Agency, all relevant information about the processing of personal data concerning consent should appear directly from the consent text. Alternatively, it should be clear from the consent text, where the registered person can find the necessary information, eg by the registered person clicking on a link with the following text: "You can see what information we will process about you here". In this way, it will be clear to the data subject where he or she can find the information. In addition, a layered consent solution will be an appropriate way to ensure that the data subject receives the necessary information.

3.1.4. Summary

It is on the basis of the above data from the Danish Data Protection Agency that Matas' consent solution does not ensure a sufficient voluntary, specific or informed consent. Matas' consent solution consisting of a consent text with associated terms and conditions thus does not meet the requirements for a valid consent, which is why personal data cannot be legally processed on this basis, cf. Article 6 (1) of the Data Protection Regulation. Article 4 (1) (a).

The Danish Data Protection Agency thus finds grounds for expressing serious criticism that Matas has processed personal data in violation of Article 6 (1) of the Data Protection Regulation. 1.

When choosing a sanction, the Danish Data Protection Agency has, among other things, special emphasis on the very long

case processing time, which is due to the circumstances of the supervision.

4. Treatment safety

It is a basic precondition for taking appropriate measures to ensure an adequate level of protection under Article 32 of the Data Protection Regulation that the data controller has previously identified the risks to data subjects involved in data processing in order to clarify the specific technical and organizational measures, the data controller must take to minimize these risks.

Pursuant to Article 5 (1) of the Data Protection Regulation 2, the data controller must otherwise be able to demonstrate e.g. compliance with the principle of integrity and security in accordance with Article 5 (2); 1, letter f, according to which personal data must be processed in a way that ensures sufficient security for the personal data in question.

The Danish Data Protection Agency has noted that Matas did not prepare a risk assessment dated 11 September 2018 until after the inspection visit. took into account the risks posed by the processing to the data subjects' rights and freedoms.

In this connection, the Danish Data Protection Agency has emphasized Matas' own information that the company had not prepared a written risk assessment prior to 11 September 2018. The Danish Data Protection Agency has also emphasized that Matas has stated that the work with a risk-based approach before 11 September 2018 only consisted of general considerations about compliance with the data protection law rules. In this connection, the Danish Data Protection Agency must note that such general considerations regarding compliance with the data protection law rules do not live up to the requirement to identify risks for the data subjects.

On the basis of this, the Danish Data Protection Agency finds grounds for expressing criticism that Matas has at least for the period before 11 September 2018 processed personal data without being able to demonstrate that the processing has taken place taking into account the risks that the processing poses to the data subjects' rights and freedoms in accordance with Article 5 (2) of the Data Protection Regulation. 2, cf. Article 32 (1) (f) 1 and 2.

In connection with the supervision, Matas has stated that the company to a certain extent also considers risks for the company itself and risks for the data subjects to coincide, because lack of security in the processing of members' information also has negative consequences for Matas as a company.

With this decision, the Danish Data Protection Agency has not assessed whether Matas actually had an insufficient level of security with the technical and organizational measures that were established at the time of notification of the supervision.

However, the Danish Data Protection Agency notes that a risk assessment in order to ensure an adequate level of protection

under Article 32 of the Regulation should only take into account the risk to the data subject and not to the company itself.

5. Summary

In the light of the above, the Danish Data Protection Agency finds grounds for expressing serious criticism that Matas has processed personal data in violation of Article 6 (1) of the Data Protection Regulation. 1, as the consent solution does not ensure a sufficient voluntary, specific or informed consent.

In addition, the Danish Data Protection Agency finds grounds for criticizing the fact that Matas has processed personal data at least for the period before 11 September 2018 without being able to demonstrate that the processing has taken place taking into account the risks that the processing poses to the data subjects' rights and freedoms. in accordance with Article 5 (2) of the Data Protection Regulation 2, cf. Article 32 (1) (f) 1 and 2.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals 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).

[2] Act No. 502 of 23 May 2018 on supplementary provisions to the Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Act).

[3] Matas also states that information on members is processed in the light of Article 6 (1) of the Data Protection Regulation. 1, letter f, if there is a suspicion of abuse of membership. In connection with the audit, the Danish Data Protection Agency has not found reason to take a position on this processing, but has focused the audit on the processing authority on which the vast majority of processing activities depend.

[4] "Beacons" are small transmitters that interact with bluetooth devices, such as smartphones, nearby. These transmitters are used i.a. in stores to track the customer's movements in the store.

[5] See Guideline 5/2020 of the European Data Protection Board regarding consent under Regulation 2016/679 (version 1.1., Adopted on 4 May 2020), page 14

[6] See Guideline 5/2020 of the European Data Protection Board regarding consent under Regulation 2016/679 (version 1.1., Adopted on 4 May 2020), page 13

[7] See also Opinion 3 of the Article 29 Working Party on Limitation of Purpose (WP 203), p. 16. appears: "For these reasons fulfills a vague or general purpose such as. "Improving the user experience", "marketing purposes", "IT security purposes" or

"future research" - without more detailed information - does not normally meet the criteria for consent. "

[8] The principle of purpose limitation follows from Article 5 (1) of the Data Protection Regulation. 1, letter b, according to which personal data must be collected for explicitly stated and legitimate purposes and may not be further processed in a way that is incompatible with these purposes.

[9] See Guideline 5/2020 of the European Data Protection Board regarding consent under Regulation 2016/679 (version 1.1., Adopted on 4 May 2020), page 14, example 7.

[10] See Article 29 Working Party Guidelines on Transparency pursuant to Regulation 2016/679 (WP260rev01) as last revised and adopted on 11 April 2018, page 7

[11] See Article 29 Working Party Guidelines on Transparency pursuant to Regulation 2016/679 (WP260rev01) as last revised and adopted on 11 April 2018, page 8