

# Summary Final Decision Art 60

Investigation

EDPBI:SE:OSS:D:2023:817

Administrative fine

## Background information

Date of final decision:	26 June 2023
Date of broadcast:	26 June 2023
LSA:	SE
CSAs:	NO, DK, FI, EE, DE
Legal Reference(s):	Article 4 (Definitions), Article 6 (Lawfulness of processing) Administrative fine.
Decision:	Cookies, Consumer protection, Advertising, Lawfulness of
Key words:	processing, Legitimate interest, Profiling

## Summary of the Decision

### Origin of the case

The controller is a parent company in a group that includes several entities operating in media industry. The affiliated companies collect personal data from their customers and people who visit the company's websites. The data collected is then transferred into two group common databases, one customer database and one behavioural database. These databases generate profiles of individuals. The data stored in the behavioural database is consequently processed for the purpose of displaying personalised content and personalised advertisements in the digital services of the affiliated companies.

The LSA initiated supervision against the controller in order to investigate whether the controller complies with the GDPR requirements for the processing of personal data that takes place for marketing purposes pursuant to Article 6(1)(f) of the GDPR. The supervision covered the processing of personal data conducted through creating profiles and making it available to affiliated companies to be used to display personalized advertisements. It also covered the processing of personal data, the creation of profiles and the making available of data to affiliated companies in order to be used by affiliated companies in telemarketing and postal direct marketing.

### Findings

The LSA made the assessment that the company in question is a joint controller of the data along with the affiliated companies for the part of the personal data processing that takes place for the common purposes

of making personal data available. Both when it comes to the legal basis for processing for the purpose of displaying personalised advertisements based on data in the behavioural database and the legal basis for processing for the purpose of making contact information available for telemarketing and postal direct marketing, the controller stated that the activities within the group have been coordinated in order to achieve a better data collection and make it possible to process the personal data for specified purposes in a cost-effective and integrity-friendly manner. The controller thus relied on the legal basis of Article 6(1)(f) of the GDPR for this processing of personal data.

The LSA stated that supplementary behavioural profiles do constitute **personal data** and even the simple behavioural profiles not linked to the controller's database mean that individuals are identifiable.

The LSA also found that that (1) the processing, both based on simple behavioural profiles and supplemented behavioural profiles that took place for the purpose of making the data available to affiliated companies for the purpose of displaying personalised advertisements and (2) that the processing for the purpose of making available contact details for telemarketing and postal direct marketing, included **profiling** of data subjects as defined in Article 4(4) of the GDPR.

When assessing reliance on the legal basis of **Article 6(1)(f)** of the GDPR, the LSA first noted that the controller has defined an interest that is legitimate. Second, the LSA concluded that the processing in question could be considered as necessary for the purpose stated by the controller. Third, the LSA assessed the balancing test and noted that the possibility for using Article 6(1)(f) GDPR as the lawful basis for profiling based on observed data is limited. The LSA further stated that the privacy interest of data subjects is of great significance due to the nature of the data. The LSA noted that in this case the profiling included data collected from other contexts such as previous purchases, collected demographic data and statistical data. The LSA further considered that profiling was extensive in its nature and that such profiling was not something a data subject could expect without having consented to such processing of personal data. In conclusion, LSA considered that because the processing enabled profiling of individuals, the data subject's privacy interest outweighed the interests of controller and affiliated companies.

In light thereof, LSA found that the controller has processed personal data without having a lawful basis pursuant to Article 6(1) GDPR in order to profile the data subjects based on their behavioural data in a so-called supplemented behavioural profile and make the profiles available to affiliated companies in order to display personalised advertisements. In addition, the LSA found that the controller has processed personal data without having a lawful basis pursuant to Article 6(1) GDPR in order to profile the data subjects based on their behavioural data in so-called simple behavioural profiles and make the profiles available to affiliated companies for the purpose of displaying personalised advertisements and by profiling the data subjects based on their supplemented customer database profiles in order to make contact information available to affiliated companies for tele marketing and postal marketing.

When it comes to processing of personal data not linked to the behavioural database, the LSA noted that the controller has taken steps to minimise the number of data points both in relation to the principles of data minimisation and storage minimisation and that profiling did not include data collected through cookies. Also, the investigation has shown that the data subjects have been given the opportunity to object before the processing was conducted and that the controller respected the data subjects' wishes to avoid marketing that has been noted in national block lists or with the controller. In conclusion, LSA considered that the interests or fundamental rights of the data subjects did not outweigh the interests of the controller and it could indeed rely on Article 6(1)(f) of the GDPR for the processing in question.

## Decision

Pursuant to Articles 58(2) and 83 of the GDPR, in view of the gravity, aggravating and mitigating circumstances of the infringement and the high turnover in relation to the infringements, the LSA ordered the controller to pay an administrative fine of SEK 13.000.000 (approximately EUR 1.150.000). The LSA considered this amount to be effective, proportionate and dissuasive.