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To: Datatilsynet
Postboks 458 Sentrum
0105 Oslo, Norway

Subject: Complaint against Datatilsynet

Dear Sir/Madam,

I would hereby like to lodge an *official complaint* against Norwegian Data Protection Authority (“Datatilsynet”), organization number 974 761 467, for breaches of Norwegian Data Protection Act, 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, “GDPR”), and Norwegian Electronic Communication Act.

Datatilsynet is established as a supervisory authority for personal data protection, with delegated authority to perform tasks conferred by GDPR Art. 57/58.¹ As such, it is bound to be held to the highest data protection standards. However, Datatilsynet has shown disregard for GDPR articles 5, 6, 13, 32 and 57, as well as Electronic Communication Act §2-7b.

Specifically, Datatilsynet operates a website which processes users’ personal data without a proper legal basis, fails to properly inform users of purposes of processing, fails to obtain user consent for placement of cookies, and neglects to implement appropriate security measures. Furthermore, the website fails to make it possible for data subjects to submit complaints to Datatilsynet, in breach of obligations imposed by GDPR Art. 57(2), which might have a large impact on data subjects’ ability to exercise their right to lodge a complaint pursuant to GDPR Art. 77.

Datatilsynet has a page dedicated to providing data subjects with the notice of its processing activities (“privacy notice”). On this page, Datatilsynet informs that it engages in the following data processing activities connected to the use of their website(s):

- Web analytics, with the purpose of improving the website content and use, relying on GDPR Art. 6(1)(f) as legal ground, whereas the legitimate interest is improvement of services;
- Placement of cookies, used to ensure functioning of the website, relying on GDPR Art. 6(1)(f) as legal ground, whereas the legitimate interest is functioning of website;

¹ See Norwegian Data Protection Act, §20.

- Search terms storage, used to improve website content, relying on GDPR Art. 6(1)(f) as legal ground, whereas legitimate interest of Datatilsynet is to “enable website to function”;
- “Did you find what you were looking for?” feedback function, used to improve website content, relying on GDPR Art. 6(1)(f) as legal ground, with no legitimate interest identified;
- Storage of comments on Personvernbloggen, without processing purpose specified, relying on GDPR Art. 6(1)(f) as legal ground, with no legitimate interest specified.

The following breaches of regulatory framework may be observed:

A. Breach of GDPR Art. 6 (“lawfulness of processing”)

Datatilsynet bases all processing activities connected to website visits on GDPR Art. 6(1)(f), which provides that personal data may be processed if “processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.”

However, Datatilsynet may not lawfully process personal data on the grounds of legitimate interest, seeing as GDPR Art. 6(1) clearly stipulates that “point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.” Datatilsynet is indeed a public authority, and operation of the website is indeed done in performance of its tasks. Processing based on this legal ground is consequently unlawful.

Furthermore, even if Datatilsynet could rely on legitimate interest in some of these scenarios, the actual interests named in privacy notice do not constitute proper basis for the processing of personal data, insofar there is no logical way to establish necessity of processing for the interests cited (e.g. storage of search terms is not *necessary* in order for a website to function).

B. Breach of Norwegian Electronic Communication Act §2-7b

Datatilsynet places several cookies on terminal equipment of data subjects visiting their website, on the cited ground of legitimate interest. This is in violation of Electronic Communication Act §2-7b, which clearly states that placement of cookies is only permitted where valid consent is obtained from users.

C. Breach of GDPR Art. 13 (“Information to be provided where personal data are collected from the data subject”)

Datatilsynet fails to adequately inform users about the details of its processing activities.

GDPR Art. 13(1)(d) specifically requires data controllers to, where the processing is based on point (f) of Article 6(1), disclose the legitimate interests pursued by the controller or by a third party. Datatilsynet did not disclose legitimate interest it pursues with feedback function or storage of comments on Personvernbloggen. Furthermore, even when it discloses legitimate interests it relies on, Datatilsynet fails to follow WP29 recommendation on disclosing the results of the balancing test.

D. Breach of GDPR Art. 5

Datatilsynet is in breach of principles of purpose limitation, which provides that personal data shall be “collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes”. Purposes of processing which are cited in its privacy notice are not specific enough, and consequently do not constitute a valid purpose of processing. Furthermore, there is a demonstrated lack of accountability principle due to the violations described herein.

E. Breach of GDPR Art. 57 and 77

Datatilsynet makes it unnecessarily difficult for data subjects to submit complaints for violations of GDPR or other laws it administers. There is no easy way to find a page on information on how to lodge a complaint, either in primary or in secondary navigation.

Furthermore, Datatilsynet does not make it possible for data subjects to submit complaints in an electronic format, and requires data subjects to instead mail a hard copy of a complaint. This is in violation of Art. 57(2), which provides that “each supervisory authority *shall* facilitate the submission of complaints referred to in point (f) of paragraph 1 *by measures such as a complaint submission form which can also be completed electronically*, without excluding other means of communication.”

Most concerningly, Datatilsynet informs data subjects that “in order to ensure effective handling of the case, you must contact the organization before you complain to us”. There is no requirement in GDPR to contact data controllers prior to lodging a complaint to supervisory authorities. Imposition of such requirement, or actions which may be mistaken for such imposition, constitutes therefore a violation of data subject’s right to lodge a complaint in line with GDPR Art. 77.

Consequently, given that Datatilsynet violates the very law it is in charge of supervising, in ways which not only send wrong signals to data controllers across the country, but also seriously hamper data subject’s ability to exercise their rights, I request that Ministry of Local Government and Modernisation urgently establishes a special panel to deal with this complaint, and fines Datatilsynet to the fullest extent possible under the law.

I would also kindly request to be notified of the official resolution of my complaint via a binding administrative decision.

Thank you in advance.

Best regards,

Miloš Novović