



ANDMEKAITSE INSEKTSIOON

**FOR INTERNAL USE**

Holder of information: Data Protection Inspectorate

Note made: 7 May 2021

Restriction of access in force until the decision enters into force, but for personal data until 7 May 2096

Basis: clauses 35 (1) 2, 35 (1) 12 of the Public Information Act

**Recommendation on personal data protection  
Notice of termination of proceedings**

The Data Protection Inspectorate (hereinafter referred to as the Inspectorate) received a complaint from Lithuanian citizen [REDACTED] in the information exchange system IMI regarding unsolicited telephone calls. On 28 August 2018, a woman from the company [REDACTED] called the applicant (with the number [REDACTED]) and made an offer to purchase goods. The applicant asked what the legal basis for the call was. The applicant was told that the caller had an offer. The caller from [REDACTED] was of the opinion that this was not an advertisement but an offer. The applicant reminded the caller that under data protection law, they do not have the right to offer goods without prior consent. The caller replied that they had always worked like that and would continue to do so. According to the complaint, the applicant's personal data are being processed illegally and used for marketing purposes.

The Inspectorate asked the Lithuanian supervisory authority for its opinion on calls being made to arbitrarily generated numbers. The Lithuanian data protection authority clarified that persons may not be called in Lithuania without their prior consent, even if this number is randomly generated.

The Inspectorate explained to the processor of data that the Lithuanian data protection authority is of the opinion that even only a telephone number can be considered to be personal data and that calling a randomly generated telephone number therefore constitutes to processing personal data and that prior personal consent is required for conducting direct marketing in this way. The Estonian Data Protection Inspectorate requests that this requirement to be complied with in the future, because if a complaint is received, the Inspectorate must apply Lithuanian law regarding direct marketing for activity in Lithuania.

Based on the above, the Estonian Data Protection Inspectorate initiated supervision proceedings pursuant to clause 56 (3) 8) of the Personal Data Protection Act.

**The Inspectorate drew the attention of the data controller of the data to the following and made a recommendation to [REDACTED]:**

- 1. When processing personal data, the controller must ensure that the data would be processed lawfully, fairly and in a transparent manner in relation to the data subject (point (a) of Article 5 (1) of the General Data Protection Regulation). To explain, there must be a legal basis for any kind of data processing.** Hereby, it is important that data processing would be clear and understandable, and that people are not provided with misleading information about the processing of personal data. The processing of personal data shall be lawful only if at least one of the conditions provided for in Article 6(1) of GDPR is fulfilled.
- 2. [REDACTED] lacks any legal basis to make calls to telephone numbers obtained from public databases or generated in another way. Therefore, calls to numbers not in line with the originally stated purpose for obtaining the numbers are not permitted.**

█ does not have the consent to call the numbers to make offers. For example, if a person selling a car has published his/her telephone number publicly on the Internet, this number may not be called with the purpose of offering him/her goods or services. The number is published for the sole purpose of receiving calls for selling the car.

- 3. Pursuant to the Lithuanian Law on Electronic Communications, the data controller must have the prior consent to make marketing calls. This is the view of the Lithuanian data protection authority. The Inspectorate makes a recommendation to follow the Lithuanian Law on Electronic Communications when making calls so that the company would operate in accordance with Lithuanian law.**

Based on the above, the Inspectorate terminates the supervision procedure and forwards this notice to the data controller.

█  
Lawyer  
Authorised by Director General

Republic of Estonia  
Data Protection Inspectorate