



4.8.2023

Number 7732/161/23

## Decision of the Data Protection Ombudsman

### Case

Decision of the Data Protection Ombudsman to Ridetech International B.V. and Yandex LLC to prohibit and suspend data transfers to the Russian Federation.

### Controllers

Ridetech International B.V. (Yango Taxi Service Application)

Yandex LLC

### Background to the case

Yango is a taxi service that is used with the help of a mobile app. The service provider of the Yango application in the EEA is Ridetech International B.V. (formerly Yandex.Taxi B.V.) based in the Netherlands. A case concerning the Yango application, and the lawfulness of transfers of personal data associated with that application, is the subject of a cooperation procedure between the European Data Protection Authorities. According to that investigation, personal data which relates to the users of the Yango application is being transferred to the Russian Federation. The lead supervisory authority in that case is the Dutch supervisory authority Autoriteit Persoonsgegevens and the Finnish Data Protection Ombudsman's Office is a participating supervisory authority.

In so far as this Decision concerns the processing of personal data by Yandex LLC, established in the Russian Federation, the Data Protection Ombudsman's Office is competent under Article 58 of the GDPR.

### Report received

On 22 May 2019, the Office of the Data Protection Ombudsman requested Yandex Oy to provide information about which party is acting as the controller of personal data in relation to the Yango application. Yandex Oy responded to the request for clarification on 28 June 2019. According to its response, Ridetech International B.V. (formerly Yandex.Taxi B.V.) based in the Netherlands is the service provider of the Yango application in the EEA. Ridetech International B.V. acts as the data controller for most of the personal data processed in connection with the Yango application. According to the investigation, Yandex LLC is also involved in the processing of personal data in connection with the Yango application. The Office of the Data Protection Ombudsman considers that this operator should therefore be treated as a data controller in accordance with the GDPR.

### Hearing of the parties

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According to section 34(1) of the Act on National Administrative Procedure (Administrative Act 434/2003), a party must be given an opportunity to be heard before the matter is decided, and to provide explanations on any claims which may affect the outcome of the case. According to paragraph 2(4) of the provision, the matter may be decided without hearing if the hearing may jeopardise the attainment of the purpose of the decision.

On 3 August 2023, the Data Protection Ombudsman became aware that, on 1 September 2023, a law will enter into force in the Russian Federation which gives the authorities a broad right of access to the data of taxi passengers. On the grounds set out in this Decision, the purpose of this interim decision is to suspend the transfer of data from Finland to the Russian Federation before the entry into force of this law.

According to the opinion of the Data Protection Ombudsman, consulting the interested party on this matter, and the subsequent notification of the Data Protection Ombudsman's decision, would take a sufficiently long period that the purpose of the decision would be impeded and the legal protection of persons using the Yango application in Finland would be seriously compromised. The Office of the Data Protection Ombudsman therefore considers that the consultation of the interested party on the matter would jeopardise the realisation of the purpose of the decision.

Due to the foregoing, the matter is decided by an interim decision without hearing the party on the basis of section 34(2)(4) of the Administrative Procedure Act.

## **Consideration of the matter in the collegial body of sanctions of the Office of the Data Protection Ombudsman**

According to the Rules of Procedure of the Office of the Data Protection Ombudsman, under the second paragraph of Article 14, the collegial body of sanctions shall deal with a case concerning the prohibition of processing and the suspension of data transfers as provided for in Article 58(2)(f) and (j) of the GDPR.

The collegial body of sanctions of the Office of the Data Protection Ombudsman has dealt with the matter as a matter of urgency at a meeting convened on 4 August 2023. The Office of the Data Protection Ombudsman has taken a decision on the matter after consulting the collegial body of sanctions. The collegial body of sanctions was unanimous.

## **Applicable law**

### **Transfers of personal data to third countries**

Transfers of personal data to third countries or international organisations are laid down in Chapter V of the General Data Protection Regulation. The general principle of transfers is laid down in Article 44 of that Chapter, according to which any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation shall take place only if, subject to the other provisions of this Regulation, the conditions laid down in that Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation. All provisions of that Chapter shall be

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applied in order to ensure that the level of protection of natural persons guaranteed by this Regulation is not undermined.

Article 46 of the GDPR provides for transfers of personal data subject to appropriate safeguards. Pursuant to paragraph 1 of that Article, in the absence of a decision pursuant to Article 45(3), a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.

According to paragraph 2 of that Article, the appropriate safeguards referred to in paragraph 1 may be provided for, without requiring a specific authorisation from the supervisory authority, by: a legally binding and enforceable instrument between public authorities or public bodies; binding corporate rules pursuant to Article 47; standard data protection clauses adopted by the Commission in accordance with the examination procedure referred to in Article 93(2); standard data protection clauses to be adopted by the data protection authority and adopted by the Commission in accordance with the examination procedure referred to in Article 93(2); adopted codes of conduct referred to in Article 40, together with binding and enforceable commitments by the controller or processor of the third country, for the application of appropriate safeguards, including the rights of data subjects; the approved certification mechanism referred to in Article 42, together with binding and enforceable commitments by the controller or processor of the third country, for the application of appropriate safeguards, including the rights of data subjects.

Subject to the authorisation of the competent supervisory authority, the appropriate safeguards referred to in paragraph 1 may also include, in particular, the following: contractual clauses between the controller or processor and the controller, processor or recipient of the data in a third country or international organisation; or (b) provisions to be included in administrative arrangements between public authorities or public bodies and which include enforceable and effective rights of data subjects.

The supervisory authority shall apply the consistency mechanism referred to in Article 63 in the cases referred to in paragraph 3 of Article 46. The approvals granted by a Member State or a supervisory authority pursuant to Article 26(2) of Directive 95/46/EC shall remain valid until such time as the supervisory authority concerned amends, replaces or revokes them where necessary. Decisions adopted by the Commission pursuant to Article 26(4) of Directive 95/46/EC shall remain in force until they are amended, replaced or repealed where necessary by a Commission decision adopted in accordance with paragraph 2 of this Article.

### **Powers of the supervisory authority**

Article 56 of the GDPR provides for the powers of the lead supervisory authority. Article 60 of the GDPR provides for cooperation between lead supervisory authorities and other supervisory authorities involved.

Article 58 of the GDPR sets out the powers of the supervisory authorities. In accordance with subparagraph 2(f) of that article, the authority may impose a temporary or permanent restriction on processing, including a prohibition of processing. In

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accordance with subparagraph 2(j) of that article, the authority may order the suspension of data flows to a recipient in a third country or to an international organisation.

### **Urgent procedure**

According to Article 66 of the GDPR on the urgency procedure:

1. In exceptional circumstances, where a supervisory authority concerned considers that there is an urgent need to act in order to protect the rights and freedoms of data subjects, it may, by way of derogation from the consistency mechanism referred to in Articles 63, 64 and 65 or the procedure referred to in Article 60, immediately adopt provisional measures intended to produce legal effects on its own territory with a specified period of validity which shall not exceed three months. The supervisory authority shall, without delay, communicate those measures and the reasons for adopting them to the other supervisory authorities concerned, to the Board and to the Commission.
2. Where a supervisory authority has taken a measure pursuant to paragraph 1 and considers that final measures need urgently be adopted, it may request an urgent opinion or an urgent binding decision from the Board, giving reasons for requesting such opinion or decision.
3. Any supervisory authority may request an urgent opinion or an urgent binding decision, as the case may be, from the Board where a competent supervisory authority has not taken an appropriate measure in a situation where there is an urgent need to act, in order to protect the rights and freedoms of data subjects, giving reasons for requesting such opinion or decision, including for the urgent need to act.
4. By derogation from Article 64(3) and Article 65(2), an urgent opinion or an urgent binding decision referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the Board.

### **Hearing of the parties**

According to section 34(1) of the Act on National Administrative Procedure (Administrative Act 434/2003), a party must be given an opportunity to be heard before deciding on the matter and to provide explanations on any claims and explanations which may affect the outcome of the case.

According to section 34(2)(4) of the Administrative Procedure Act, a matter may be decided without consulting the party concerned if the hearing may jeopardise the realisation of the purpose of the decision, or if the delay in the processing of the matter caused by the hearing would cause significant harm to human health, public safety or the environment.

### **Compliance with the order and appeal**

Under section 25(3) of the Data Protection Act (1050/2018), a decision of the Data Protection Ombudsman or the Assistant Data Protection Ombudsman may stipulate that the decision must be complied with despite any appeal, unless the Appellate Authority orders otherwise.

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## Legal issue

There is a need to rule on:

1. Whether the processing of personal data in the context of the Yango application infringes the general principle of Article 44, Article 46 and Chapter V of the GDPR on transfers of personal data to third countries,
2. Whether the case can be dealt with under the urgent procedure provided for in Article 66 of the GDPR; and
3. Whether the controller should be prohibited from processing the personal data of users of the Yango application pursuant to Article 58(2)(f) GDPR and/or ordered to suspend the transfer of personal data collected in connection with the Yango application pursuant to Article 58(2)(j) GDPR to a recipient in a third country or to an international organisation.

## Decision of the Data Protection Ombudsman and reasons

### Decision

1. The Office of the Data Protection Ombudsman considers that the processing of personal data in the context of the Yango application is contrary to the general principle of Article 44, Article 46 and Chapter V of the GDPR on transfers of personal data to third countries.
2. The Office of the Data Protection Ombudsman considers that the conditions for the urgency procedure under Article 66 of the GDPR are met for the reasons set out in more detail below.
3. The Data Protection Ombudsman prohibits the controller from processing the personal data of users of the Yango application in order to transfer them from Finland to the Russian Federation pursuant to Article 58(2)(f) of the General Data Protection Regulation.

Pursuant to Articles 58(2)(j) and 66(1) of the GDPR, the Office of the Data Protection Ombudsman orders the controller to suspend the transfer of personal data collected in connection with the Yango application from Finland to the Russian Federation.

The processing ban and the order to suspend data transfers will enter into force on 1 September 2023. This is a provisional decision valid for a period of three months until 30 November 2023.

Pursuant to section 25(3) of the Data Protection Act (1050/2018), the Data Protection Ombudsman orders the controller to comply with the order to suspend data transfers despite any appeal.

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The Data Protection Ombudsman shall instruct the controller to notify the Office of the Data Protection Ombudsman by 25 August 2023 of the measures it will take in response to this decision.

The controller may also provide the Office of the Data Protection Ombudsman with other information which it considers to have an impact on the assessment set out in this Decision. On the basis of this information, the Office of the Data Protection Ombudsman may assess the need for a prohibition of processing and a suspension of processing.

## Rationale

### On the lawfulness of data transfers

A case concerning the Yango application and the lawfulness of transfers of personal data has been the subject of a cooperation procedure between the European Data Protection Authorities. According to that investigation, the personal data relating to users of the Yango application are transferred to The Russian Federation on the basis of safeguards under Article 46 of the GDPR. These safeguard measure are, in-and-of themselves, compatible with the GDPR and, in principle, allow the transfer of personal data to a third country for which the Commission has not taken a decision on an adequate level of data protection in accordance with Article 45 of the GDPR. However, the safeguards do not create an absolute right for the controller to transfer data to a third country. The controller must also ensure that data transfers comply with the general objectives of the General Data Protection Regulation and with Article 8 of the Charter of Fundamental Rights of the European Union.<sup>1</sup> In particular, following the judgment of the Court of Justice in *Schrems II*, such an assessment must take into account whether the authorities of a third country have access to the personal data transferred.<sup>2</sup>

In practice, the Court has held that a competent supervisory authority is required to suspend or prohibit a transfer of personal data to a third country on the basis of standard data protection clauses adopted by the Commission, if, in the view of that supervisory authority, it considers, in the light of all the circumstances of that transfer, that those clauses are not or cannot be complied with in that third country and that the protection of the data transferred, as required by EU law, and in particular by Articles 45 and 46 of the GDPR and by the Charter, cannot be ensured by other means, in so far as the controller established in the Union or its processor has not itself suspended or terminated the transfer.<sup>3</sup> This may be due, for example, to the legislation of the relevant third country.

The activities of the controllers have been examined in the cooperation procedure between supervisory authorities under Article 60 of the General Data Protection Regulation. However, the new legislation, which will enter into force on 1 September 2023, creates the right for the executive authority of the Russian Federation's security services to have 24/7 remote access to databases and information systems used to

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<sup>1</sup> Judgment of the Court of Justice of the European Union in Case C-311/18 – Data Protection Commissioner vs Facebook Ireland and Maximilian Schrems ('Schrems II'), paragraphs 90 to 121

<sup>2</sup> Schrems II, paragraph 104

<sup>3</sup> Schrems II, paragraph 121

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receive, store, process and dispatch taxi orders. This allows the said authority to have very wide access to personal data collected from Finland.

In *Schrems II*, the Court of Justice emphasised that the exceptions and limitations on the protection of personal data (which includes the disclosure of such personal data to a public authority<sup>4</sup>) must be proportionate to the objectives pursued and must apply only in so far as is strictly necessary. The legislation in question must contain clear and precise rules governing the scope and application of the exception or restriction and must lay down safeguard measures for exceptions and limitations. In particular, the legislation must lay down conditions for the exceptions and limitations that ensure that the protection of personal data is no more limited than necessary.<sup>5</sup> Such conditions often include *ex ante* control measures restricting public authorities' access to data, such as a separate decision by an independent court on the authority's right of access. In the case before the Office of the Data Protection Ombudsman, there are no such safeguards. The national authority would have extensive and unrestricted access to the data under the legislation that enters into force in the Russian Federation.

The Office of the Data Protection Ombudsman considers that there is a significant and concrete risk that personal data collected from Finland and transferred to the Russian Federation would be processed in a manner that does not meet the requirements of the General Data Protection Regulation or the data transmission mechanisms provided for therein, and would not be in line with the Charter of Fundamental Rights of the European Union.

### **Dealing with a case under the urgent procedure**

A case concerning the processing of personal data that has an impact on the territory of several Member States (and EEA countries) is dealt with in the so-called cooperation procedure under Article 60 GDPR. Under this procedure, the lead supervisory authority shall be determined by the main establishment of the controller as defined in Article 4(16). In the present case, the service provider of the Yango application in the EEA is, according to a previous investigation, Ridetech International B.V. (formerly Yandex.Taxi B.V.) based in the Netherlands. Consequently, the Dutch supervisory authority Autoriteit Persoonsgegevens has acted as the lead supervisory authority in Yango cases. The other supervisory authorities involved in Article 60 procedures shall be the supervisory authority concerned, as defined in Article 4(22). The Office of the Data Protection Ombudsman is a supervisory authority concerned.

However, in accordance with Article 66(1) of the GDPR, and by way of the derogation that is provided for in exceptional circumstances, the supervisory authority concerned may immediately adopt provisional measures.

In connection with a telephone conversation with the journalist from Helsingin Sanomat on 3 August 2023, the Data Protection Ombudsman was informed of new legislation concerning taxi service providers that will enter into force in the Russian Federation on 1 September 2023. In the Russian Federation, a federal law adopted in December

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<sup>5</sup> Schrems II, point 176



2022 requires<sup>6</sup> a taxi service provider to provide the federal security executive, or its regional body, with access to taxi service information systems and databases. With regard to the Yango taxi application, such information could include, for example, the addresses from which the customer was picked up and to which he or she was taken.

In accordance with Article 14(7) of the Act on the Organisation of the Carriage of Passengers and Baggage by Passenger Taxi in the Russian Federation, access shall be given to information systems and databases used for the receipt, storage, processing and transfer of passenger taxi orders in a manner prescribed by the Government of the Russian Federation.

The Government of the Russian Federation adopted a decree on the same subject on 4 July 2023.<sup>7</sup> The Regulation lays down rules requiring the security executive to have access to the information of the taxi service. In accordance with paragraph 2 of the rules laid down by the Regulation, the passenger taxi subscription service operating on an online service shall provide the executive of the State Security Service with 24/7 remote access to information systems and databases used to receive, store, process and dispatch taxi orders.

The aforementioned law of the Russian Federation concerning the provision of information, as well as the Decree of the Government of the Russian Federation, which supplements it, will enter into force on 1 September 2023.

As stated above, the Office of the Data Protection Ombudsman considers that the controller will not be in a position to comply with the safeguards provided for in Article 46 GDPR, the safeguards provided elsewhere in the GDPR, or the right to the protection of personal data under Article 8 of the EU Charter of Fundamental Rights, in particular following the entry into force of the law on the Organisation of the Transport of Passengers and Baggage by Passenger Taxis in the Russian Federation. Since this legislation enters into force on 1 September 2023, the matter must be dealt with under the urgency procedure referred to in Article 66 of the GDPR. In particular, it would not be possible to deal with the matter under the ordinary cooperation procedure before the entry into force of that law, since the procedural provisions of Article 60 GDPR takes at least four weeks to complete.

On the basis of the above, the Data Protection Ombudsman considers that the unrestricted access of the Russian Federation's National Security Service to the personal data of taxi passengers seriously jeopardises the fundamental rights and freedoms of data subjects in Finland. The Office of the Data Protection Ombudsman also emphasises that such unrestricted access to personal data is contrary to Article 10 of the Constitution of Finland and Article 8 of the Charter of Fundamental Rights of the

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<sup>6</sup> Law of the Russian Federation No. 580-FZ on the organisation of the carriage of passengers and baggage by passenger taxis in the Russian Federation, amending certain acts of the Russian Federation and recognising certain provisions as invalid. The law was approved in Duma on 22 December 2022, the law was approved by the Federal Council on 23 December 2022, and the President signed the Act on 29 December 2022. The law can be read from an online service maintained by the Russian authorities: [actual.pravo.gov.ru/text.html#pnum=0001202212290039](http://actual.pravo.gov.ru/text.html#pnum=0001202212290039), visited 4.8.2023

<sup>7</sup> Decree N. 1101 of the Government of the Russian Federation of 4 July 2023, which can be read from the online service operated by the Russian authority: <http://publication.pravo.gov.ru/document/0001202307070021>, visited 4.8.2023

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European Union. For this reason, the urgent procedure provision is also necessary in order to protect the interests of data subjects.

Given the urgency of the matter, the lack of appropriate safeguards and the risks to the rights and interests of data subjects, the Office of the Data Protection Ombudsman considers that the requirements for the need for exceptional circumstances and urgent measures referred to in Article 66 GDPR are met in this case.

### **Further consideration of the case and considerations to be taken into account**

On the basis of a clarification by the controller in April 2022, the controller's main establishment, as referred in Article 4(16) GDPR, is located in the Netherlands. In August 2023, the Office of the Data Protection Ombudsman was informed by the Dutch supervisory authority that a number of mergers and acquisitions have taken place in the Yandex group.

In view of the fact that this Decision constitutes a temporary emergency measure to safeguard the rights and freedoms of data subjects in Finland, a further analysis of the matter must continue to be carried out if and how the mergers and acquisitions affect, as regards the personal data processed in the context of the Yango application, who or who is to be considered the controller. This also has an impact on who is to be regarded as a competent supervisory authority.

The final decision is therefore taken by the lead supervisory authority, the EDPB or the Office of the Data Protection Ombudsman as the competent supervisory authority.

## **Applicable law**

Referred to in the decision.

## **Appeals**

According to section 25 of the Data Protection Act (1050/2018), this decision can be appealed to the Administrative Court in accordance with the provisions of the Act on Proceedings in Administrative Matters (808/2019). The appeal is filed with the Helsinki Administrative Court.

The notice of appeal is attached.

## **Service**

The decision is notified in accordance with sections 60 and 63 of the Administrative Procedure Act (434/2003).

## **Further information on this decision**

Meeri Blomberg, Senior Officer, tel. 029 5666 755

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Data Protection Ombudsman

Anu Talus

Senior Inspector

Meeri Blomberg

The official version of this document has been signed electronically. If necessary, the correctness of the signature can be checked by the registry of the Office of the Data Protection Ombudsman.

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## Distribution

Controllers

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European Data Protection Board

European Commission

Traficom

Ministry of Transport and Communications

Ministry of Justice

## Contact details of the Office of the Data Protection Ombudsman

**Postal address:** PO Box 800, 00531 Helsinki

**E-mail:** tietosuoja@om.fi

**Telephone switchboard:** 029 566 6700

**Website:** [www.tietosuoja.fi](http://www.tietosuoja.fi)

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