

Der Landesbeauftragte für den Datenschutz und die Informationsfreiheit Rheinland-Pfalz
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By email: poststelle@datenschutz.rlp.de

Vienna, 22.11.2021

noyb-case number: C-052

Complainant: [REDACTED], geb. am [REDACTED]
[REDACTED], Deutschland

Represented on the basis of Article 80(1) GDPR by: *noyb* – European Center for Digital Rights
Goldschlagstr. 172/4/3/2, 1140 Wien, Österreich

Against: **Airbnb Inc.**, having its registered office in San Francisco, CA 94103, USA (www.airbnb.com) („**Airbnb**“);

and/or

Airbnb Ireland UC, having its registered office in 8 Hanover Quay, Dublin 2, Irland (<https://www.airbnb.ie/>);

and/or

any other controller or processor involved in the processing operations detailed in this complaint

Regarding: Article 22, Articles 12 to 15 and Article 5(1)(a) GDPR

COMPLAINT

1. REPRESENTATION

1. *noyb*-European Centre for Digital Rights is a non-profit organisation with its registered office at Goldschlagstraße 172/4/2, 1140 Wien, Austria, and with registration number ZVR: 1354838270 (hereinafter, "*noyb*") (see **Attachment 1**, articles of association) (██████████).
2. Pursuant to Article 80(1) GDPR, the Complainant is represented by *noyb* (**Attachment 2**).

2. FACTUAL BACKGROUND

2.1. Preliminary remarks

3. The Complainant is a host on Airbnb since June 2020. In April 2021, Airbnb unilaterally decided to delete a 5-star review (the Review) that a guest had given to the Complainant. Despite having contacted Airbnb to understand the reason behind this deletion, the Complainant never received any answer from Airbnb customer service. The Complainant therefore addressed an information request to the data protection officer (DPO) of Airbnb with respect to the processing of her personal data, and the reason for deleting such data (among others); she also asked for the Review to be reinstated. But her request was also left unanswered, as detailed below. The automated decision of Airbnb, and in particular their decision to delete the Review, has a significant impact on the status of the Complainant as an Airbnb 'Superhost', and more particularly on her earnings.

2.2. Airbnb and its 'Superhost' feature

4. Airbnb operates an online marketplace for lodging, primarily for home-stays. By creating so-called 'listings', individuals can therefore temporarily rent their house or apartment via the Airbnb app or website. Each listing usually contains a description of the property and of the amenities, some pictures, as well as additional general information relating to the location and the host.
5. To foster trust and reliability on its platform, Airbnb promotes a rating system based on reviews from both hosts and guests. After checking-out, guests are asked to rate their experience from 1 to 5 stars, on the basis of criteria such as location of the property or communication with the host. Similarly, hosts are invited to rate their experience with the guests by assigning them a score from 1 to 5 stars based on cleanliness, communication and observance of house rules – 5 being the highest possible rating.
6. On its website, Airbnb distinguishes between two categories of hosts: normal host and 'Superhosts'. According to Airbnb Superhost terms and conditions (**Attachment 3**), a Superhost is (i) a host who has an overall 4.8+ ratings from the guests, (ii) has less than 1% cancellation rate; (iii) responds to 90% of guest inquiries within 24 hours, and (iv) has more than 10 bookings and stays in the rental property over the last 12 months-period (or a shorter period, if the host hasn't yet been renting a property for a full year on Airbnb). Airbnb assesses four times a year whether Airbnb hosts qualify as 'Superhosts' or not.
7. Once a host is granted a Superhost status, a badge will automatically appear on their listing and profile, which increases visibility and trust from guests. It is also possible for prospective

guests to filter their search on Airbnb on the basis of the Superhost status, in the sense that only listings with a Superhost badge will appear in the search results. As explained by Airbnb on its own website (**Attachment 4**) under the title “Superhosts, super benefits”:

- *“Superhosts often benefit from a significant increase in earnings. More visibility and trust from guests can mean more money for you.”*
 - *“The badge can make your listing more attractive to guests—they’ll know you’re an experienced host known for great hospitality. Guests can even filter their search results to discover only listings with Superhost status.”*
 - *“You’ll get an extra 20% on top of the usual bonus when you refer new hosts. And after 4 consecutive quarters as a Superhost, you’ll receive a travel coupon” (the value of which is currently \$100).*
8. In accordance with Airbnb Superhost Terms & Conditions (**Attachment 3**), a host may gain or lose the Superhost status at the end of each assessment period. From the four requirements mentioned above, the most challenging one to fulfil for hosts is usually to maintain a 4.8+ ratings from the guests. As a consequence, receiving and maintaining 5-stars reviews is incredibly important, and can have a significant impact on the (economic) success of an Airbnb host.

2.3. The relationship between the Complainant and Airbnb

9. The Complainant registered a listing on Airbnb in June 2020, called [REDACTED] (hereafter, the “**Listing**”). This Listing consists in a separate unit on the ground floor of the Complainant’s house. It is composed of a small living-room and a kitchen, a bedroom and a private bathroom. The Listing is today still available for bookings on Airbnb at [REDACTED].
10. Since June 2020, the Complainant has regularly been renting this Listing via the Airbnb’s platform. The earnings from renting this Listing represent a significant portion of the overall revenues of the Complainant.
11. Early October 2020, the Complainant was notified by Airbnb that she had gained the status of ‘Superhost’. Thanks to this Status, the Complainant has been able to successfully continue renting her Listing, despite a significant worldwide decrease in the demand for short-term rentals due to the Covid-19 crisis. The Complainant therefore made it a priority to foster this Superhost status, and in particular to maintain the 4.8+ average rating on her Listing. In this context, every 5-stars review left by a guest has a significant impact on the status and ultimately on the earnings of the Complainant.

2.4. The unilateral decision of Airbnb to delete a 5-star Review

12. On April 7, 2020, the Complainant received an email from the address “automated@airbnb.com”, stating the following (**Attachment 5**):

“Hi [REDACTED],

We have recently removed one or more reviews from your account that we suspect to be in violation of our Review Policy. We have removed reviews for the reservations listed below as they are associated with reservation signals indicating that the reviews may not be entirely unbiased, including signals that the reservations were significantly discounted and received a five-star rating. We'd like to remind you that Airbnb only allows authentic unbiased reviews.

Reviews we have removed:

████████████████████

These reviews will no longer appear on your account and will not be used to calculate your overall ratings. Superhost status is maintained by having a 4.8 overall rating for the most recent 12 months at the time of evaluation, and by meeting other requirements outlined in Superhost Terms and Conditions.

At this time, we are not taking any additional action against your account or any of your listings based solely on these prior reviews. We may consider these prior reviews when evaluating any future violations of our review policy. Please be aware that future violations of the policy may result in the suspension or removal of your Airbnb account and/or listings.

Thanks,

The Airbnb team"

13. After clicking on the link provided by Airbnb, the Complainant found out that only one (1) review had been deleted by Airbnb, and in particular a **5-star review** (hereafter, 'the **Review**'). The Complainant understood that both the deletion and the accompanying notification had been automated, as reflected by the sender's email address (i.e. automated@airbnb.com), the impersonal tone and the imprecise wording of the message, given the fact that Airbnb was referring to "one or more reviews", or to "[t]hese reviews", despite the fact that, in the end, only one review had been subject to deletion.
14. The content of the deleted Review could no longer be read. However, the Complainant still had access to the following information: the booking number (HMFFMA9P2X), the number of nights (1), the name of the guest, and the price paid at the time (9,00 EUR). The Complainant noticed that the price was very low, and remembered the reason thereof. At that time, there was no hot water in the apartment, therefore restricting the use that guests could have of the kitchen and the bathroom. As a consequence, the Complainant had offered the guest an exceptional reduced price of 9,00 EUR/night.
15. Suspecting that the Review had been automatically deleted by an algorithm on the basis of this low price per night (although justified once contextualised), the Complainant decided to contact Airbnb in order to alert them of their mistake. On April 8, 2020, the Complainant thus initiated a conversation with the "Airbnb Support" team via the Airbnb app. After a few back-and-forth with a 'chat bot', the Complainant was invited to leave a message that a human person would later review. The Complainant briefly wrote down the facts and formulated the following two questions (**Attachment 6**):

"1) I would like to contest the automated removal by Airbnb of the 5-stars review left by my very first guest, (X). This review was genuine. The price per night was very low at the time because the hot water in the apartment was not yet connected.

2) I would also like to make a data subject information request with respect to the manner in

which Airbnb determines whether a review is genuine or not. On the basis of which criteria did Airbnb come to the conclusion that this review had to be removed?"

(hereafter, 'the **First Request of the Complainant**')

16. The Complainant did not hear from Airbnb during eight (8) days. On April 16, 2020, the Complainant was then simply informed that her inquiry had been forwarded "*to a member of [Airbnb Support] team who c[ould] better assist [her]*". The next day, on April 17, 2020, the Complainant was informed that the chat thread would be closed because the conversation had to continue via emails. That night, at 4:11 a.m., the Complainant received the following messages from the email address "reply@support-email.airbnb.com" (**Attachment 7**):

"Hello [REDACTED]

Thank you for contacting us about your concerns. After a thorough review, we have decided to uphold our original decision. We consider it final.

Thanks, Alyssa"

17. At 8:40 a.m. on the same day, the Complainant replied to this email by asking if they could tell her "*on the basis of which criteria*" such a decision was based. Fifteen minutes later, the Complainant received the following answer by email, almost identical to the previous one (**Attachment 7**):

"Hello [REDACTED]

Thanks for your reply. After a thorough review, we have decided to uphold our original decision. We consider it final.

Thanks, Alyssa".

18. Suspecting that she was again talking to a 'chat bot' or alike in light of the irrelevance of the provided answer, and that in any case Airbnb would not change their decision, the Complainant decided to escalate the matter by contacting the DPO of Airbnb directly.

19. On 19 April 2020, the Complainant sent an email to the address dpo@airbnb.com, as indicated in Airbnb Privacy Notice as the address for contacting the DPO of Airbnb for persons located in the EU (see point 2.4 of **Attachment 10.b**). After describing the facts and the content of the previous correspondence chronologically, the Complainant addressed the following request (**Attachment 8**):

"In my opinion, these reviews qualify as personal data under the GDPR, and in particular personal data relating to my place of residence, as well as my ability to welcome guests. This is the reason why I figured that contacting the DPO of Airbnb was a better idea.

Could you tell me in particular:

- *who is behind such processing (Airbnb Inc. or a processor acting on its behalf?);*
- *what type of processing was performed on my reviews (human or automated check?);*
- *once I contested this decision, how did Airbnb process my request and on the basis of which criteria did Airbnb withhold its decision?*

Thank you in advance.

[REDACTED]"

(hereafter, the ‘**Second Request of the Complainant**’).

20. On 21 April 2020 at 2:50 a.m., the Complainant received the following ‘answer’ from the address reply@support-email.airbnb.com (**Attachment 9**):

“Hi [REDACTED]
Thank you for contacting us about your concerns. After a thorough review, we have decided to uphold our original decision. We consider it final.
Regards,
Bobby”

No mention was made, and no answer was provided to the Complainant’s First or Second Data Subject Request.

21. To this date, the Complainant still has not received any answer from Airbnb’s DPO or any other representative of Airbnb with respect to her First or Second Data Subject Request.
22. It is already important to note, at this stage, that the automated deletion of reviews by Airbnb is a type of processing operation that can cause a significant prejudice to hosts. According to Airbnb’s website, there is, to date, 4 million Airbnb hosts around the world.¹ Hence, Airbnb should have conducted a data protection impact assessment (DPIA) prior to implementing such processing operation.

3. AUTHORITY COMPETENT TO DEAL WITH THE CASE/ LEAD AUTHORITY

23. This complaint is filed with the Landesbeauftragte für den Datenschutz und die Informationsfreiheit Rheinland-Pfalz (LFDI) because the Complainant is a resident in [REDACTED] and her house is located in [REDACTED].
24. Airbnb, Inc. has its registered office in San Francisco, while Airbnb Ireland UC has its registered office in Ireland. Since the Complainant did not receive any answer regarding the identity of the controller of her personal data, it is still unclear, until today, which entity or entities are responsible for the processing of her personal data in the context of the present complaint.
25. In Schedule 1 of Airbnb Privacy Policy for individuals located in the EEA and in Switzerland (**Attachment 10.b**), Airbnb seems to indicate that the controller of the personal data is Airbnb Ireland UC. Yet, Airbnb cannot subjectively or contractually determine which entity qualifies as ‘controller’ for EU data subjects. As made clear by the EDPB indeed, the concepts of controller and processor are functional, in the sense that they aim to allocate responsibilities according to the actual roles of the parties.² This means that the relevant controller in this case is the entity which has decided and implemented the terms of the Superhost status, the Review Policy, as well as the automated deletion of reviews, and which has interacted with the Complainant when the latter objected to the deletion of the Review.

¹ See <https://news.airbnb.com/about-us/>.

² EDPB Guidelines 07/2020 on the concepts of controller and processor in the GDPR, pt. 12.

In this case, this entity is without a doubt Airbnb Inc., given that they determined the criteria for being a Superhost (**Attachment 3**), implemented them through automated processing, and corresponded with the Complainant about such implementation (cf. most messages were sent by Airbnb's representatives to the Complainant at a time corresponding to the GMT-7-time zone (i.e. on the West Coast of the United States)).

26. The simple fact that Airbnb formally designates Airbnb Ireland UC as the controller for individuals in the EEA and in Switzerland in its Privacy Policy (**Attachment 10.b**) cannot alter these facts. The EDPB indeed specifically stated in this respect that the legal status of an actor as "controller" must be determined by its actual activities in a specific situation, rather than upon the purely formal designation of an actor as being either a "controller" in a contract.³
27. Consequently, the LFDI is competent to deal with the Complaint, since Airbnb, Inc. is the controller of the data processing at stake. Alternatively, in the unlikely event that the LFDI would conclude that Airbnb Ireland UC is the controller in that case, we kindly request the LFDI to consult and inform us before deciding that the Data Protection Commissioner should act as Lead Supervisory Authority (LSA).

4. GROUNDS FOR THE COMPLAINT

28. The Complainant considers that Airbnb violated the GDPR as follows and as further developed in the following:
- (a) Violation of the rights of the Complainant in relation to automated decision-making (Article 22 GDPR).
 - (b) Violation of the obligation to inform the Complainant about the processing (Article 13-14 GDPR), and of the principle of transparency (Article 5(1)(a) GDPR);
 - (c) Violation of the obligation to answer requests from the Complainant (Article 12 and 15 GDPR), and of the principle of transparency (Article 5(1)(a) GDPR);
 - (d) Violation of the obligation to answer and take into account the objection to the deletion of the Review by the Complainant (Article 12 and 21 GDPR).

4.1. Preliminary remarks

29. As a preliminary remark, it must be stressed that the Review, the profile of the Complainant, and any other data relating to the Listing, qualify as personal data of the Complainant under Article 4 GDPR. This is clear from the following facts, among others:
- The Complainant is an identified individual on Airbnb (besides the fact that her name and contact details appear on her profile, Airbnb has requested the Complainant to identify herself by providing a copy of her national identity card at the time the Complainant created the Listing);

³ EDPB Guidelines 07/2020 on the concepts of controller and processor in the GDPR, pt. 12.

- The Complainant is hosting guests in her own house, where she is also officially registered as a resident. Hence, data describing the Listing, including Reviews left by guests, directly relate to the living situation of the Complainant, as well as her ability and performance in hosting guests (e.g. reviews contain information on how the Complainant welcomes guests, where her house is located, how fast she answers requests from guests, etc.) (CJEU, 20 December 2017, *Nowak*, C-434/16, § 35);
- In its Privacy Policy, Airbnb itself admits that Reviews constitute personal data: “*You have the right to ask us to delete your personal information [...] Information you have shared with others (e.g., **Reviews**, forum postings) will continue to be publicly visible on Airbnb, even after your Airbnb account is cancelled. **However, attribution of such information to you will be removed.***” (**Attachment 10.b.**, section 5.3 “Erasure”).

4.2. Violation of the rights of the Complainant in relation to automated decision-making (Article 22 GDPR)

30. For a decision to fall within the scope of Article 22 GDPR, the decision must (i) be based **solely on automated processing**, and must (ii) produce a **legal effect** or at least a **similarly significant effect** on the Complainant.
31. In the opinion of the Complainant, the deletion of the Review by Airbnb qualifies as an automated individual decision-making in the sense of Article 22(1) GDPR (hereafter, **AIDM**).
32. Regarding the first requirement (i.e. the decision must be based “solely on automated processing”), it can indeed only be assumed that Airbnb relies on a set of algorithms to automatically detect and delete reviews that would allegedly not comply with the Airbnb’s Review Policy (**Attachment 11**), considering that:
- millions of reviews are left on Airbnb’s website, making it almost impossible to rely on humans to check them;
 - the notification was sent from the address “automated@airbnb.com”, and the message was both impersonal and imprecise (see **Attachment 5**); and most importantly
 - in its Privacy Policy, Airbnb mentions the use of AIDM “*to restrict or suspend access to the Airbnb Platform if such processes detect activity that we think poses a safety or other risk to Airbnb, our community, or third parties*” (see **Attachment 10.a**, section 3.2).
33. Regarding the second requirement (i.e. the decision must produce “a legal or at least a similarly significant effect”), the decision to delete the 5-stars Review has had the effect to reduce the overall rating of the Complainant as a host, which directly influence the Superhost status of the Complainant and the contractual advantages that it provides (cf. **Attachment 3**; to be a Superhost, a host must have a “*a 4.8 or higher average overall rating based on reviews from their Airbnb guests in the past year*”). In other words, the Complainant can lose her Superhost status and the substantial advantages that it confers on her.

34. For these reasons, it must be concluded that the decision by Airbnb to delete the Review is an AIDM in the sense of Article 22 GDPR. It is quite obvious that the decision was purely automated. In this respect, the EDPB has already made clear that the controller cannot fabricate human involvement. For example, if a controller gives an individual the task to review automated decisions, but in reality it is found that this individual routinely validates them “*without any actual influence on the result*”,⁴ those decisions would still qualify as AIDM. Human involvement indeed requires a meaningful oversight over the decisions, “*rather than just a token gesture*”.⁵ As a consequence, to prove human involvement, Airbnb must show that it was “*carried out by someone who has the authority and competence to change the decision*” before the decision was notified to the Complainant, and that, as part of the analysis, these individuals have duly considered “*all the relevant data*”,⁶ and in particular any data that could have explained the low price per night.
35. According to Article 22(1) GDPR, data subjects have the right **not** to be subject to an AIDM. This Article sets out a general prohibition on AIDM, as confirmed by the EDPB.⁷ Since Article 22(1) GDPR establishes a prohibition against AIDM as a general rule, the exceptions to this rule must be interpreted restrictively. In this case, none of the exceptions provided in Article 22(2) GDPR can reasonably apply to this case. Therefore, by having recourse to such type of processing against the general prohibition and limited exceptions set out in the GDPR, Airbnb is in clear breach of Article 22(1) and (2) GDPR.
36. Alternatively, even if it was accepted that Airbnb could rely on one of the exceptions listed in Article 22(2) GDPR to conduct such an AIDM, *quod certe non*, Airbnb has in any case failed to implement the required safeguards in relation to such processing. According to Article 22(3) GDPR indeed, Airbnb should have implemented suitable safeguards to protect the rights, freedoms and legitimate interest of the Complainant, as well as of any other hosts subject to such AIDM. Article 22(3) GDPR more specifically states that the controller should “*at least*” guarantee to data subjects (i) the right to contest the decision and express their point of view, and (ii) the right to obtain human intervention.
37. While the Complainant was indeed provided with the possibility to contest the decision and to express her point of view via the Airbnb chat, it is clear that the elements provided by the Complainant were not even assessed by Airbnb. The right to contest the decision was therefore not effective and remains dead letter. Moreover, her right to obtain human intervention has clearly been violated. The responses provided by Airbnb were indeed purely artificial and did not meet the threshold of human involvement required by the GDPR. The EDPB has clarified in this respect that, for the human intervention to be valid, “*[the] review must be carried out by someone who has the appropriate authority and capability to change the decision. The reviewer should undertake a thorough assessment of all the relevant data,*

⁴ EDPB, Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, adopted on 3 October 2017, p. 21.

⁵ Ibidem.

⁶ Ibidem.

⁷ EDPB, Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, adopted on 3 October 2017, p. 19.

*including any additional information provided by the data subject.*⁸ In this case however, Airbnb (i) never answered the questions formulated by the Complainant regarding the criteria on the basis of which the Review had been deleted, and Airbnb (ii) never considered the additional information provided by the Complainant in relation to the Review (i.e. absence of hot water in the apartment justifying the low price per night). Rather than providing the Complainant with a genuine human reassessment, representatives of Airbnb simply copy-pasted a text-block stating the decision to delete the Review was upheld and “*final*” (**Attachments 7 and 9**). This does not qualify as a valid human intervention under Article 22(3) GDPR.

38. As a consequence, Airbnb is in breach of its obligations under Article 22(3) GDPR, and in particular of its obligation to grant the Complainant a meaningful human review after the latter contested the decision of Airbnb to automatically delete the Review. Moreover, the EDPB made it clear that transparency was to be considered as a suitable safeguard.⁹ As developed under section 4.3 below, no information was provided regarding the AIDM at stake.

4.3. Violation of the obligation to inform the Complainant about the processing (Article 13-14 GDPR) and of the principle of transparency (Article 5(1)(a) GDPR)

39. Article 13(1)(c) GDPR, and Article 13(2)(a) and (f) GDPR respectively, provide that the controller must, at the latest at the time when personal data are obtained, provide information on: (i) **the purpose of the processing** for which the personal data are intended as well as **the legal basis** for the processing; (ii) the **period** for which the personal data will be stored, or at least the criteria used to determine that period, and (ii) the **existence of any automated decision-making**, including, at the very least, information about the **logic involved**, as well as the **significance of the envisaged consequences** of such processing for the data subject. The same obligations apply in situations where the personal data about the Complainant have been collected from a third party, such as a guest, in accordance with Article 14(1)(c) and Article 14(2)(a) and (g) GDPR.

40. Airbnb Privacy Policy however (**Attachments 10.a and 10.b**) does not contain any of this mandatory information:

- As far as the **purposes of the processing** and their **legal bases** are mentioned, the Privacy Policy never indicates that Airbnb will process personal data for the purpose of automatically reviewing and in some instances deleting reviews left by guests. Rather, the Privacy Policy states very broad and general objectives. In particular, it states that Airbnb “*may conduct profiling based on your interactions with the Airbnb Platform, your profile information and other content you submit to Airbnb, and information obtained from third parties*”, before adding that “[i]n limited cases, automated processes **could** restrict or suspend access to the Airbnb Platform if such processes detect activity that we think poses a safety or other risk to Airbnb, our

⁸ EDPB, Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, adopted on 3 October 2017, p. 27.

⁹ EDPB, Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, adopted on 3 October 2017, p. 27.

community, or third parties” (see Section 3.2 of **Attachment 10.a**). In its Privacy Policy for the EU, Airbnb further generally states that it will process personal data “*to provide, improve and develop Airbnb*”, or to “*create and maintain a trusted and safer environment*” (see section 4.2 of **Attachment 10.b**). The EDPB Guidelines on Transparency clearly indicate that the purposes of, and the legal basis for, processing the personal data should be clear.¹⁰ The Guidelines further provides examples of good or bad practices in this respect. Bad practices include stating very broad purposes without specifying how these purposes will be concretely achieved, or using verbs such as “*may*” or “*might*”. In this case, Airbnb Privacy Policy clearly offers examples of such bad practices. When reading the broad and vaguely formulated objectives set in Airbnb Privacy Policy, no data subject could indeed reasonably understand or expect that reviews concerning him or her would be processed exclusively through automated means for the purpose of analysing their content and/or deleting them, as the case may be. Furthermore, for both of these broadly formulated objectives, Airbnb invokes without any distinction its “*legitimate interest*” and/or the “*adequate performance of our contract*”, adding for the second objective other legal bases, such as the necessity to comply with legal obligations, the protection of the vital interest of an individual or reasons of public interest in the area of public health. Because of this confusing patchwork of incomplete and ambiguous information, the data subjects have no mean to truly grasp which legal basis applies for what purpose. This lack of information is clearly in breach of Article 13(1)(c) or 14(a)(c) GDPR and contrary to the principle of transparency enshrined in Article 5(1)(a) GDPR.

- As far as the **retention period** of personal data is concerned, the criteria indicated by Airbnb in its Privacy Policy are once again too broad and vague (see section 6 of **Attachment 10.b**). It is not possible for data subjects to know until when Airbnb may unilaterally decide to analyse and delete reviews, as nothing indicates when such processing would come to an end (for example, it is unclear if Airbnb could analyse the reviews left by guests for the purpose of deleting some reviews, even if these reviews have been left years ago). This lack of clear information is in breach of Article 13(2)(a) or 14(2)(a) GDPR and flagrantly contrary to the principle of transparency enshrined in Article 5(1)(a) GDPR.
- As far as the existence of an AIDM is concerned, Airbnb generally and vaguely refers to the use of automated processes in limited cases, “*to restrict or suspend access to the Airbnb Platform if such processes detect activity that we think poses a safety or other risk to Airbnb, our community, or third parties*” (see section 3.2 of **Attachment 10.a**). The broadness and vagueness of this statement leaves data subjects with a very imprecise and incomplete picture of the type of automated processing that Airbnb actually conducts on some personal data, and does not cover the automated assessment of reviews received by the hosts. Furthermore, as far as the automated deletion of reviews are concerned, Airbnb does not explain *which factors* may influence the decision to keep or delete a review and their respective degree of importance (i.e. absence of information regarding the logic involved). They also do not mention the fact that the automated deletion of such reviews may possibly deprive hosts from their Superhost status (i.e. lack of information on the significance of envisaged consequences). The EDPB Guidelines on Transparency however stress

¹⁰ WP29 Guidelines on transparency under Regulation 2016/679, as last revised and adopted on 11 April 2018, and as endorsed by the EDPB, p. 9.

that information on the existence of AIDM, together with meaningful information about the logic involved and the significant and envisaged consequences of the processing for the data subject, forms part of the obligatory information which must be provided to a data subject under Articles 13.2(f) and 14.2(g).¹¹ Airbnb's practices are thus in clear breach of Article 13(2)(f) or 14(2)(g) GDPR and of the principle of transparency enshrined in Article 5(1)(a) GDPR.

4.4. Violation of the obligation to answer access requests from the Complainant (Article 12 and 15 GDPR), as well as the principle of transparency (Article 5(1)(a) GDPR)

41. Article 12(2) GDPR provides that controllers must facilitate the exercise of data subjects' rights. Article 12(3) GDPR further provides that an answer must be provided within a month to the data subject, or in exceptional circumstances within a period extended by two further months (for example, if the case is highly complex). Finally, Article 12(4) GDPR provides that if a controller does not take action, it must inform the data subject without delay and at the latest within a month of the reason for not taking action and on the possibility to lodge a complaint with a supervisory authority.
42. In April 2020, the Complainant exercised her right of access under Article 15 GDPR to obtain information about the processing – namely about the deletion of the Review. As explained in points 15 and 19 of this Complaint, the Complainant requested twice specific information with respect to the processing (**Attachment 6** and **Attachment 8**). In particular, the Complainant asked about:
- the identity of the person which had conducted the specific processing at stake (and in particular whether this was Airbnb Inc. or a processor acting on its behalf);
 - the existence of any AIDM (and in particular whether the Review had been deleted solely on the basis of automated processing, or by a human reviewer);
 - the criteria behind the decision to delete or keep such reviews; and
 - after the Complainant had contested the deletion of the Review, how did Airbnb process the Complainant's objection, and on the basis of which criteria did Airbnb withhold its original decision? (by this latter question, the Complainant wanted to understand if it was once again a machine which had confirmed the first decision, with representatives of Airbnb merely confirming by email the automated decision).
43. Airbnb should have already provided this information to the Complainant in accordance with Article 13 or Article 14 GDPR and is in any case obliged to provide it as a result of the Complainant's proactive request under Article 15 (1) GDPR (see First and Second Requests by the Complainant, **Attachments 6 and 8**). Up until today, i.e. *more than 6 months after these*

¹¹ WP29 Guidelines on transparency under Regulation 2016/679, as last revised and adopted on 11 April 2018, and as endorsed by the EDPB, p. 22, pt. 41; EDPB, Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, adopted on 3 October 2017, p. 25.

requests have been made, the Complainant still has not received any answer from Airbnb on any of these points. Airbnb also did not explain the reason for not taking action.

44. These violations are evident and persistent, even if no AIDM was used within the meaning of Article 22. Indeed, in any case, Airbnb remains bound by the obligation to inform the Complainant of the existence or absence of an AIDM, and about how the access requests made by the Complainant were further processed by Airbnb (Article 15(1)(h) GDPR). The EDPB has indeed made very clear that even if a profiling practice does not qualify as an AIDM under Article 22 GDPR, the controller must in any case provide sufficient information to the data subject to ensure the fairness of the processing, and comply with Article 13 and 14 GDPR.¹²
45. As a consequence, Airbnb is in clear breach of Articles 12 and 15 GDPR. Furthermore, by failing to inform the Complainant about such a significant processing operation, Airbnb is also in clear breach of the principle of transparency under Article 5(1)(a) GDPR.

4.5. Violation of the obligation to answer and take into account the objection to the deletion of the Review by the Complainant (Article 12 and 21 GDPR)

46. On April 8, 2021, the Complainant clearly stated that she contested the deletion of the Review by Airbnb, and that she did not agree with such a deletion of her personal data in the form of the Review (see **Attachment 6**: *"I would like to contest the automated removal by Airbnb of the 5-stars review left by my very first guest, (X)*).
47. According to Article 21 GDPR, data subjects have the right to object at any time to the processing of personal data when such a processing is based on the legitimate interest of the controller. This seems the case in the present dispute, since Airbnb almost systematically (and supposedly) relies on its legitimate interest in its Privacy Policy. Article 21(1) GDPR further provides that, in the event a data subject exercises his or her right to object, *"the controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims."*
48. In the event that the Review was processed on the basis of legitimate interests, Airbnb had to understand the objection of the Complaint (her "contestation") in Annex 6 as an objection under Article 21(1) GDPR. The fact, presented by the Complainant, that the price for the Listing was set at only 9.00 EUR per night at that time due to a still missing hot water connection, represents a ground relating to a *"particular situation"* within the meaning of Article 21(1) GDPR. To this date, Airbnb did not reinstate the deleted Review. Furthermore, in *none* of the answers provided by Airbnb, did they even mention or try to demonstrate any compelling legitimate grounds for not reinstating the deleted Review. Rather, Airbnb simply repeated the same blunt answer, according to which their decision was 'final' (see **Attachment 7**). Yet, it is clear from the facts of the case that the deletion of this Review has a significant impact on the interests, rights and freedoms of the Complainant, while Airbnb did not provide any justification for such a deletion, and never took into account the crucial information provided by the Complainant in this respect.

¹² EDPB, Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679, adopted on 3 October 2017, p. 25; see also WP29 Guidelines on transparency under Regulation 2016/679, as last revised and adopted on 11 April 2018, and as endorsed by the EDPB, p. 22, pt. 41.

49. As a consequence, Airbnb is in clear violation of Article 12 and 21 of the GDPR.

5. REQUESTS

5.1. Request to investigate

50. In view of the above, the Complainant respectfully requests the LFDI to investigate into the data processing practices of Airbnb in relation to the analysis and deletion of reviews, in order to confirm that Airbnb uses AIDM subject to Article 22 GDPR.

51. Furthermore, regardless of whether the processing practice of Airbnb qualifies as AIDM, the Complainant believes that the unilateral decision to delete reviews by Airbnb is a type of processing operation that can cause a significant prejudice to hosts, as explained above (pt. 23). Hence, Airbnb should have conducted a data protection impact assessment (DPIA) prior to implementing such processing operation. In this respect, the Complainant therefore respectfully requests the LFDI to use its investigative powers to request from Airbnb any relevant documentation in relation to this DPIA.

5.2. Request to issue injunctions to compel the controller(s) to bring processing into compliance with the GDPR

52. In view of the above, the LFDI should state that Airbnb (or the other entity identified as controller, i.e. the Respondent):

- (a) has violated the Complainant's rights with regard to individual automated decision-making:
 - since the use of an automated decision procedure violates Article 22(1) and (2) GDPR; or
 - *alternatively*, should the LFDI consider that such AIDM is in line with Article 22(1) and (2) GDPR, the LFDI should conclude that no suitable safeguards were in place, since no information on the AIDM was provided to the Complainant, and she was, in particular, not granted the right to obtain the intervention of a human on the part of the controller, nor the right to express her point of view and to contest the decision (Article 22(3) GDPR);
- (b) has violated the obligation to inform the data subjects about the processing (Articles 13-14 GDPR) and the principle of transparency (Article 5(1)(a) GDPR), as the Complainant was not properly informed on the processing purposes, legal bases, retention period or automated decision-making;
- (c) has violated the obligation to respond to the requests for information from the Complainant (Articles 12 and 15 GDPR) and the principle of transparency (Article 5(1)(a) GDPR), as Airbnb has ignored the Complainant's requests for information - in particular with regard to Article 15(1)(h) GDPR; and

(d) has violated the obligation to answer or take account of the Complainant's objection (Articles 12 and 21 GDPR), provided that the processing was carried out on the basis of Article 6(1)(f) GDPR.

53. The LFDI should also order the Respondent:

(a) to reinstate the deleted Review or to explain to the Complainant in an understandable way why a reinstatement will not be conducted despite the Complainant's contesting under Article 22(3) GDPR (see above, point 51(a)), and despite the stated reasons relating to the particular situation of the Complainant within the meaning of Article 21(1) GDPR (paragraph 51(d));

(b) to provide the Complainant with the information referred to in paragraph 51(b) in accordance with Articles 13 and 14 GDPR;

(c) to answer the complainant's requests for information, in particular with regard to Article 15(1)(h) GDPR.

5.3. Request to impose an administrative fine

54. The Complainant suggests the imposition of an effective, proportionate and dissuasive fine on the violations to be found. It should be noted in particular that (i) thousands of Airbnb hosts across the EU have been or are exposed to the same illegal data processing practices, and (ii) that the loss of the status of a "Superhost" can result in a significant economic disadvantage for data subjects.

6. CONTACT AND TRANSLATION

6.1. Communication with *noyb*

55. Communications between *noyb* and the LFDI in the course of this procedure can be done by email at [REDACTED] with reference to the Case number mentioned in the title of this complaint.

6.2. English translation

56. We provide an informal English translation of this complaint for the convenience of the authorities only. If there is any conflict in the translations, the German version should prevail because the law requires us to file this complaint with selected supervisory authority in German.

6.3. Contacts

57. We are happy to assist you with any further factual or legal details you may require to process this complaint. Please contact us at [REDACTED] or at [REDACTED].