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# Decision following supervision under the General Data Protection Regulation - Spotify AB

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## Decision of the integrity protection authority

### Spotify's general procedures for handling access requests

The Swedish Data Protection Authority notes that during the period from 16 November 2021 to 16 May 2022, Spotify AB (556703-7485) did not provide sufficiently clear information in the information to be provided in accordance with Article 15(1) and (2) of the <sup>GDPR</sup><sup>1</sup> about

- the purposes of the processing,
- categories of personal data to which the processing relates,
- categories of recipients of the personal data,
- the envisaged periods for which personal data will be stored or, if this is not possible, the criteria used to determine this period,
- where personal data comes from,
- appropriate safeguards when transferring personal data to third countries.

Furthermore, the Authority finds that, during the period from 11 June 2019 to 16 May 2022, by providing the description of the data in the technical log files in English by default, Spotify AB has not complied with the requirement that any communication provided to the data subject under Article 15 of the GDPR must be clear and comprehensible as set out in Article 12(1) of the GDPR.

Spotify AB has thus processed personal data in breach of Articles 12(1) and 15(1)(a) to (d), 15(1)(g) and 15(2) of the GDPR.

Pursuant to Articles 58(2) and 83 of the GDPR, the Swedish Data Protection Authority decides that Spotify AB shall pay an administrative fine of SEK 58,000,000 (fifty-eight million) for these deficiencies.

### Examination of individual complaints

With regard to complaint 1, the Swedish Data Protection Authority finds that Spotify AB, in its handling of the complainant's access request made on 27 May 2018, has processed personal data in breach of the GDPR.

- Article 12(3) of the GDPR, by providing the copy of personal data too late,
- Articles 12(1), 15(1) and 15(3) of the GDPR, by failing to provide all of the complainant's personal data in an intelligible form in the copy of personal data provided by Spotify AB.

With regard to complaint 2, the Swedish Data Protection Authority finds that Spotify AB, in its handling of the complainant's request for access made on 10 October 2018, has processed personal data in violation of

- Articles 15(1) and 15(3) of the GDPR, by failing to provide access in the copy of personal data provided by Spotify AB to all personal data processed by Spotify AB about the complainant,

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<sup>1</sup> 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).

- Articles 15(1)(a) to (h) and 15(2) of the GDPR, by failing to provide any of the information listed in those provisions.

The Authority issues a reprimand to Spotify AB under Article 58(2)(b) of the GDPR for the deficiencies concerning complaints 1 and 2.

The Data Protection Authority orders Spotify AB under Article 58(2). c of the General Data Protection Regulation to comply with the complainant<sup>s2</sup> request for access in relation to complaint 2 within one month of this decision becoming final by, subject to any applicable exceptions in Article 15(4) of the General Data Protection Regulation and Chapter 5 of the Data Protection <sup>Act</sup><sup>3</sup>, providing the complainant with access to all personal data processed by Spotify about the complainant by providing the complainant with a copy of the personal data in accordance with Article 15(3) and information in accordance with Article 15(1)(a) to (h) and Article 15(2).

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<sup>2</sup> The complainant's identification details are set out in Annex 1.

<sup>3</sup> Act (2018:218) with supplementary provisions to the EU Data Protection Regulation.

# 1 Description of the supervision case

The Swedish Authority for Privacy Protection (IMY) has, in light of the fact that IMY has taken note of complaints against Spotify AB (Spotify) regarding the right of access under Article 15 of the General Data Protection Regulation, initiated supervision of Spotify in order to investigate whether the company's way of handling data subjects' requests for access is in accordance with the provisions of the General Data Protection Regulation. IMY has initially examined the company's general procedures for requesting access and not what has occurred in the individual complaints. The review has focused on whether the company's processes and procedures for providing access under Article 15 generally enable data subjects to access the personal data the company processes about them and other information under the provision. In this context, data subjects are the customers who use Spotify's services and not other categories of data subjects, such as employees of Spotify.

Within the framework of this review, IMY has not verified which personal data Spotify processes and whether all of these are disclosed at each individual request. For example, no comparison has been made between Spotify's register of processing operations under Article 30 of the GDPR and the personal data included in the copy of personal data under Article 15(3) of the GDPR. Nor has IMY, within the framework of this supervision, examined whether Spotify's personal data processing otherwise fulfils the provisions of the General Data Protection Regulation, e.g. regarding basic principles and legal basis for the processing.

The supervision case was opened with a letter of supervision on 11 June 2019. A response to the supervision letter was received on 31 July 2019. On 16 October 2019, a request for completion of the case was sent. A response was received on 15 November 2019. Spotify has subsequently, on its own initiative, submitted further supplements on 25 August 2020 in order to inform IMY of updates regarding procedures for handling access requests.

Spotify is an organisation with operations and users in several EU Member States. Given the cross-border nature of the case, IMY has applied the cooperation and consistency mechanisms set out in Chapter VII of the GDPR. All data protection authorities in the EU have been involved as supervisory authorities in this case. Due to the cooperation and consistency mechanisms, and the need for a harmonised complaint handling within the EU<sup>4</sup>, in November 2020 IMY extended the ongoing general supervision to include the findings of three individual complaints, which also include the complaints that initially formed the basis for the supervision of the general practices.

On 5 November 2020, IMY requested that Spotify explain its position on the deficiencies alleged in the complaints and what measures Spotify has taken to respond to each request for access. Spotify responded to IMY's request on 18 December 2020. Spotify has subsequently submitted supplementary statements, on 15 April 2021 in response to supplementary questions posed by IMY on 24 March 2021 and on 31 August 2021 in response to questions posed by IMY on 9 July 2021.

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<sup>4</sup> In 2020, the DPAs worked jointly to establish common approaches to the handling of complaints, resulting in an internal guidance document adopted in February 2021. From previously using complaints to identify recurring patterns and risks, but as a general rule closing the complaints with a standard response, IMY now makes an individual assessment of each complaint. Internal EDPB Document 02/2021 on SA's duties in relation to alleged GDPR infringements, adopted on 2 February 2021.

On 19 October 2021, a further request for completion was sent regarding Spotify's general procedures. A response was received on 12 November 2021. On 8 June and 17 October 2022, Spotify has, on its own initiative, submitted further supplements in order to inform IMY of updates regarding procedures for handling access requests.

Spotify commented on IMY's draft decision on 20 December 2022. IMY then gave the other supervisory authorities concerned the opportunity to comment in accordance with Article 60 of the GDPR. The French data protection authority expressed a relevant and reasoned objection to IMY's draft decision. On 13 March 2023, Spotify was given the opportunity to comment on the objection and on IMY's revised draft decision. Spotify's response was received on 11 April 2023.

In light of the above, the supervision case includes a review of Spotify's general procedures for handling requests for access and a review of what has occurred in the three complaints. The general procedures regarding the provision of personal data in accordance with Article 15(1) and (3) of the General Data Protection Regulation that have been reviewed are those in force from the start of IMY's supervision on 11 June 2019 until 16 May 2022. With regard to the information under Article 15(1) and (2) of the GDPR to be provided in a request for access, Spotify has updated it several times since the start of the supervision. IMY has therefore limited its review to the information that was valid during the period from 16 November 2021 to 16 May 2022.<sup>5</sup>

## 2 Applicable provisions

According to Article 15(1) of the GDPR, the data subject has the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed and, if so, access to the personal data and information about the

- a) The purposes of the processing.
- b) the categories of personal data concerned by the processing
- c) the recipients or categories of recipients to whom the personal data have been or will be disclosed, in particular recipients in third countries and international organisations.
- d) If possible, the envisaged period for which the personal data will be stored, or if this is not possible, the criteria used to determine this period.
- e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing.
- f) The right to lodge a complaint with a supervisory authority.
- g) If the personal data is not collected from the data subject, all available information about the source of the data.
- h) the existence of automated decision-making including profiling as referred to in Article 22(1) and (4), whereby at least in these cases meaningful information shall be provided.

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<sup>5</sup> See Spotify's information according to Article 15 of the GDPR in Annex 2. The information, which was printed by IMY on 16 May 2022, shows that the current website was updated no later than 16 November 2021. The time period for the review is therefore set to the period from 16 November 2021 to 16 May 2022.

information on the logic, significance and foreseen consequences of such processing for the data subject.

Article 15(2) of the GDPR states that where personal data is transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards applied to the transfer in accordance with Article 46.

Article 15(3) of the GDPR requires the controller to provide the data subject with a copy of the personal data being processed. Furthermore, if the request is made in electronic form, the information shall, unless otherwise requested, be provided in a commonly used electronic format.

Recital 63 of the GDPR states, where relevant, the following:

*The data subject should have the right of access to personal data collected about him or her and be able to exercise that right easily and at reasonable intervals, in order to be aware that processing is taking place and to be able to verify its lawfulness. (...) All data subjects should therefore have the right to know and be informed in particular of the purposes for which the personal data are processed, if possible the period of time during which the processing takes place, the recipients of the personal data, the logic involved in the automatic processing of personal data and, at least when the processing is based on profiling, the consequences of such processing. (...)*

In addition, Article 12(1) of the GDPR requires the controller to take appropriate measures to ensure that any communication provided to the data subject under Article 15 is in a concise, clear, intelligible and easily accessible form, using clear and plain language.

Article 12(2) of the GDPR requires the controller to facilitate the exercise of the data subject's right of access under Article 15.

Article 12(3) of the GDPR requires the controller to provide the data subject, upon request, without undue delay and in any event no later than one month after receiving the request, with information on the measures taken pursuant to Article 15 of the GDPR. This period may be extended by a further two months if necessary, taking into account the complexity of the request and the number of requests received. The controller shall inform the data subject of such an extension within one month of receipt of the request and indicate the reasons for the delay.

### **3 Spotify's general procedures for handling access requests - Justification of the decision**

#### **3.1 Information - Article 15(1)(a) to (h) and (2) of the GDPR**

##### **3.1.1 Findings of the case**

In summary, Spotify has stated the following. Spotify provides information in accordance with Article 15(1)(a) to (h) and (2) of the GDPR via an online function. This feature is available in 21 different languages and visitors to the site will



automatically be given the information in language based on the language settings of their browser.

Data subjects exercising their right of access are informed about the feature in several ways. A link to the information is included in each copy of personal data provided under Article 15(3) of the GDPR. The information can also be found online in the list of available features on the company's "Privacy & Security" page and by answering the question "Where can I find information about Spotify's processing of personal data that Spotify is required to provide under Article 15 of the GDPR?" on the company's "Personal data rights and privacy settings" page.

In the <sup>information<sup>6</sup></sup> under Article 15 of the GDPR provided by Spotify during the period from 16 November 2021 to 16 May 2022, which IMY has seen, Spotify provided, among other things, information on the purpose of processing (Article 15(1)(a)), the categories of personal data processed (Article 15(1)(b)), the recipients or categories of recipients (Article 15(1)(c)) and the source of the personal data (Article 15(1)(g)). In addition, the information under Article 15 also included information on international transfers (Article 15(2)), the criteria for the duration of the retention of personal data (Article 15(1)(d)), the rights of the data subject (Article 15(1)(e)), the right to lodge a complaint with the data protection authority (Article 15(1)(f)), automated decision-making (Article 15(1)(h)) and the possibility of obtaining a copy of personal data.

In the information provided under Article 15 of the GDPR, Spotify also informed that the processing of personal data is described in more detail in its privacy policy, which could also be accessed via a direct link. The privacy policy contains, among other things, descriptions of the categories of personal data processed by Spotify.

Spotify has stated that any questions that are not answered by the information provided under Article 15 of the GDPR or that have not been satisfactorily explained to the user are promptly escalated to its data protection team. In this way, the company states, the data protection team becomes aware of, and is able to respond to, requests for clarification or requests for more individualised information on the processing of personal data under Article 15 of the GDPR.

### **3.1.2 Assessment of the Data Protection Authority**

IMY notes that during the period under review, Spotify's Article 15 GDPR information feature was available on several different pages of the Spotify website. Furthermore, a link to the information was included in the "Read me first" file attached to each copy of personal data provided to the data subject in accordance with Article 15(3) of the GDPR upon a request for access. In light of the above, IMY assesses that Spotify's practices during the relevant period were sufficient to ensure that Article 15 information was provided to the data subject upon each access request.

IMY further notes that the information provided by Spotify under Article 15 of the GDPR included all the items of information required under Article 15 of the GDPR. 15.1 and 15(2) of the GDPR must be provided to the data subject. In order for the information to fulfil the requirements of the GDPR, it must

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<sup>6</sup> See Annex 2

However, the information is also designed in such a way as to fulfil the purpose of the right of access.

The purpose of the right of access is for the data subject to be aware that processing is taking place and to be able to verify its lawfulness, as stated in recital 63 of the GDPR. For example, a data subject should be able to check which categories of data are processed about him or her, for what purposes and for how long. For the data subject to be able to check the lawfulness of the processing of personal data, he or she must know which processing operations are relevant in his or her specific case. This information must be provided in a way that fulfils the transparency requirements of Article 12(1) of the GDPR.

Given the purpose of the right of access, there is often a need to adapt the content of the information under Article 15(1) and (2) of the GDPR to the data subject who has made the request, for example depending on which of the controller's services the data subject has chosen to use. However, this does not apply to all elements of the information. While the right to lodge a complaint with a supervisory authority (Article 15(1)(f) of the GDPR) does not change depending on who requests access, other information may vary depending on the service the data subject uses, such as the categories of personal data processed, the recipients and the source of the personal data.

The same applies to information on whether a transfer to a third country has taken place and, if so, what appropriate safeguards have been put in place for the transfer.

Therefore, as stated above, in order for the data subject to be able to verify the lawfulness of the processing concerning him or her, Spotify must have taken steps to adapt the information to the data subject's specific situation.<sup>7</sup>

IMY notes that the <sup>information</sup><sup>8</sup> provided by Spotify under Article 15 of the GDPR was generalised. Thus, the same information was provided regardless of who requested access under Article 15 of the GDPR. Thus, the information was not customised based on each request for access. However, Spotify described when certain information was relevant to the data subject, such as "*If you use a third party service (...)*", "*If you choose to pay for a service or feature by invoice (...)*" and "*Where you have given us permission (...)*". Thus, there were some conditions for the data subject to determine what information was related to him or her. There was also a possibility for data subjects to approach Spotify and request more individualised information as well as clarifications of the information provided.

IMY considers that such general information may be appropriate for standardised services involving the processing of personal data. However, in order for data subjects to understand how their personal data is processed, it must always be possible to clearly and easily identify which information is applicable in which situations from the information provided. This means that the possibility for data subjects to turn to Spotify for more individualised information and clarifications does not affect the assessment of whether the information is sufficiently clear in this respect. Generalised information must not lead to any ambiguity in terms of

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<sup>7</sup> See European Data Protection Board (EDPB) Guidelines 01/2022 on data subject rights - Right of access, version 2.0 (finally adopted on 28 March 2023), paragraph 113.

<sup>8</sup> See Annex 2

whether or not the data subject is affected by the information in question based on their individual situation. IMY therefore has to assess whether the information provided by Spotify fulfils these requirements.

#### Information on categories of personal data, purposes, recipients and source

Information on the purposes of the processing should refer to the purposes for which the personal data of the data subject are actually processed, and should not merely consist of a list of different purposes without clarifying the purposes relevant to the applicant. Furthermore, information on the categories of personal data processed may need to be adapted to the circumstances of the data subject requesting access. As regards the indication of recipients or categories of recipients, such information should be as specific as possible. The controller should normally indicate the actual recipients to whom the personal data have been or will be disclosed, unless this is impossible due to the fact that, for example, information on the recipients is not yet available. In addition, all available information on the source of the personal data should be provided if the personal data was not collected from the data subject.<sup>9</sup>

As regards the information provided by Spotify on the purposes of the processing, the recipients of the personal data and the source from which the data was collected, IMY notes that the information was broken down into different categories of personal data. These

categories of personal data were '*user data*', '*usage data*', '*plan verification data*', '*voting data*', '*payment and purchase data*' and '*competition, survey and lottery data*'. The categories of personal data provided were of a general nature and in several cases, for example in relation to '*user data*' and '*utilisation data*', did not contain any IMY considers that, especially in the absence of a clear description of the categories in question, it was not possible for data subjects to understand from the information provided which personal data were included in the different categories. Since the information on the purposes, recipients and sources was categorised according to those categories of personal data, that deficiency means that it was also not possible for data subjects to easily understand which personal data was processed for which purposes, which personal data was obtained from which source or which personal data was provided to a particular recipient or category of recipients. Consequently, data subjects have not been able to identify how their personal data was processed.

IMY therefore considers that Spotify did not provide sufficiently clear information about the purposes of the processing (Article 15(1)(a) of the GDPR), the categories of personal data processed (Article 15(1)(b) of the GDPR), the recipients or categories of recipients (Article 15(1)(c) of the GDPR) or the source from which the data was collected (Article 15(1)(g) of the GDPR).

The information was not concise, clear and transparent, nor easily accessible. It therefore also did not fulfil the requirements of Article 12(1) of the GDPR.

#### Information on storage period

Information provided on the duration of the retention of personal data should be sufficiently specific to enable the data subject to understand how long their personal data will be retained. If it is not possible to specify the date of deletion, the relevant

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<sup>9</sup> Cf. European Data Protection Board (EDPB) Guidelines 01/2022 on data subject rights - Right of access, version 2.0 (adopted on 28 March 2023), paragraphs 114-120 and judgment of 12 January 2023 in Case C-154/21, Österreichische Post.

the event affecting retention is specified, such as the end of a warranty period. The retention periods shall relate to the personal data associated with the data subject requesting access. Where these personal data are subject to different retention periods, information on the retention periods should be provided in relation to each relevant processing operation and category of personal data.<sup>10</sup>

Spotify provided information on retention periods under the heading "Criteria for the retention of personal data". The information included general information on the purposes for which personal data is retained and the criteria used to determine the retention periods. In particular, it stated that personal data is retained for 90 days by default, unless a longer period is chosen for a legitimate business reason. It also stated, inter alia, that personal data is retained for an appropriate period to deliver a personalised service over time and that streaming history is typically retained for the lifetime of an account.

The information on the duration of data retention was general in nature and, with the exception, inter alia, of the information on streaming history, not clearly linked to the categories of personal data covered by the different retention periods. It was therefore difficult for data subjects to identify which of their personal data was retained for which period of time. Furthermore, the criteria for determining the retention period provided in the information were in some cases very imprecise. For example, it is difficult for a data subject to understand what constituted a "legitimate business reason" and thus in which situations personal data was retained for longer than 90 days or what it meant that streaming history was "usually" retained for the lifetime of an account.

IMY considers, on balance, that the information provided regarding retention periods did not fulfil the requirements of Article 15(1)(d) of the GDPR, partly because the information in this part was general and not linked to the relevant category of personal data, and partly because some of the criteria used to determine the retention period were too imprecise for the data subject to understand how long their personal data was stored. The information was not concise, clear and transparent, nor easily accessible. It therefore also did not fulfil the requirements of Article 12.1 in the General Data Protection Regulation.

#### Information on third country transfer

In order to enable the data subject to assess the lawfulness of any transfer of his or her personal data to a third country, the data subject must be provided with meaningful information enabling him or her to know whether his or her personal data have been transferred and, if so, what safeguards have been applied. In order to allow the data subject to verify whether his or her personal data have been lawfully processed, it should normally also be made clear to which third countries the transfer has taken place.<sup>11</sup>

The information provided by Spotify regarding transfers to third countries stated under the heading "*International transfers*" that Spotify may share personal data globally with other Spotify Group companies, service providers, partners, etc. It further stated that Spotify ensures that the transfer is carried out in compliance with applicable data protection and privacy laws and that technical and organisational measures, and in particular appropriate safeguards, are applied, such as the standard contractual clauses that

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<sup>10</sup> European Data Protection Board (EDPB) Guidelines 01/2022 on data subject rights - Right of access, version 2.0 (finally adopted on 28 March 2023), paragraph 118.

<sup>11</sup> See Article 29 Working Party Guidelines on transparency under Regulation (EU) 2016/679, WP260rev.01, adopted by the European Data Protection Board, p.40.

authorised by the European Commission when personal data is transferred from the European Economic Area (EEA).

IMY notes that the information provided by Spotify regarding third country transfers was generalised and not linked to the data subject's own situation. It did not indicate whether the data subject's personal data had been transferred to any third country, and if so, what appropriate safeguards had been taken during the transfer. It was also not clear to which third countries the transfer had taken place. IMY therefore considers that the information provided regarding third country transfers did not fulfil the requirements of Article 15(2) of the GDPR.

The information was not concise, clear and transparent, nor easily accessible. It therefore also did not fulfil the requirements of Article 12(1) of the GDPR.

#### Summary assessment of the information provided under Article 15(1) and (2) of the GDPR

To summarise, IMY finds that the information provided by Spotify under article 15.1 and 15(2) of the GDPR during the period between 16 November 2021 and 16 May 2022 has been deficient in the above-mentioned respects. Spotify has thus processed personal data in breach of Articles 12(1) and 15(1)(a) to (d), 15.1 g and 15(2) of the GDPR.

### **3.2 The right of access to personal data and copy of personal data during processing - Article 15(1) and (3) of the GDPR.**

#### **3.2.1 What has emerged in the case**

Spotify has stated that their responses to access requests, with a few exceptions, are designed to disclose all personal data they process relating to the data subject. The company has also explained its procedures for ensuring that all personal data is disclosed, for example in the case of new or updated personal data processing operations.

The copy of personal data provided by Spotify under Article 15(3) of the GDPR can be provided through three different responses, Type 1, Type 2 and Type 3.

The personal data covered by Type 1 is profile information and the personal data that Spotify has deemed to be of most interest to the data subjects. Type 1 therefore includes the data subject's playlists, streaming history and searches from the past year, items saved in the data subject's library, the number of followers the data subject has, the number of users the data subject follows, the names of artists the data subject follows, user data and payment information. In order to give the data subject access to Type 1 information, the company has introduced a feature called "*download your data*" on a privacy settings webpage. The webpage through which the data subject can access this data is available to all customers through their Spotify account and is provided in the same language as their Spotify service. Data subjects can access the Type 1 information within approximately seven days. Data subjects can also access the Type 1 information by contacting Spotify customer service.

Type 2 information consists of technical log files stored in Spotify's systems linked to the data subjects' user IDs. To gain access to the Type 2 information, the data subject may submit a request via Spotify's online privacy form or by contacting customer service or Spotify's data protection officer through any of the following channels

another channel (email, Facebook, Twitter or letter). It takes about two to four weeks to compile and disclose this personal data.

Type 3 information is the information specifically requested by a data subject and may, for example, relate to the data subject's listening history on a particular date, an extended listening history or a request for unstructured personal data, such as a request for a particular email correspondence. Type 3 information can be requested in the same way as Type 2 and such a request normally takes less than 30 days to process. In case it takes longer to process the request, due to the complexity of the request, the data subject is informed of the delay.

On 15 June 2021, Spotify has implemented changes whereby all Spotify users who request a copy of personal data beyond what is available in the "*Download Your Data*" tool, or who directly request a copy of all their personal data from Spotify's customer service, will have access to extended streaming history as well as technical log information in one package.

Spotify has stated that the design of the process and its development to date is a collective result of joint discussions, careful considerations and analyses and meetings with the relevant customer service and development teams. Spotify's data protection team has advised on legal requirements and data protection best practices and continues to update these on an ongoing basis based on a number of identified parameters, including, inter alia, relevant and up-to-date legislation, guidance, the ability to respond quickly to a large number of requests, ease of use and categories of personal data processed.

Spotify has stated that it has over 232 million monthly active users and that in the period from 25 May 2018 to 30 June 2019 it responded to 753 575 access requests. According to Spotify, the segregation of data into three different types has made it possible to provide a quick and easy way for the data subject to download the personal data most likely to be relevant to the data subject and to generate responses at the scale and speed necessary to satisfy the majority of data subjects.

Spotify further refers to the statements in the EDPB Guidelines on <sup>Transparency</sup><sup>12</sup> that there is an inherent tension in the GDPR between the requirements to provide comprehensive information to data subjects on the one hand and to provide the information in a concise, clear, understandable and easily accessible form on the other hand, that there is a need to determine how to prioritise the information that needs to be provided to data subjects and what levels of detail and methods are appropriate to convey the information, and that the principle of transparency is an overarching obligation. Spotify believes that these guidelines are relevant to the design of a concise, transparent, easily understandable and accessible process for data subjects to exercise their rights under Article 15 of the GDPR. By providing three layers of responses to data subject access requests, Spotify intends to properly balance the interests of the GDPR in favour of Spotify's data subjects. Spotify's goal is to provide accurate information in accordance with Article 15 to all data subjects at the right time by providing information in different layers and in different ways.

Spotify has stated that it informed data subjects that it was possible to request access to more personal data than those covered by Type 1 and Type 2; and

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<sup>12</sup> WP29 Guidelines on transparency under Regulation (EU) 2016/679, WP260rev.01, adopted by the European Data Protection Board, paragraph 1 and paragraph 34.

that this information was provided to data subjects before they requested access to their personal data. Furthermore, Spotify has stated that it was clear that data subjects could request access to more personal data than those covered by Type 1 by requesting a Type 2 response. In addition, data subjects could contact Spotify's customer service with specific requests (so-called Type 3 requests). This information is provided in various ways, including on the "Personal data rights and privacy settings" webpage and on the webpage where information under Article 15 of the GDPR is published. Furthermore, according to Spotify, when a user requests access to the personal data covered by Type 1 by going to "Download your data", it is clear from the context that users are given access to a selection of their personal data and not all their personal data. The "Download your data" page also contains a reference to the webpage "Personal data rights and privacy settings". For both Type 1 and Type 2 requests, information is provided under Article 15 of the GDPR, which includes a comprehensive description of the data available. The information sources also explain that users can request access to their personal data via customer service or by contacting Spotify via email. If a user contacts Spotify's customer service to exercise the right of access under Article 15 of the GDPR, customer service can explain all three types of personal data available and inform users of the additional information available. Data subjects were also informed that they could request access to more personal data than already downloaded on the "*Understanding my data*" webpage.

Furthermore, Spotify has updated the information addressed to data subjects during the processing of the case in order to make it more transparent to data subjects that there is more to request than what is available in the "*Download your data*" tool.

Regarding the clarity of the information, Spotify has stated in essence the following. In designing the format for responses to access requests, the company focused on providing all information in a way that makes it relevant, transparent and helpful to data subjects. The company developed a procedure to ensure that the descriptions of personal data are accurate and complete, which included extensive efforts to translate technical information into simple language that can be understood by an average customer, without removing details required for transparency. To facilitate understanding, Spotify does the following, among other things.

- When downloading Type 1 information, the data subject also receives a so-called "*Read Me First*" file. The "*Read Me First*" file contains a link to the "*Understand my data*" webpage, which describes the format and personal data included in Type 1. This page has been updated during the processing of the case to include a general description of the data in the technical log files and the extended streaming history. The linked pages are automatically displayed in the customer's preferred language based on the language setting of the customer's browser.
- The Type 2 information, which consists of technical <sup>109</sup> files<sup>13</sup>, contains some information that is highly technical in nature. To help data subjects understand the formatting of the personal data, Spotify provides a detailed description of the personal data in a separate file at the time of disclosure (in a "*Read Me First*" file for Type 2 requests). This description is provided by default in English. Spotify also responds to customers' questions about the meaning of the personal data provided, as part of its data subject access request process. Furthermore, Spotify continuously updates both

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<sup>13</sup> From 15 June 2019, in addition to the technical log files, the Type 2 information includes extended listening history.

- the format of technical log files related to the customer's user ID (Type 2) and the corresponding information in the Type 2 "*Read Me First*" file to increase transparency based on the questions asked.
- As far as specific requests (Type 3) are concerned, when the personal data provided may require explanations, Spotify may, if necessary, provide the information in an email to the data subject together with the copy of the personal data.

Spotify has stated the following as the reason why the description of the Type 2 data is provided in English by default. To ensure that the information provided by the company to data subjects is correctly translated into their local language, the files to be translated are sent for manual translation to professional translators. Given that technical log data changes more dynamically over time than other personal data collected, the company would have to send the extensive "Read me First" file for translation several times a month. This would be disproportionate and unreasonable for all local languages given the additional time, resources and administration involved. Furthermore, many of the words that appear in the technical log data do not typically have a translation as they often reflect technical concepts that are primarily communicated in English and are not usually translated into local languages. However, the company will assist in translating the information into the local language if a user requests it to the extent that the technical terms are translatable. Spotify has further stated that it has responded to approximately 340,000 requests for access to technical log files. Of these requests, only two data subjects have approached the company and requested a translation of the description into their local language. Spotify further argues that translating the technical log files without a request would mean that all data subjects would have to wait longer to fulfil their right of access to the technical log files.

With regard to the format used, Spotify has stated that the personal data is provided in JSON format, which according to the company is a structured and widely used format that can be understood by both computers and humans. However, data provided in response to a Type 3 request is provided in the format needed to respond to the request.

Furthermore, on 17 October 2022, Spotify has informed IMY that the company has since then enabled data subjects to request access to account data, extended streaming history and technical log information directly through the "Download your data" tool, i.e. without contacting customer service. These procedures are not covered by IMY's review as the update has taken place after 16 May 2022.

### **3.2.2 The assessment of the Data Protection Authority**

According to Article 15(1) of the GDPR, the data subject has the right to obtain confirmation as to whether the controller is processing personal data concerning him or her and, if so, to obtain access to the personal data. The controller has an obligation under Article 15(3) to provide the data subject with a copy of the personal data being processed. The right of access is the same regardless of who the controller is, but the way in which a request for access is handled may vary, depending, among other things, on the scope of the personal data being processed and the number of data subjects. Under Article 12(2) of the GDPR, the controller has an obligation to facilitate the exercise of the data subject's rights.



The purpose of the right of access is to ensure that the data subject is aware of the processing and can verify its lawfulness. The controller must therefore ensure that the copy of the personal data provided contains all the personal data processed about the data subject and is presented in a way that is comprehensible to the data subject. In doing so, access to the personal data must be provided in a way that fulfils the transparency requirements of Article 12(1) of the GDPR.

The requirements on the format and content of the copy mean that controllers processing a large amount of data or data that is particularly difficult to understand may need to take special measures when presenting the information to data subjects.

Spotify, whose personal data processing is both extensive and complex, has developed specific procedures to handle access requests. The question is whether these procedures enable the company to provide access to the personal data it processes in a way that fulfils the data subject's right of access.

#### Division of the copy of personal data into different layers

Spotify divides the copy of personal data into different layers, Type 1, Type 2 and Type 3.

IMY considers that there is no obstacle to splitting the copy of personal data as long as the right of access is respected. On the contrary, in some situations it may be easier for the data subject to assimilate the information if it is presented in parts, at least when it is a large amount of information. However, the provision of the copy of personal data in different layers must neither restrict the right of access nor hinder its exercise. The controller must therefore take particular account of this when assessing whether splitting the copy of personal data is an appropriate measure.

A data subject who approaches a data controller to request access to their personal data normally has no knowledge of what personal data is actually being processed. Instead, obtaining this knowledge is often the very purpose of the request. In this situation, if the controller only provides the data subject with a sample of their personal data, the data subject risks being misled into believing that the copy provided is complete.

For this reason, IMY considers that the controller, in the channel it has established for the data subject to request access, must be clear that the copy of the personal data is divided into different layers. It should also be clear to the data subject what information is contained in the different layers and how the data subject can access them.<sup>14</sup>

The statement provided by Spotify shows that the data subject is informed, through several different channels, that access to different personal data can be requested in different ways.

These channels indicate that access to "*your most relevant personal data*" can be obtained through the "*download your data*" function and that access to technical log information, extended streaming history or answers to other specific data protection requests can be obtained upon request via email or customer service. From the examples presented in the report, IMY notes that the information provided to data subjects also includes

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<sup>14</sup> Cf. European Data Protection Board (EDPB) Guidelines 01/2022 on data subject rights - Right of access, version 2.0 (finally adopted on 28 March 2023), paragraph 146.

a comprehensive list of the personal data covered by the different types of requests.

IMY considers that the information provided by Spotify in this regard, during the period covered by the review of the general practices, is sufficiently clear for the data subject to understand how the copy is organised, including what data is contained in the different layers, and how to request the different layers.

Establishing specific conditions for the exercise of the right of access without the support of the GDPR risks unduly hindering the data subject's exercise of the right. In other words, it may be perceived as unnecessarily complicated to exercise the right, which in turn may cause the data subject to refrain from requesting all data to which the data subject is entitled. It should be emphasised that the controller has an obligation under Article 12(2) of the GDPR to facilitate the exercise of the data subject's rights. Therefore, in order for the provision of the copy of personal data in different layers not to result in a restriction of the right or to make the exercise of the right more difficult, IMY considers that the data subject cannot be required to return to the controller on several occasions in order to gain access to all personal data. Nor should it be complicated to request access to the different layers. IMY therefore believes that the data subject should be able to request access to all the layers from the beginning and that it should be easy to access them. On the other hand, the data subject, knowing how the data is organised, can still choose to request access to only one or more layers.<sup>15</sup>

According to Spotify's statement, the data subject can request access to the different layers in different ways. It is not necessary for the data subject to return to Spotify to access the different layers. However, the data subject may need to take several steps to access multiple layers, e.g. by both downloading Type 1 information through the "download *your data*" function and by requesting access to Type 2 and Type 3 information through customer service. If the data subject makes the request directly to customer service, the data subject can request access to all personal data at the same time.

IMY considers that the fact that the data subject has to take different actions to request the different layers of data may cause some inconvenience. However, the data subject has the possibility to take all these actions at the same time. Moreover, all measures can easily be taken via the Spotify website. On balance, IMY considers that Spotify's procedures allow data subjects to request access to all their personal data in a sufficiently simple manner.

#### The design of the copy and the format of the copy

It follows from Article 12(1) of the GDPR that the information provided under Article 15 of the GDPR must be given in a concise, clear and plain, intelligible and easily accessible form, using clear and plain language. The requirements for clarity in the individual case must be assessed in light of the purpose of the right of access, i.e. that the data subject should be aware of the processing taking place and be able to verify that the processing is lawful.

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<sup>15</sup> Cf. European Data Protection Board (EDPB) Guidelines 01/2022 on data subject rights - Right of access, version 2.0 (finally adopted on 28 March 2023), paragraph 146.

Most of the data processed by Spotify, in particular the data contained in the technical log files, are by nature very technical as they contain, inter alia, codes and numbers. Such data may be difficult for an average data subject to understand. According to IMY, providing such information without further explanation would not fulfil the requirements of clarity, given the purpose of the right. However, as the information to be provided under Article 15(1) of the GDPR and subject to a copy under Article 15(3) of the GDPR should be the personal data being processed, it is not permissible for the controller to modify incomprehensible personal data to facilitate understanding. Such data may instead need to be explained.

Together with the copy of personal data, Spotify provides additional descriptions to make the data in the different layers comprehensible to the data subject. Spotify also responds to data subjects' questions about the meaning of the personal data provided and updates its general practices and descriptions based on the questions asked.

IMY considers that the data in the technical log files provided by Spotify can be difficult to understand, despite the descriptions provided by Spotify. However, IMY considers that by providing these descriptions, Spotify enables the data subject, albeit with some effort, to assimilate the information. The fact that despite descriptions, some effort may be required by the data subject to understand some particularly complex data is a natural consequence of the nature of this data.

Spotify provides by default only the detailed description of the data in the technical log files in English. Neither Article 12(1) nor Article 15 of the GDPR contains an explicit requirement for the language in which personal data, or the description thereof, should be provided to the data subject. However, IMY considers that it follows from the purpose of the right of access and the requirements for clarity in Article 12(1) that data subjects should be able to receive the information in a language they understand, at least when the controller directs its activities to countries where this is an official language.<sup>16</sup> This means that the controller must take sufficient measures to ensure that the data subject understands the information.

Spotify provides the vast majority of information provided to data subjects under Article 15 of the GDPR, including a general description of what the technical log files may include, based on the language settings in the individual's web settings, i.e. the local language. Furthermore, Spotify provides clear information, in the local language, about the possibility to request a translation of the description of the technical log files in the "Read Me First" file provided with each access request. This information is also provided in the local language on the "*Understand My Data*" webpage. Thus, Spotify has taken extensive measures to provide information in a language that the data subject can understand. However, Spotify has reported significant difficulties in translating the description of the data in the technical log files into all the local languages of the countries to which it targets its activities. These difficulties arise from the constant changes to the data in the technical log files and the fact that many technical terms are difficult to translate from English.

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<sup>16</sup> See WP29 Guidelines on transparency under Regulation (EU) 2016/679, WP260rev.01, adopted by the European Data Protection Board, paragraph 13 and European Data Protection Board (EDPB) Guidelines 01/2022 on data subject rights - Right of access, version 2.0 (finally adopted on 28 March 2023) paragraph 142.

However, IMY notes that Spotify has stated that, upon request from a data subject, it is able to translate the description of the data in the technical log files into a local language to the extent that the technical terms are translatable. Since a translation is therefore possible in practice, IMY considers that such translation should be provided even before a request for translation has been made by a data subject. Moreover, Spotify's stated difficulties in translating the description, including the fact that translation may need to be done on several occasions each month and the additional resources this requires, cannot justify providing the description in English by default. Given the purpose of the right of access, it is crucial that the data subject understands which of his or her personal data has been processed in the technical log files, which requires an intelligible description of its content. IMY therefore considers that Spotify should have provided the description in the local language already when providing the technical log files to the data subject, at least to the extent necessary to understand the information contained in the technical log files.

Against this background, IMY considers that Spotify has not taken sufficient measures to ensure that the data subject understands the description of the data in the technical log files when this information is provided by default only in English. Therefore, the information provided by Spotify in this respect did not fulfil the requirements of Article 15 GDPR that all communications to the data subject should be clear and comprehensible as set out in Article 12(1) GDPR. The fact that a data subject has the possibility to return to Spotify to request a translation does not cure this deficiency.

According to Article 15(3) of the GDPR, a data subject making a request for access in electronic form shall receive the information in an electronic format commonly used, unless the data subject requests otherwise. Spotify provides the data in JSON format. The guidelines on the right to data portability provide the JSON format as an example of a commonly used open format.<sup>17</sup>

IMY notes that the format requirements are different for the right to data portability and the right of access as data portability under Article 20(1) of the GDPR also requires that the data be provided in a structured and machine-readable format. Given the purpose of the right of access, IMY requires that the format in which the data is provided under Article 15 of the GDPR must be readable by a natural person. However, there is nothing to prevent the format from also being machine-readable. Such a format can in many cases make it easier for the data subject to make various summaries or extractions to facilitate understanding. IMY considers that the JSON format, which can be read by both computers and natural persons, is currently an electronic commonly used format referred to in Article 15(3) of the GDPR.

#### Summary assessment regarding the right of access to personal data and copy of personal data during processing - Article 15(1) and (3) of the GDPR

To summarise, IMY finds that Spotify's way of dividing the copy of personal data into different layers does not impede the exercise of the data subjects' rights and is therefore compatible with Article 12(2) of the GDPR and that the design and format of the copy of personal data generally meets the transparency requirements of Article 12(1) of the GDPR.

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<sup>17</sup> Article 29 Working Party Guidelines on the right to data portability, WP242 rev.01, adopted by the European Data Protection Board, p. 19.

However, IMY finds that the description of the data in the technical log files provided by Spotify during the period from 11 June 2019 to 16 May 2022 has not fulfilled the requirements of Article 12(1) of the GDPR as this information has been provided by default only in English. In this respect, Spotify has therefore processed personal data in breach of Article 12(1) of the GDPR during the period in question.

## **4 Investigation of individual complaints - Reasons for decisions**

### **4.1 Complaint 1 (from the Netherlands with national reference number z2018-28415)**

#### **4.1.1 Background**

In summary, the appellant submits that, following his request for access made on 27 May 2018, Spotify did not provide access to all his personal data within the time limit laid down in Article 12(3) of the GDPR and that, once he was given access to all his personal data, it was not provided in an intelligible form as required by Article 12(1) of the GDPR.

#### **4.1.2 What has emerged in the case**

Spotify provides three types of responses to ensure an appropriate and complete response to its users' requests under Article 15 of the GDPR.

Spotify stated that information on all three types of responses (Type 1, Type 2 and Type 3) and information on how to request access to them was available at the time of the complainant's request. When a user chose to download their data (Type 1), the description and instructions directly related to the download tool indicated that this was only a convenient way to obtain a copy of "most" personal data from their account and the categories of personal data available through the tool. It was therefore sufficiently clear from the context that other personal data was also available. The complainant also had the possibility to contact customer service through multiple channels and request additional personal data.

The complainant had also been able to contact the customer service centre and directly request access to all his personal data.

Spotify believes that the process at that time was sufficiently transparent for users to understand and request additional available data beyond that included in the "*Download your data*" tool. Many other users also requested both Type 2 and Type 3 data at that time. The complainant also managed to request and obtain access to both Type 1 and Type 2 information. Spotify has since made several improvements to its processes to ensure that users cannot miss the existence of all three types of information and how to easily request access to that information.

Spotify has stated that with regard to the provision of the complainant's personal data, all requested personal data was provided within the timeframe set out in Article 12(3) of the GDPR. "*Download your data*" (Type 1) was requested by the complainant on 27 May 2018. The data was made available and downloaded by the complainant on 28 May 2018. A response time of one day is in line with Spotify's goal of providing the most relevant information to users quickly through its automated tools.

Technical log files (Type 2) were requested by the complainant via email on 11 June 2018. In Spotify's response on 6 July 2018, Spotify informed the complainant that the provision of the personal data would take a little longer than expected due to the high number of requests and the complexity of compiling such technical information. The information was made available for download on 17 July 2018. Even after informing the complainant of the reason for the delay, only 36 calendar days (26 working days) elapsed between the complainant's request and the receipt of a reply.

Regarding the complainant's complaint about the format of the personal data, Spotify has stated that Type 2 data contains a large number of files with technical log data. The data processed can differ significantly for different users based on the type of Spotify service plan they have (e.g. Free, Premium, Family), features and the specific user's activity, as well as variations in the usual internal processing and error logging of the Spotify software itself. It is a challenge to find a way to explain this kind of technical information in a way that the average Spotify user can understand.

At the time of the complainant's request, Spotify provided the information in a JSON format. However, Spotify did not provide any additional documentation to further clarify the types of data included and how they should be interpreted (beyond the information contained in the JSON data fields themselves). However, since 2019, Spotify provides an additional "Read Me First" file upon delivery of all Type 2 data, which further describes the information included in each file and data field. Given the complexity and volume of the technical log files, the production of the 'Read Me First' file required a lot of work, and Spotify had not yet finalised this process at the time of the complainant's initial access request.

It was a mistake to provide the complainant with some of the technical log files in encrypted format. Spotify stores data in its systems in encrypted format to enhance the privacy and security of its own internal processing of personal data. It was not Spotify's intention to withhold the complainant's personal data from him. Although most of the encrypted data was decrypted before being included in the complainant's technical log files, some of the fields were not decrypted. This type of problem was corrected upon discovery, and nowadays requested personal data is always provided unencrypted.

Spotify draws IMY's attention to the fact that the complainant requested his personal data again in July 2020. This request came after his complaint to IMY and the improvements described above. The complainant received his personal data significantly faster than within 30 days. The complainant requested "*Download your data*" (Type 1) on 28 July 2020. Spotify provided the personal data three calendar days later, on 31 July 2020.

The complainant also requested his technical log files (Type 2) on 3 August 2020 and downloaded the personal data when it was available 15 days later, on 18 August 2020. Both these requests were answered within a total of 18 days by Spotify and the complainant was able to receive all his personal data within a total of 21 calendar days. This timeframe is representative of Spotify's handling of these types of requests from users. All technical information received by the complainant on 18 August 2020 was unencrypted. The complainant also allegedly received a "Read Me First" file that explained the provided data field by field. With the fulfilment of the complainant's latest request, Spotify hopes that all the complainant's questions regarding Articles 12(1) and 12(2) will be answered.

12(3) of the GDPR that he raised in his complaint have been answered.

#### 4.1.3 Assessment of the Data Protection Authority

As IMY notes in the assessment of its general practices, section 3.2.2 of this decision, it is possible to split the copy of personal data into different layers provided that the data subject has been sufficiently informed, inter alia, about how the copy of personal data is split and how access to the different layers can be requested.

The complainant's claim that his personal data was not provided in due time shows that the complainant must have considered that his initial request sent on 27 May 2018 concerned all the personal data that Spotify processed about him. Furthermore, the information provided by the complainant shows that he contacted Spotify because he himself noticed that the copy of personal data he received on 28 May 2018 was not complete. The fact that he contacted Spotify was thus a consequence of the conclusions the complainant himself drew from the copy of personal data he received and not because the complainant understood Spotify's breakdown of the copy of personal data and how access to additional data could be requested. According to IMY, these circumstances indicate that the information provided by Spotify at the time of the complainant's request regarding the breakdown of the copy of personal data was not sufficiently clear.

IMY further considers that, when assessing the information provided by Spotify in the description and instructions when the complainant made his Type 1 request on 27 May 2018, that information alone was not sufficiently clear for the complainant to have understood that only a subset of the personal data was covered by the request. Moreover, at the time of the complainant's request, the information currently available on Spotify's website, including on the "*Personal data rights and privacy settings*" webpage, which indicates what personal data is provided in the various responses, and how access to it can be requested, was missing. IMY further considers that Spotify's statement that the complainant could contact customer service and request additional information is irrelevant as such behaviour presupposes that the complainant would have understood that there was additional personal data that could be disclosed.

In light of the above, IMY considers that Spotify, at the time of the complainant's request for access, did not provide sufficiently clear information for the complainant to understand that the copy of personal data was disaggregated. Providing sufficient information for a data subject to understand that his or her request relates only to a sample of the personal data being processed is a prerequisite for the controller to be able to restrict disclosure to that personal data. Therefore, where it is unclear whether the request relates only to a sample of the personal data, the controller should assume that the data subject wishes to have access to all their personal data. Therefore, given the lack of information in that regard at the time of the complainant's request, Spotify should have disclosed all the personal data it processed about the complainant in the context of his access request made on 27 May 2018. The time within which Spotify had to provide the copy of all personal data must therefore be calculated from that date. According to Article

12(3) of the GDPR, provide a full copy of the complainant's personal data or notify the complainant of an extension of the time period by 27 June 2018. Spotify only notified the complainant of an extension of the time period on 6 July 2018. The copy of the additional personal data was provided on 17 July 2018. IMY notes that Spotify did not notify the extension within the time limit provided for in Article 12(3) of the GDPR. Spotify has therefore provided the copy of the complainant's personal data too late.

The complainant's information, as confirmed by Spotify, shows that the additional personal data accessed on 17 July 2018 was difficult to understand and, in some cases, encrypted.

As IMY notes in section 3.2.2, the explanation of particularly difficult to understand personal data by the controller is required to fulfil the purpose of the right of access. IMY notes that Spotify has failed to comply with its obligations in the complainant's case as it has not provided an explanation for the particularly difficult-to-understand data it provided in the copy and as it has provided some data in encrypted form.

In light of the above, IMY finds that in its handling of the complainant's access request made on 27 May 2018, Spotify has processed personal data in breach of Article 12(3) of the GDPR, by providing the copy of personal data late, and in breach of Articles 12(1), 15(1) and 15(3) of the GDPR, by not providing all of the complainant's personal data in an intelligible form.

## **4.2 Complaint 2 (from Austria with national reference number D130.198)**

### **4.2.1 Background**

The complainant has argued that, in response to his access request made on 10 October 2018, Spotify has not provided all the personal data that Spotify processes about the complainant, that Spotify has not provided any of the information on the processing of the complainant's personal data required by Article 5(1)(b) of the GDPR, and that Spotify has not provided the complainant with the information required by Article 5(1)(b) of the GDPR.

15(1)(a) to (h) and 15(2) of the GDPR and that Spotify did not provide the personal data in an intelligible form as provided for in Article 12(1) of the GDPR. The complainant states, inter alia, that the data was provided in a format that is only machine-readable and not intelligible to natural persons.

### **4.2.2 What has emerged in the case**

Spotify has stated that the complainant requested access to "*Download your data*" (Type 1) on 10 October 2018. The data was made available and downloaded by the complainant on 18 October 2018. The complainant never contacted Spotify again to raise the issues raised in his complaint with IMY. Nor did he request access to additional information beyond that made available through the "*Download your data*" tool.

Spotify provides three types of responses to ensure an appropriate and complete response to its users' requests under Article 15 of the GDPR.

Spotify has stated that information on all three types of responses (Type 1, Type 2 and Type 3), as well as information on how to request access to them, was available at the time of the complainant's request. When a user chose to download their data (Type 1), the description and instructions directly related to the tool indicated that this was only a convenient way to get a copy of "most" personal data from their account and the categories of personal data available through the tool. It was therefore sufficiently clear from the context that other personal data was also available. The complainant also had the possibility to contact customer service through multiple channels and request additional personal data.

Spotify believes that the process was sufficiently transparent at the time for users to understand and request additional available data beyond that provided by Spotify.



which was part of the "*Download your data*" tool. Many other users also requested both Type 2 and Type 3 data at that time. Spotify has since made several improvements to its processes to ensure that users cannot miss the existence of all three types of information and how to easily request access to that information.

At the time of the complainant's request, the specific webpage containing information under Article 15(1)(a) to (h) and (2) of the GDPR had not yet been created, nor was such information automatically included in the response to the access request. Spotify confirms that the complainant did not receive this information with his Type 1 response in October 2018. Spotify notes that although the complainant did not receive the specific Article 15 information in connection with its request, the information was available to the complainant in Spotify's privacy policy.

Spotify further stated that it had processes in place to provide additional information and take action in the event that its response was not considered sufficient to fully respond to a data subject's request for access. If the complainant had contacted [privacy@spotify.com](mailto:privacy@spotify.com) or Spotify's customer service team regarding his questions, they would have been happy to provide the additional personal data and other Article 15 GDPR information he requested.

It is true that the complainant's "*Download your data*" information was provided in JSON format. JSON is a recommended standard format that can be understood by both humans and computers. The information in "*Download your data*" (Type 1) is largely self-explanatory based on the file and field names. However, nowadays Spotify also provides a detailed description of the data on the "*Understanding my data*" information webpage.

#### **4.2.3 The assessment of the Data Protection Authority**

As IMY notes in the assessment of its general practices, section 3.2.2 of this decision, it is possible to split the copy of personal data into different layers provided that the data subject has been sufficiently informed, inter alia, about how the copy of personal data is split and how access to the different layers can be requested.

The complainant has, as IMY understands it, wanted access to all the data that Spotify processes about him. However, the complainant has only requested access to Type 1 data and has not returned to Spotify for further information.

According to IMY, the complainant's behaviour suggests that the information provided by Spotify at the time of the complainant's request regarding the division of the copy into personal data and how access to the different layers could be requested was not sufficiently clear for the complainant to understand how to access all the data.

IMY further considers that when assessing the information provided by Spotify in the description and instructions when the complainant made his Type 1 request on 10 October 2018, that information alone was not sufficiently clear for the complainant to have understood that only a subset of the personal data was covered by the request. Furthermore, at the time of the complainant's request, the information currently available on Spotify's website, including on the "*Personal data rights and privacy settings*" webpage, which indicates what personal data is provided in the various responses, and how access to it can be requested, was missing. IMY furthermore considers that Spotify's statement that the complainant could contact customer service and request additional information is irrelevant, as such behaviour presupposes that

the complainant would have realised that there was additional personal data that could be disclosed.

In light of the above, IMY considers that Spotify, at the time of the complainant's request for access, did not provide sufficiently clear information for the complainant to understand that the copy of personal data was disaggregated. Providing sufficient information for a data subject to understand that his or her request relates only to a sample of the personal data being processed is a prerequisite for the controller to be able to restrict disclosure to that personal data. Therefore, where it is unclear whether the request relates only to a sample of the personal data, the controller should assume that the data subject wishes to have access to all their personal data. Therefore, given the lack of information in this regard at the time of the complainant's request, Spotify should have disclosed all the personal data it processed about the complainant. IMY notes that Spotify has not disclosed all the personal data it processed about the complainant. Therefore, Spotify has not fulfilled the requirements of Articles 15(1) and 15(3) of the GDPR to provide the data subject with access to his or her personal data as it has not provided the data subject with a complete copy of the personal data being processed.

The complainant further stated that the personal data provided to him was difficult to understand. Spotify's response indicates that at the time of the complainant's request there was no description of the data provided to the complainant (Type 1). However, IMY considers that the data provided under a Type 1 request is sufficiently clear for the average user to understand the data and therefore does not require further explanation. IMY therefore considers that the personal data provided has been sufficiently clear to fulfil the requirements of Article 12(1) of the GDPR, i.e. that the information provided under Article 15 of the GDPR should be given in a concise, clear, intelligible and easily accessible form, using clear and plain language. There has therefore been no deficiency in the clarity of the personal data provided to the complainant. However, IMY welcomes the improvements that Spotify has made since then, which may further enhance the understanding of the personal data provided in Type 1 responses.

In addition, the complainant argued that his personal data was provided in a format that was only machine-readable and not comprehensible to natural persons. Spotify has stated that the data was provided in JSON format. IMY considers, as also stated above under 3.2.2, that JSON format, which can be read by both computers and natural persons, is currently an electronic commonly used format referred to in Article 15(3) of the GDPR. IMY therefore considers that there was no deficiency in the format in which the data was provided to the complainant.

Finally, the complainant argues that he was not provided with information under Article 15(1)(a) to (h) and (2) of the GDPR. Spotify has confirmed that the complainant did not receive this information together with the response to the request submitted in October 2018. Thus, Spotify has not fulfilled its obligation to provide information under Article 15(1)(a) to (h) and (2) in connection with the complainant's request for access. The fact that information was available in the company's privacy policy at the time of the complainant's request does not cure this deficiency.

In summary, IMY finds that in its handling of the complainant's access request made on 10 October 2018, Spotify has processed personal data in breach of Article 15(1) and (3) of the GDPR, by failing to provide access to

all personal data processed by Spotify about the complainant and in breach of Article 15(1)(a) to (h) and (2) of the GDPR, by not providing any of the information listed in those provisions.

### **4.3 Complaint 3 (from Denmark with national reference number 2018-31-1198)**

The complainant argues that Spotify has not responded to the complainant's request for access under Article 15 of the GDPR made on 12 November 2018.

The investigation of the case has not shown that Spotify has failed in its handling of the complainant's request for access, which leads to the rejection of the present complaint. The receiving supervisory authority, i.e. the Danish data protection authority, should therefore adopt the decision on this complaint under Article 60(8) of the GDPR.

The reasons for the decision in this respect are therefore set out in a separate decision of the Danish Data Protection Agency.

## **5 Choice of intervention**

### **5.1 Applicable provisions**

The IMY has a number of remedial powers in the event of a breach of the GDPR, including reprimand, injunction and fines. This follows from Article 58(2)(a) to (j) of the GDPR.

IMY shall impose penalties in addition to or instead of other corrective measures referred to in Article 58(2) of the GDPR, depending on the circumstances of each case.

Where a controller or a processor, in respect of the same or linked data processing operations, intentionally or negligently infringes several provisions of this Regulation, the total amount of the administrative pecuniary sanctions shall not exceed the amount determined for the most serious infringement. This is set out in Article 83(3) of the GDPR.

Each supervisory authority shall ensure that the imposition of administrative fines in each case is effective, proportionate and dissuasive. This is set out in Article 83(1) of the GDPR.

Article 83(2) of the GDPR sets out the factors to be taken into account in determining whether an administrative fine should be imposed, but also what should influence the amount of the fine.

The EDPB has adopted guidelines on the calculation of administrative fines under the GDPR which aim to create a harmonised methodology and principles for the calculation of fines.<sup>18</sup>

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<sup>18</sup> EDPB Guidelines 8/2020 Guidelines 04/2022 on the calculation of administrative fines under the GDPR, finally adopted on 24 May 2023.

## 5.2 Same or linked data processing operations

As noted above, IMY, in its review of Spotify's general processes and procedures for granting access under Article 15 of the GDPR, has found deficiencies in the information provided under Article 15(1)(a) to (h) and (2) of the GDPR and in the description of the data in the technical log files provided by Spotify. Furthermore, Spotify has failed in its handling of access requests in relation to two of the complaints examined by IMY, complaint 1 and complaint 2.

The breaches of the general procedures relate, with regard to the information under Article 15(1)(a) to (h) and (2) of the GDPR, to the period from 16 November 2021 to 16 May 2022 and, with regard to the description of the data in the technical log files, to the period from 11 June 2019 to 16 May 2022. The requests for access covered by the individual complaints were made on 27 May 2018 and 10 October 2018 respectively. IMY considers, inter alia, against this background, that the breaches relating to the general practices and the breaches relating to the two complaints do not constitute the same or linked processing operations within the meaning of Article 83(3) of the GDPR.

However, IMY considers that Spotify's provision of information covered by Article 2(1)(a)(ii) of Regulation (EC) No [...].

15.1 and 15(2) of the GDPR and the provision of the description of the data in the technical log files are interconnected. That assessment is made, inter alia, in the light of the fact that the deficiencies found in these areas relate to the requirements for transparency in the information provided by Spotify to data subjects under Article 15 of the GDPR during a partially coinciding period of time. Furthermore, the complaints are considered to be linked to each other.

IMY must therefore determine the choice of intervention for the identified deficiencies in Spotify's information under Article 15(1) and (2) of the GDPR and in the description of the data in the technical log files, on the one hand, and for the identified deficiencies in the two complaints, on the other.

## 5.3 Shortcomings in the information referred to in Article 15(1) and (2) of the GDPR and in the description of the data in the technical log files

IMY has assessed that Spotify has infringed Articles 12(1), 15(1)(a) to (d), 15(1)(g) and 15(2) of the GDPR. In light of, among other things, the fact that the infringements have been able to affect a large number of data subjects, that the infringements have been ongoing for a long time and that the deficiencies in the information have made it difficult for data subjects to exercise their other rights under the data protection regulation, these are not minor infringements.

A penalty should therefore be imposed on Spotify for the infringements in this respect.

The IMY finds that Spotify has infringed articles covered by Article 83(5) of the GDPR which provides for the imposition of a fine of up to EUR 20 million or 4 per cent of the global annual turnover in the preceding financial year, whichever is higher.

When determining the maximum amount of a penalty to be imposed on an undertaking, the definition of an undertaking used by the Court of Justice of the European Union in the

application of Articles 101 and 102 TFEU (see recital 150 of the GDPR). According to the Court's case law, this includes any entity engaged in an economic activity, irrespective of its legal form and the way it is financed, and even if the entity is legally composed of several natural or legal persons.

IMY assesses that the company's turnover to be used as a basis for calculating the administrative fines that Spotify can be imposed is Spotify's parent company Spotify Technology S.A. Spotify Technology S.A.'s annual report for 2022 shows that the annual turnover in 2022 was approximately SEK 132,000,000,000. The maximum penalty amount that can be determined in the case is four per cent of this amount, approx. SEK 5 280 000 000.

When assessing the seriousness of the infringements, IMY takes into account the following in addition to what is stated above, i.e. that the infringements have been able to affect a large number of data subjects, that the infringements have been ongoing for a long time and that the deficiencies in the information have made it difficult for data subjects to exercise their other rights under the data protection regulation. The infringements have entailed a risk that the purpose of the right of access is frustrated, as the deficiencies in the information provided have made it difficult for data subjects to understand which of their personal data has been processed and how. Consequently, the data subject has not been able to verify whether the processing was lawful. Furthermore, Spotify's processing of personal data covers a large amount of personal data about each data subject and concerns many data subjects in several different countries.

However, it appears that the data processed do not constitute special categories of personal data within the meaning of Article 9 of the GDPR.

The processing of personal data that takes place within the framework of a customer relationship in the provision of a music streaming service also does not normally have major consequences for the data subjects. Furthermore, despite the scope of Spotify's personal data processing, IMY has only received a few complaints regarding the company's handling of access requests.

It is also significant that Spotify faces the challenge of providing comprehensive information about complex personal data processing in a way that is comprehensible to data subjects, leading to difficult trade-offs in assessing how best to present the information. Spotify has provided some information under all points of Article 15(1) and

15.2 in the General Data Protection Regulation. Furthermore, Spotify has provided information about its processing of personal data on several pages on its website. Some information on how the personal data is processed has also been possible to deduce from the copy of personal data under Article 15(3) of the GDPR that Spotify has provided to data subjects who have requested access and which IMY has generally assessed to fulfil the requirements of clarity in Article 12(1) of the GDPR.

The investigation in the case also shows that Spotify, on its own initiative and before the current supervisory case was initiated, has taken several measures and put considerable effort into producing, developing and improving processes for access requests that are transparent to the data subjects. These processes and procedures have since been continuously developed and improved. According to IMY, this indicates that Spotify intends to fulfil the right of access in a way that is transparent to data subjects. Until last year, when the EDPB adopted guidelines on the right of <sup>access</sup><sup>19</sup>, there has also been a lack of detailed guidance on how to provide the information and at what level of detail, including the following

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<sup>19</sup> European Data Protection Board (EDPB) Guidelines 01/2022 on data subject rights - Right of access, (adopted on 18 January 2022 for public consultation and finally adopted on 28 March 2023).

as regards the degree of individualisation of the information to be provided under Article 15.1 and Article 15(2) of the GDPR and the language to be used for communication under Article 15 of the GDPR.

Overall, IMY assesses, in light of the circumstances presented, that the infringements in question are of low severity. The starting point for the calculation of the penalty fee should therefore be set relatively low in relation to the current maximum amount. In order to ensure a proportionate penalty fee in the individual case, there is also reason to further adjust the starting point for the continued calculation downwards already at this stage, taking into account the high turnover on which the calculation of the penalty fee is based.

In addition to the assessment of the seriousness of the infringement, IMY will assess whether there are any aggravating or mitigating circumstances that are relevant to the amount of the penalty payment. The circumstances already taken into account in the assessment of the seriousness of the infringement cannot be taken into account again at this stage of the assessment.

IMY assesses that there are no further aggravating circumstances that affect the size of the penalty fee. As a mitigating circumstance, IMY attaches particular importance to the possibility for data subjects to contact Spotify's customer service through several different channels to obtain further individualised information. Furthermore, in June 2022, Spotify has informed that it has made updates to the Article 15 information, among other things, in order for the data subject to understand the specific personal data processing applicable to their unique use of the Spotify service. With regard to the deficiencies concerning Spotify's choice of language for the description of the data in the technical log files, it is also relevant that data subjects have had the possibility to contact Spotify to have the description translated or explained in their local language and that Spotify has provided clear information about this possibility in the "Read Me First" file provided in connection with the provision of the data to the data subject.

In light of the seriousness of the infringements, aggravating and mitigating circumstances and the high turnover in relation to the observed infringements, IMY sets the administrative fine for Spotify at SEK 58,000,000. IMY has thereby assessed that this amount, which corresponds to approximately 1 per cent of the maximum possible penalty amount that can be set in the case, is effective, proportionate and dissuasive in the present case.

#### **5.4 Infringements concerning complaints 1 and 2**

IMY has found that Spotify has failed to fulfil its obligations in relation to the complainants in complaints 1 and 2. However, IMY notes that in both cases the complainants have been given timely access to some of their personal data. Furthermore, when contacted by the complainant in complaint 1, Spotify has been helpful in providing additional information and answering questions. With regard to complaint 2, Spotify has not been made aware that the complainant considers that his request for access was not fully met. The complainant has not approached Spotify to express his dissatisfaction with the company's handling of his request for access and therefore Spotify has had difficulties in remedying the deficiency.

IMY notes that the infringements in question did not involve sensitive personal data. Furthermore, Spotify has taken steps, albeit insufficient, to fulfil the complainants' requests. Even if the complainants' right of access is not

fully complied with, the shortcomings are therefore of a less serious nature than if the requests had been left unanswered.

In an overall assessment, IMY finds that the infringements in complaints 1 and 2 are minor infringements and that there is therefore reason to refrain from imposing a fine on Spotify for the infringements found in this part. Instead, a reprimand should be imposed on Spotify under Article 58(2)(b) of the GDPR.

Spotify has stated that it is happy to engage with the complainants directly to ensure that it has provided all the data and information sought by the complainants and that it has answered their questions.

According to the facts of the case, the complainant in complaint 1 approached Spotify again in July 2020 and subsequently obtained access under Article 15 of the GDPR. The complainant received all his personal data, including an explanatory document on the personal data processed, within 21 days. The personal data then provided was unencrypted. As the complainant's request for access has been satisfied, there are no grounds to order Spotify to provide access again under Article 15.

With regard to complaint 2, there is no evidence that the complainant has gained access to more personal data or information since the response to the access request in October 2018. Therefore, on the basis of Article 58(2)(c) of the GDPR, Spotify should be ordered to comply with the complainant's request for access under Article 15 of the GDPR by providing the complainant with access to all the personal data that Spotify processes about him by providing him with a copy of the personal data under Article 15(3) of the GDPR and information under Article 15(1)(a) to (h) and (2) of the GDPR. In doing so, Spotify must take into account the exceptions to the right of access in Article 15(4) of the GDPR and Chapter 5 of the Data Protection Act that may be relevant. IMY assesses that access must be provided within one month of this decision becoming final.

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This decision was taken by Director General Lena Lindgren Schelin after being briefed by lawyers Karin Ekström and Evelin Palmér. Legal Director David Törngren and Head of Unit Catharina Fernquist also participated in the final processing.

Lena Lindgren Schelin, 2023-06-12 (This is an electronic signature)

### **Annex**

Annex 1 - Complainant's identification data (complaint 2)

Annex 2 - Spotify's information pursuant to Article 15 of the GDPR, 16 November to 16 May 2022 inclusive

Annex 3 - Information on the payment of penalties