



noyb - European Center for Digital Rights  
Goldschlagstraße 172/4/3/2  
1140 Vienna  
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Spanish Data Protection Agency (Agencia  
Española de Protección de Datos) C/ Jorge  
Juan 6  
28001 Madrid Spain

Vienna, July 27, 2023

Noyb reference: C-065

## CLAIM

On behalf of:



Represented in  
accordance with Article  
80(1) GDPR by:

noyb - European Center for Digital Rights  
Goldschlagstraße 172/4/3/2  
1140 Vienna  
Austria

Against:

**Ryanair DAC** (hereinafter **Ryanair** or **claimed**)  
Ryanair Dublin Office.  
Airside Business Park  
Swords, Co. Dublin  
Ireland

and other entities identified by the competent  
authority in the course of the procedure.

## TO THE SPANISH DATA PROTECTION AGENCY

1. *noyb* - European Center for Digital Rights (hereinafter referred to as *noyb*), represented by [REDACTED], a non-profit association established under Austrian law and operating in the field of protection of the rights and freedoms of data subjects, with registered office at Goldschlagstraße 172/4/3/2, 1140 Vienna, Austria, and e-mail address for service purposes [REDACTED] in the name and on behalf of (mandate of representation is attached as **Annex 1**) of
2. [REDACTED], [REDACTED], [REDACTED] (in [REDACTED] with [REDACTED] hereinafter referred to as **claimant, this party** or **represented person**)
3. before this body appears and, as is best in law

DICE

4. who, by virtue of this letter, submits a **COMPLAINT** under Article 77 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter **GDPR** or **General Data Protection Regulation**) on the grounds that the processing of personal data carried out by the Respondent is in breach of the GDPR.

### 1. FACTUAL BACKGROUND

5. On [REDACTED] the Claimant booked a Ryanair flight through the online travel agency eDreams (**Exhibit 2**).
6. On the same day Ryanair confirmed the flight reservation to the claimant by e-mail (**Exhibit 3**).
7. The [REDACTED] The complainant received an email from Ryanair at her [REDACTED] email address (**Attachment 4**) containing the following text (automatic translation of the English original received by the claimant):

*"Dear Customer,*

*It appears that your reservation [REDACTED] has been made through a third party intermediary or BOT that is not authorized by Ryanair to use the Ryanair website or application or to offer our flights for sale. We do this to keep prices low, as intermediaries can apply massive surcharges to fares or ancillary products such as bags, seats and priority boarding.*

*In addition, there are security issues that affect passengers and our crew. The passenger must personally complete the check-in process to ensure that he/she is aware of and has confirmed that he/she has complied with the protocols of*

*safety, security and public health, including those established by the ICAO Technical Instructions, Regulation (EU) 2015/1998 and the EASA/ECDC Aviation Health Safety Protocol Covid-19.*

*As you may have made your reservation through an unauthorized intermediary, we may not have been provided with your correct contact and payment information, which may prevent us from processing your reservation:*

- Notify you of the required safety, security and public health protocols.*
- Notify you of the mandatory travel forms.*
- Assist health authorities in locating contacts for Covid-19.*
- Contact you to inform you of important flight updates and terminal changes.*
- Comply with our post-contractual obligations (such as processing legitimate refund claims) as set out in EU Regulation 261/2004 and Ryanair's General Conditions of Carriage.*

*TO RESOLVE THESE ISSUES, YOU HAVE THE OPTION OF BILLING THROUGH:*

#### *ONLINE VERIFICATION*

- The passenger of this reservation can be verified by facial recognition technology.*
- This service is offered on Ryanair's website for a fee of 0.35 euros.*
- Online verification allows you to manage your booking through Ryanair.com.*

#### *On-line verification*

*The cost of this service serves to cover the checks, Ryanair does not benefit commercially from this transaction.*

*If you do not wish to use online check-in, all passengers on this booking can come to the Ryanair ticket counter at least 120 minutes prior to departure to check in free of charge. Please note that our airports are busier than usual in the summer months and queues may be longer as a result, as we must provide a safe place for our staff to work.*

*We thank you in advance for your cooperation with this security measure.*

*To check if you have been overcharged by the unauthorized intermediary, you can use our price checker tool available on Ryanair.com, which will quickly show you what Ryanair has received for this booking. To find the lowest fares, look for the Ryanair Verified seal. This ensures that you are booking directly on the Ryanair.com website or app.*

*Thank you for choosing*

*Ryanair. Best regards*

*Ryanair Customer Service".*

8. El [REDACTED], the claimant performed the process of "verification on 0.35 euros for the process (**Annex 5**).
9. Subsequently, the claimant was able to finalize her check-in process, finally receiving her boarding pass online (**Annex 6**).
10. Ryanair's General Terms and Conditions of Carriage (**Annex 7**) applicable to the Claimant's contract states:

*"[...] 6.2.7 You may not be able to check-in online if you have purchased your flight through a third party who is not authorized by Ryanair to use our website or our mobile application to sell our flights, and who nevertheless does so in breach of our website Terms of Use (including the mobile application and any web pages and/or any data passing through the ryanair.com web domain ("unauthorized intermediary")).*

*6.2.8 If you have booked through an unauthorized intermediary, you must complete our customer verification process (the "Verification Process"). The verification process can be completed online here up to 120 minutes before the scheduled departure of the flight for a fee of €0.35, corresponding to the costs of the process. Otherwise, you can also complete the verification process free of charge at the relevant airport ticket counter at least 120 minutes prior to flight departure. Please check our FAQ for quick answers to the most frequently asked questions we receive about the verification process.*

*6.2.9.1 If you choose to use the online verification process, you will be asked to complete the following steps:*

- i. provide your reservation reference code (PNR) and the name(s) of the passenger(s) in the reservation;*
- ii. provide a photograph of your travel documentation (i.e. passport or identity card);*
- iii. provide a real-time video of your face to verify the travel documentation you provided in step 2;*
- iv. provide your personal email address, and v. pay the fee of 0,35 €.*

*6.2.9.2 Once one of the passengers listed on your reservation has completed the online verification process, all passengers listed on the reservation will be able to check in online as usual.*

*6.2.10 To ensure that we can contact you directly if necessary, the email address you have provided to us during the verification process will replace the email address originally provided to us by the unauthorized intermediary. [...]"*

11. Ryanair's "Privacy Policy" (**Exhibit 8**) adds:

<b><i>How we use your data</i></b>	<b><i>Why we process your data</i></b>	<b><i>Legal justification</i></b>
[...]	[...]	[...]
<i>We collect your image (temporarily)</i>	<p><i>To verify your online identity when a risk of fraud is detected. You will also be offered the option of manual verification.</i></p> <p><i>To verify your identity during online check-in and when processing refund requests and/or claims under Regulation (EC) No. 261/2004, in order to ensure that you comply with our general terms and conditions of carriage. In both cases you will also be offered the option of manual verification.</i></p> <p><i>To verify your identity when you suspect that an unauthorized third party may have provided us with your data. incorrectly.</i></p>	<i>Explicit consent</i>
[...]	[...]	[...]

The following are applicable to the factual background

## **2. LEGAL BASIS**

### **FIRST - Infringements of the GDPR**

12. Ryanair breached the GDPR by

- (a) treated data personal data without obtaining a consent valid consent (article 9 RGPD),

(b) processed personal data (i) when it was not necessary for the stated purpose (Article 5.1.c GDPR), (ii) in an unfair manner (Article 5.1.a GDPR), (iii) for an unlawful purpose (Article 5.1.b GDPR),

(c) no other legal basis is applicable (Article 6 and 9 GDPR).

## **SECOND - The consent is not valid.**

### *I. Ryanair invokes consent as legal basis and must not change it*

13. Ryanair states in its "Privacy Policy" (**Annex 8**) that explicit consent is the legal basis for processing images for verification purposes.
14. Thus, Ryanair indicated to the complainant that the processing of the data was dependent on her approval. If Ryanair were to argue that another legal basis applies, it would be contradicting itself by suggesting to the complainant that it has a decision-making power that does not actually exist. This would be contrary to the principle of fairness and transparency of Article 5.1.a GDPR.

The ECDC Guidelines 5/2020 on consent within the meaning of Regulation (EU) 2016/679 (Version 1.1, adopted on May 4, 2020) also state that the legal basis for processing must be determined before processing begins (paragraph 121). Regarding consent it is specified: "[...] *Sending the message that data will be processed on the basis of consent, while in reality, another legal basis is being used, would be really unfair to data subjects.*" (paragraph 122).

### *II. Consent is not informed*

15. According to Article 4.11 GDPR consent is only valid if the data subject has expressed his or her will in an "informed" manner.
16. In this regard, Recital 42.4 RGPD states:

*"For consent to be informed, the data subject must know at least the identity of the controller and the purposes of the processing for which the personal data are intended."*

17. In the e-mail sent to the complainant (**Annex 4**, see also No. 7 of the factual background) different purposes are indicated which are hypothetical and vague. It is not understood for what purpose consent is requested.

It was mentioned in the message:

*"The passenger must personally complete the check-in process to ensure that he or she is aware of and has confirmed compliance with the protocols of*

*safety, security and public health, including those established by the ICAO Technical Instructions, Regulation (EU) 2015/1998 and the EASA/ECDC Aviation Health Safety Protocol Covid-19."*

It seemed that it was necessary to check in personally for Ryanair to ensure that passengers received certain information. However, the message adds:

*"As you may have made your booking through an unauthorized intermediary, your correct contact and payment details may not have been provided to us, which may prevent us from being able to:*

- Notify you of the required safety, security and public health protocols.*
- Notify you of the mandatory travel forms.*
- Assist health authorities in locating contacts for Covid-19.*
- Contact you to inform you of important flight updates and terminal changes.*
- To comply with our post-contractual obligations (such as processing legitimate refund claims) as set out in EU Regulation 261/2004 and Ryanair's General Conditions of Carriage."*

18. Ryanair therefore wrote that the booking may have been made through an intermediary and that correct contact and payment details may not have been provided. This "may" prevent Ryanair from certain stated transactions.
19. In other words, Ryanair established merely hypothetical purposes. It is not clear whether they apply in the complainant's case. The information received is not sufficiently intelligible to understand for what purpose consent is sought in this case and what purpose the verification process serves in general. Is it necessary in order to comply with a legal obligation, such as post-contractual obligations or Regulation 261/2004? Why is consent sought if it is a legal obligation? Or is it necessary for the contract and conditions of carriage? For Covid-19 tracking? Or is consent sought to obtain the complainant's correct contact details? In this case, how could Ryanair have contacted her in the first place?
20. It is not clear from the message for which of the aforementioned purposes the consent was requested.
21. Consequently, informed consent was not possible.

### *III. Consent is not specific*

22. Beyond informed consent must also be specific, according to article 4.11 RGPD.

23. The ECDC Guidelines 5/2020 on consent within the meaning of Regulation (EU) 2016/679 (Version 1.1, adopted on May 4, 2020) note:

*...] In short, in order to comply with the "specific" character, the controller must apply: [...] the specification of the purpose as a guarantee against misuse [...]" (paragraph 55 in fine) the specification of the purpose as a guarantee against detour of use [...]" (paragraph 55 in fine)*

In addition, these Guidelines establish:

*"[...] It goes without saying that specific consent can only be obtained when data subjects are expressly informed of the intended purposes for the use of the data concerning them." (paragraph 57 in fine)*

24. Since the consent requested was not informed, it could not be specific either. The complainant lacked the necessary information to understand what purpose the processing of her personal data would serve and, furthermore, why in the context of her flight it was necessary to carry out a so-called verification.
25. Consequently, it was not possible for the claimant to express her will in a specific manner.

#### *IV. Consent is not free*

26. Recital 42.5 GDPR provides: *"Consent should not be considered as freely given when the data subject does not have a genuine or free choice or is not able to refuse or withdraw consent without detriment"*.
27. Therefore, Recital 42.5 GDPR contains two alternative scenarios when consent is not free: (i) the data subject does not have a genuine or free choice or (ii) the data subject cannot refuse or withdraw consent without prejudice.
28. Furthermore, in Case C-61/19, *Orange România SA*, the Court of Justice of the European Union (CJEU) held:

*"Moreover, [...] the free nature of that consent appears to be called into question by the fact that, in the event of a refusal of consent, Orange România, by departing from the normal procedure leading to the conclusion of the contract, required the customer concerned to state in writing that he did not consent to the obtaining and retention of the copy of his identity card. Indeed, as the Commission observed at the hearing, such an additional requirement may unduly affect the free choice to oppose such collection and retention, which is also a matter for the referring court to verify". (paragraph 50).*

29. Ryanair required the complainant to complete a process that allegedly serves verification purposes (**Annex 4**). In this message it insisted that the



The claimant completed the imposed process through facial recognition technology, which involved the processing of biometric data. Alternatively, the courier pointed out the possibility of coming to the airport in person under certain conditions.

30. If the complainant did not consent to facial recognition, the only alternative to flying was to go to the airport. The complainant would be forced to take an additional action to refuse consent, rather than simply and directly communicating her refusal online. Requiring an additional action, such as showing up at the airport to refuse consent to process biometric data, affected the free nature of the Claimant's consent in accordance with the CJEU case law cited above in *Orange România SA* (paragraph 50).
31. In addition to the above, in order to be *on-site* at the airport, passengers were required to be present at least two hours prior to flight departure. Considering that waiting is common and typical at airports, in practice this translates into the need to be present approximately three hours before the flight. This is particularly burdensome, as it would have forced the claimant to be present earlier than in her case (flying with carry-on baggage) was necessary. Moreover, it is not always feasible to arrive so early.
32. In addition to the above, the Claimant would also have had to pay a fee to obtain her boarding pass. While the verification process was free of charge at the airport (**Exhibit 7**, point 6.2.7), obtaining a boarding pass at the counter was not (**Exhibit 7**, point 6.3). Currently the fee to obtain a boarding pass is €30 (<https://www.ryanair.com/es/es/informacin-util/centro-de-ayuda/tasas>).
33. Ryanair, being aware of the burden of going to the airport and further highlighting this fact, went so far as to state in its email to the complainant, "*Please note that our airports are busier than usual in the summer months and queues may be longer as a result as we must provide a safe place for our staff to work.*"
34. In other words, Ryanair asked the complainant to consent to an online facial recognition. In order to refuse such consent, it was necessary to go to the airport at least two hours before the departure of the flight and pay a fee to obtain her boarding pass at the counter.

Thus, the refusal to consent to the processing of her biometric data is obviously detrimental to the complainant. Consequently, free consent was not obtained.

### *V. Consent is not explicit*

35. Ryanair processed biometric data through facial recognition technology, as acknowledged in the message sent to the complainant on March 3, 2022 (**Exhibit 4**).
36. Therefore, the consent you invoke should be explicit under Article 9.2.a RGD.
37. In this context the CEPD explains in the Guidelines 5/2020 on consent within the meaning of Regulation (EU) 2016/679 (Version 1.1, adopted on May 4, 2020):

*"Explicit consent is required in certain situations where there is a serious risk in relation to data protection and where a high level of control over personal data is considered appropriate. [...]" (paragraph 91)*

38. However, the complainant was not able to give explicit consent as she was not offered to consent to specific processing with all relevant information to understand what purpose her personal data would be used for.

### *VI. Burden of proof*

39. According to Article 5.2 GDPR the controller, Ryanair, must demonstrate compliance with the principles of Article 5.1 GDPR. One of the principles is the lawfulness of the processing (Article 5.1.a GDPR).
40. Article 7.1 GDPR adds for consent: *"Where the processing is based on the data subject's consent, the controller must be able to demonstrate that the data subject consented to the processing of his or her personal data."*
41. Accordingly, Ryanair must demonstrate that it obtained valid consent.

## **THIRD - The verification imposed is arbitrary.**

### *I. Imposed verification is not useful*

42. Beyond the above, the verification process imposed is not adequate for the purpose of obtaining "correct contact and payment data", stated as a hypothetical purpose in the email sent to the complainant (**Annex 4**):

- (a) The respondent already had the correct contact details, otherwise he would not have been in a position to contact the complainant in the first place;
  - (b) In addition, facial recognition does not serve to verify that the claimant's contact details were correct. Her biometric data (and identification documents) are not intrinsically linked to contact data such as her phone number or email address;
  - (c) The same is true for payment data. Biometric data (and identity documents) are not directly linked to a bank account number, for example.
43. Therefore, verification by facial recognition is not suitable for the purpose of confirming that the contact and payment data are correct, which implies a violation of Article 5.1.c GDPR. Moreover, it is contrary to the principle of fairness of Article 5.1.a RGD to impose a processing of personal data that is obviously useless and the information about it is ambiguous, unintelligible and confusing.

### *II. Imposed verification is not required*

44. Since the verification process imposed is not useful for the alleged purpose, the process is not necessary. Also in a more generic way, such process is not necessary, as detailed below.
45. When booking directly through the Ryanair website no additional verification process is required (**Annex 7**, point 6.2.7). Only bookings through an "unauthorized intermediary" require an additional verification process (**Annex 7**, point 6.2.8).
46. However, a customer could enter any information on Ryanair's website just like on the website of any online travel agency. Therefore, it was arbitrary to impose an additional verification process on the complainant.
47. In addition, the Irish *High Court* decided that Ryanair itself could offer alternative mechanisms for identification to the airline. Customers could identify themselves through data such as date of birth and flight reservation number (**Annex 9**, point 11).
48. The complainant's fundamental right to data protection was interfered with without being strictly necessary (principle of proportionality). This interference constitutes an infringement of article 5.1.c RGD.

### *III. Imposed verification serves an illegitimate purpose*

49. It appears from publicly available documentation that Ryanair pursued other purposes than those it communicated to the complainant (see [https://www.diariodesevilla.es/consumo/Ryanair-pide-fotos-clientes-agencias-tiempo-real-embarcar\\_0\\_1632137087.html](https://www.diariodesevilla.es/consumo/Ryanair-pide-fotos-clientes-agencias-tiempo-real-embarcar_0_1632137087.html) & **Annex 10**): Attempts to prevent travel agencies from marketing flights operated by Ryanair.
50. Part of Ryanair's business consists of offering products in addition to flights. Among these additional and/or related products are hotels and rental cars. These products are promoted directly through the Ryanair website at the time of booking a flight.
51. If a flight is booked through a travel agency, Ryanair does not have the possibility to offer these additional and/or related products. It therefore loses a business opportunity.
52. For this reason Ryanair decided to impose a verification process on passengers to avoid (future) purchases through "unauthorized intermediaries" (**Annex 7**).
53. That Ryanair pursues a policy against travel agencies can also be deduced from court rulings. Thus, for example, from Judgment No. 630/2012 of the Supreme Court, Civil Chamber, of October 30 (ECLI:ES:TS:2012:9153) (**Annex 11**) in which Ryanair tried unsuccessfully to sue a travel agency for "scraping" its website.
54. According to the above, the process is totally useless and achieves no objective other than to make booking through travel agencies more difficult. There is no other reason that justifies the imposition of an invasive and annoying verification process when booking a flight on a travel agency website other than to ensure Ryanair's economic advantage. Such a practice distorts the behavior of the average consumer. This is contrary to unfair competition law and competition law in general.
55. It thus appears that the processing of the complainant's personal data served an illegitimate purpose. This is a violation of Article 5.1.b GDPR.

**FOURTH - There is no other applicable legal basis.**

56. Ryanair announced that consent is the legal basis for processing biometric data using facial recognition technology (**Exhibit 8**). It did not mention any other legal basis.
57. Nor do any of the exceptions provided for in Article 9.2 GDPR apply to the processing of biometric data intended to identify an individual. It should be noted that the "execution of a

contract" (Article 6.1.b GDPR) is not a valid legal basis for the processing of such biometric data.

In this regard, the ECDC Guidelines 5/2020 (Version 1.1, adopted on May 4, 2020) detail in paragraph 99:

*"Article 9(2) does not recognize the circumstance of "necessary for the performance of a contract" as an exception to the general prohibition on processing special categories of data. Therefore, controllers and Member States addressing this situation should consider the specific exceptions in Article 9(2)(b) to (j). In the event that none of the exceptions listed in points (b) to (j) apply, the only lawful exception for processing such data is to obtain explicit consent in accordance with the conditions for valid consent set out in the GDPR."*

58. Finally, it should be noted that there is no legal obligation to additionally identify passengers who book their flight through an online travel agency (other than the airline providing the service). In fact, other airlines do not require such identification for bookings made through online travel agencies.

#### **FIFTH - Historical Violation**

59. The fact that the responsible party no longer infringes the applicable regulations does not exempt the supervisory authority from making use of its powers, since the complainant's personal data have already been processed.

60. A practice in this sense would favor non-compliance with the regulations, since the infringement would not have any consequence if the authority were to justify the cessation of such infringement.

By virtue of the foregoing, and in accordance with the above-mentioned provisions, this party

### **3. REQUEST**

I. That the competent supervisory authority investigates the case, in accordance with the powers conferred through Article 58.1.a, e, f RGPD and its national legislation, and specifically:

- (a) the processing of data to carry out the "on-line verification",
- (b) the purpose or purposes for which the data is processed by the respondent,
- (c) the alleged legal basis (consent) and its validity;

- II. That the competent supervisory authority prohibits the respondent from processing the data of the claimant in accordance with the powers provided for in Article 58.2.f RGPD;
- III. That the competent supervisory authority order the respondent to bring its operations into compliance with the provisions of the GDPR so that the complainant can use an online travel agency in the future without interference with her right to data protection in accordance with the powers provided for in Article 58.2.d GDPR;
- IV. That the competent supervisory authority order the respondent to delete all personal data of the complainant processed without legal basis and to notify all recipients of such data of such deletion, in accordance with the powers provided for in Article 58.2.g RGPD.
- V. Finally, this party suggests that the supervisory authority, according to its discretion and when appropriate, impose an effective, proportionate and dissuasive fine on the respondent, taking into account that:

- (a) The complainant is predictably only one of thousands affected by the Respondent's practice,
- (b) That an intentional and blatant breach by a major airline should be adequately sanctioned to prevent future breaches of the GDPR and to ensure respect for the rights of data subjects.

#### **4. CONTACT WITH *NOYB***

We remain at your disposal for any factual or legal clarification you may require in order to [redacted] to process [redacted] this [redacted] claim. Our data [redacted] at [redacted] re: [redacted]

o .

To the Spanish Data Protection Agency with identification code I00000121 (article 115.1.d) of Law 39/2015).