



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

Hellenic Data Protection Authority (HDP
Kifissias 1-3, P.C. 11523
Athens, Greece

Via the Online Services of the HDP

Athens, 13.08.2024

noyb Case-No: C-085

Complainant:

[REDACTED]

Represented under
Article 80(1) GDPR by:

noyb – European Center for Digital Rights
Goldschlagstraße 172/4/3/2, 1140 Vienna

Respondent:

“ALFA-VITA” VASILOPOULOS SINGLE MEMBER S.A.
81 Spaton Avenue, P.C. 15344,
Gerakas, Pallini, Attica

Regarding:

Right of access – Article 15 GDPR
Principle of transparency – Article 5(1)(a) GDPR

COMPLAINT

1. REPRESENTATION

1. noyb – European Center for Digital Rights is a not-for-profit organisation active in the field of the protection of complainants’ rights and freedoms with its registered office in Goldschlagstraße 172/4/2, 1140 Vienna, Austria, registry number ZVR: 1354838270 (hereinafter: “noyb”) (**Attachment 1**).
2. noyb is representing the complainant under Article 80(1) GDPR (**Attachment 2**).

2. FACTS PERTAINING TO THE CASE

2.1. The controller and its customer loyalty program

3. The controller owns and operates one of the biggest chains of supermarket stores in Greece with about 600 retail stores and 2.200.000 million customers in the country, according to its website.¹ To maintain a clientele of returning customers, the controller has introduced a three-tier loyalty program called “AB plus”, based on the use of an “AB plus” card or a mobile app. This program allows the controller to process personal data of its registered customers in order to offer them discounts, as well as personalised offers and coupons.
4. The customers can choose between three tiers of “*privileges*” and “*communication preferences*”. If a customer chooses the “*AB Plus Basic*” profile, he or she will receive general promotional communications, which AB sends to all registered AB Plus customers. If a customer chooses the “*AB Plus Personal*” or the “*AB Plus Unique*” profile, he or she consents to AB conducting analysis of his/her personal data collected through his or her AB Plus card or mobile app. This personal data, also, includes his or her purchases and his or her habits as a customer. AB uses this data to create personalised offers and messages for the client.
5. If the customer chooses an “*AB Plus Unique*” profile AB will carry out to all of the processing described above. In addition, the controller will share the Customer’s personal data with third parties (“Partners”) in order to provide him or her personalised offers, personalised communications, and promotional updates.²
6. The complainant has registered to the loyalty program that AB offers. More specifically, she has chosen to be part of the “*Personal*” tier of AB’s loyalty program.

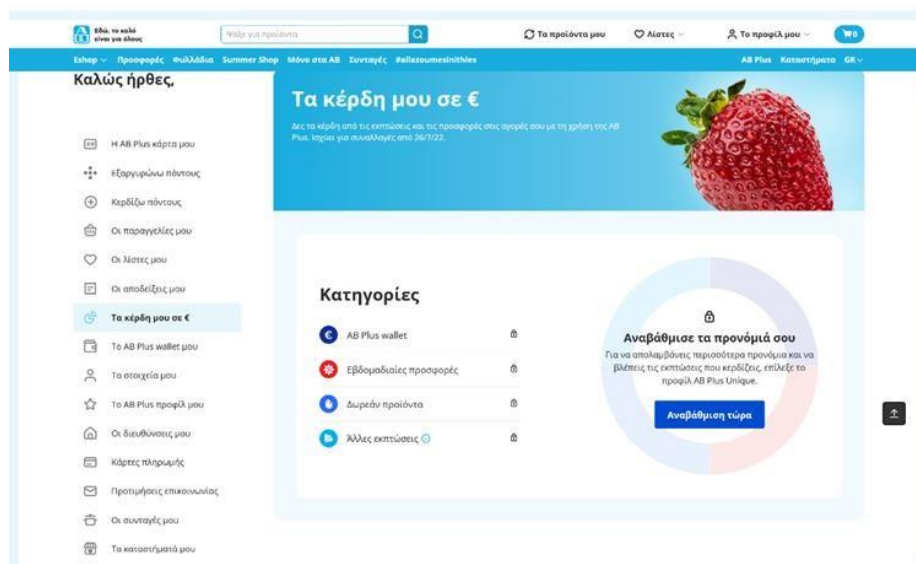
2.2. The controller did not fulfil the complainant’s access request

7. On 08.05.2024 the complainant exercised her right to access her personal data via the controller’s contact form <https://ask.ab.gr/s/contactsupport?language=el>. AB confirmed the receipt of her access request on the same day (**Attachment 3**). The controller limited the scope of the request with its response on 29.05.2024 (**Attachment 4**) by only providing a list of the complainant’s transactions and her contact information in an editable word document without signature (**Attachment 5**).
8. The complainant asked the controller to provide the missing information, according to Article 15(1) GDPR, via e-mail on 7.6.2024 (**Attachment 6**). In an email sent on 11.6.2024 (**Attachment 7**), the controller refused to provide the information and referred the complainant back to the Terms and Conditions of the AB Plus loyalty program (**Attachment 8**).
9. In addition, AB claimed that the personal data of the complainant that were available to the company were provided with AB’s previous reply. The controller, also, refused to inform the complainant on the recipients of her personal data. More specifically, AB claimed that “[the] recipients are defined in the terms of the program generally in categories according to standard practice given that some partnerships may change”.

¹ <https://www.ab.gr/ourcompany>

² See Section 2.11. of the Terms and Conditions of AB’s loyalty program (**Attachment 2**).

10. AB even excluded existing information on the processing that takes place according to its privacy policy and its Terms and Conditions page. In Section 5.8. of the Terms and Conditions AB states that they conduct profiling of the customers who choose the “*Personal*” or “*Unique*” membership tier. For this purpose, AB processes “*their buying habits, the frequency of their visits to an AB store, the use of offers communicated to them, their home address, the total cost of their purchases*”. AB did not provide access to any of this information that they, as a Controller, process.
11. More importantly, AB does not give all customers access to the total amount of euros they have saved by using their loyalty card. Customers are invited to “*upgrade*” their membership level to “*Unique*” in order to access this information. These data were not provided to the complainant, even after she submitted a request for access to her personal data.
12. In short: AB deliberately left out of their answer most information they process on the complainant, referring her back to their vague Terms and Conditions page. AB refused to provide information on the recipients of the complainant’s personal data. AB, also, excludes customers in the “*Basic*” and “*Personal*” tier from accessing the total amount of money they saved from AB’s offers.



Screenshot: AB excludes users in the “*Basic*” and “*Personal*” tiers from accessing their personal data.

3. COMPETENT AUTHORITY/ LEAD AUTHORITY

13. This complaint is being submitted to the Hellenic Data Protection Authority (HDP) because both the complainant’s place of residence and the location of the infringement are in Athens, Greece.
14. AB is a company registered and based in Greece where it operates its own supermarket chain and e-shop. The company, as a controller, has created and run the “*AB Plus*” loyalty program in all their supermarket stores in Greece.
15. Therefore, the HDP is the competent authority to handle the present complaint, according to Article 55(1) and 77(1) GDPR.

4. GROUNDS FOR THE COMPLAINT

4.1. Violations

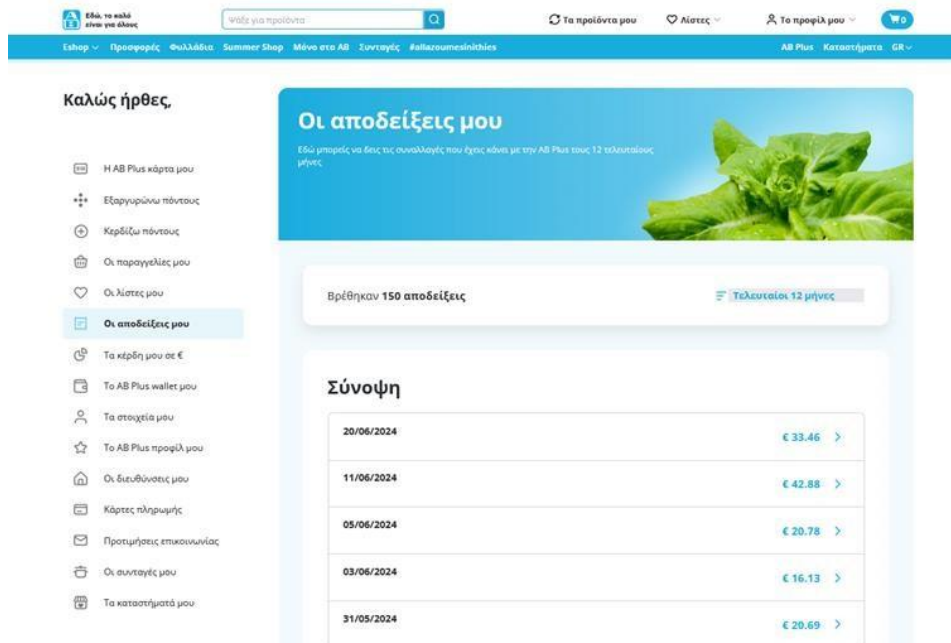
16. The respondent violated two provisions of the GDPR. AB provided an incomplete and vague answer to the complainant's access request and thus violated Article 15(1) GDPR. Subsequently, AB violated the principle of transparency set forth in Article 5(1)(a) GDPR.

4.2. Violation of Article 15(1) GDPR and Article 5(1)(a) GDPR

4.2.1. AB failed to provide full access to the categories of personal data that they process [Article 15(1)(b) GDPR]

17. Article 15(1)(b) GDPR imposes on the controller the obligation to provide access to the categories of personal data he processes.

18. AB's reply to the complainant's request for access only included two categories of personal data, when it is evident that they process much more personal data than that. This is evident from the screenshots coming from the complainant's AB Plus account on AB's website. According to the evidence, AB keeps the customers' receipts for at least a year and, also, processes all of the data derived from the receipts and shopping lists created on their online shop.



Screenshot: AB retains the customers' receipts for at least a year.

19. More importantly, the Terms and Conditions of the AB Plus loyalty program state that the personal data of the members of the loyalty program are retained for as long as the AB Plus card remains valid. It is, therefore, manifest that AB processes personal data for a longer time period and in much bigger quantity than the personal data provided to the complainant. In addition, AB did not provide access to the amount of money that was saved through the use of their loyalty card, which is clearly a piece of information they process.

20. Furthermore, according to Section 7.3 of the present complaint, AB conducts profiling of the customers who choose the "Personal" and "Unique" tiers. This profiling takes place on the basis

of the personal data provided by and collected from the customers. AB did not provide access to the content of the complainant's "AB Plus" profile nor to the categories of personal data used to create it.

4.2.2. AB refused to provide access to the recipients of the complainant's personal data [Article 15(1)(c) GDPR]

21. In the present case, AB claimed that all relevant information is included Terms and Conditions of the loyalty program instead of stating clearly the recipients of the complainant's personal data.
22. Article 15(1)(c) GDPR explicitly states that the controller should provide to the data subject access to the recipients of his/her personal data.
23. This obligation of the controller has been reaffirmed in para 51 of the Judgement of the CJEU in case C-154/21 "RW v Österreichische Post AG", as follows:

"[...] Article 15(1)(c) of Regulation (EU) 2016/679 [...] must be interpreted as meaning that the data subject's right of access to the personal data concerning him or her, provided for by that provision, entails, where those data have been or will be disclosed to recipients, an obligation on the part of the controller to provide the data subject with the actual identity of those recipients [...]"

24. It is, therefore, evident that referring the data subject back to the Terms and Conditions and mentioning only the categories of the recipients does not constitute a proper answer to an access request.

4.2.3. AB violated Article 5(1)(a) GDPR

25. AB refused to provide adequate information about the categories of the personal data undergoing processing as well as its recipients. It follows from the violation of Article 15(1)(b) and (d) GDPR that AB has infringed the principle of transparency according to Article 5(1)(a) GDPR.

5. REQUESTS AND SUGGESTIONS

5.1. Request to investigate

26. The complainant invites the competent authority to investigate according Article 58(1) GDPR the processing that AB conducts and, more specifically, the profiling of its customers and the list of recipients of the customers' personal data.

5.2. Request to issue a declaratory decision

27. The complainant requests that the complaint be upheld and that AB be found to have infringed Articles 15(1)(b) and (c), as well as Article 5(1)(a) GDPR.

5.3. Request to order the Controller to comply with the complainant's request

28. The complainant requests that the competent authority orders AB to comply with the complainant's request and to provide all information relevant to her request.

5.4. Suggestion to impose a fine

29. The complainant suggests that the competent authority imposes a fine against AB, as controller, pursuant to Articles 58(2)(i) and 83(5)(a) and (b) GDPR for the infringements of Articles 5(1)(a) and 15(1)(b) and (c) GDPR by AB.

6. CONTACT

30. Communications between noyb and the HDPa in the course of this procedure can be done by email at [REDACTED] with reference to the **Case-No C-085** or at [REDACTED].