

Having regard to 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 (the ‘GDPR’);

Having regard to the Act of¹ August 2018 on the organisation of the National Commission for Data Protection and the General Data Protection Regime (hereinafter referred to as the ‘Law of¹ August 2018’);

Having regard to the Rules of Procedure of the National Commission for Data Protection adopted by Decision No 3AD/2020 of 22 January 2020 (hereinafter referred to as the ‘ROI’);

Having regard to the complaints procedure before the National Commission for Data Protection adopted on 16 October 2020 (hereinafter referred to as the ‘Complaint Procedure before the CNPD’);

Having regard to the following:

I. Facts and procedure

1. In the framework of European cooperation, as provided for in Chapter VII of Regulation (EU) 2016/679 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 or GDPR), the Supervisory Authority of Bavaria (Germany) submitted to the National Data Protection Commission (hereinafter: “the CNPD”) the complaint of [REDACTED] (national reference of the authority concerned: Lda-1085.3-4210/19-I) via IMI in accordance with Article 61-74310 procedure.
2. The complaint was lodged against the controller [REDACTED] which has its principal place of business in Luxembourg. Under Article 56 GDPR, the CNPD is therefore competent to act as the lead supervisory authority.
3. The initial claim in IMI stated the following:

The complainant submits that he closed his [REDACTED] Account on 31.12.2018 and applied to [REDACTED] for the deletion of all data that is not subject to the statutory storage

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regulations. The company has not complied with the request to delete the data despite several requests. On 07.02.2019, the complainant filed an application for information pursuant to Art. 15 DS-GVO. [REDACTED] then provided the complainant with an extract of the stored data and it turned out that wish lists, watch lists, dates of books read, marked text passages etc., which the complainant deleted long time ago, are still stored. [REDACTED] states, that they are going to store certain data due to various tax and legal storage obligations, but does not tell, which kind of data has to remain stored. The complainant understands this to mean that there is no real process for deleting the data.

4. In essence, the applicant asks the CNPD to:
 - ask [REDACTED] to delete all personal data related to its account,
 - to have access to the personal data that must be stored for specific legal, tax and accounting reasons after the account has been closed.
5. The complaint is therefore based on Articles 17 and 15 GDPR.
6. On the basis of this complaint and pursuant to Article 57(1)(f) GDPR, the CNPD requested the controller to take a position on the facts reported by the complainant and in particular to provide a detailed description of the issue relating to the processing of the complainant's data, in particular as regards his right of erasure and his right of access.
7. The controller provided the requested information within the time limits set by the CNPD.

II. In law

1. Applicable legal provisions

8. Article 77 GDPR provides that “without prejudice to any other administrative or judicial remedy, any data subject shall have the right to lodge a complaint with a supervisory authority, (...) if he considers that the processing of personal data concerning him or her constitutes a breach of this Regulation.”
9. In accordance with Article 15 GDPR “The data subject shall have the right to obtain from the controller confirmation that personal data concerning him or her are or are not being processed and, where such data are processed, access to such personal data and the following information (...);”

10. In accordance with Article 17 GDPR *“The data subject shall have the right to obtain from the controller the erasure, as soon as possible, of personal data concerning him or her and the controller shall have the obligation to erase such personal data as soon as possible, where one of the following grounds applies (...)”*;
11. Article 56(1) GDPR states that *“the supervisory authority of the main establishment or single establishment of the controller or processor shall be competent to act as the lead supervisory authority in respect of the cross-border processing carried out by that controller or processor in accordance with the procedure laid down in Article 60”*;
12. According to Article 60(1) GDPR, *“The lead supervisory authority shall cooperate with the other supervisory authorities concerned in accordance with this Article by endeavouring to reach consensus. The lead supervisory authority and the supervisory authorities concerned shall exchange any relevant information;*
13. According to Article 60(3) GDPR, *“The lead supervisory authority shall, without delay, communicate relevant information on the matter to the other supervisory authorities concerned. It shall without delay submit a draft decision to the other supervisory authorities concerned with a view to obtaining their opinion and shall take due account of their views’*;

2. In the present case

14. Following the intervention of the Luxembourg supervisory authority, the controller confirmed that:
 - The claimant requested the cancellation of his customer account on December 31, 2018 during a phone call with [REDACTED]’s customer service. The account was successfully closed and the claimant no longer had access to the account. Due to a human error, the customer service agent who processed the request did not follow all the steps required to disable the devices and delete the customer account. This error occurred in March 2019, when [REDACTED] responded to another request by the claimant to access his remaining data by providing him with a dataset including information from the claimant’s [REDACTED] device, such as read books and text passages marked with books that, under [REDACTED]’s policy, should have been deleted.

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- Following a phone call with the complainant, [REDACTED] confirmed by e-mail on 5 March 2019 that the account had been closed and that [REDACTED] would ensure the deletion of the account. [REDACTED] also responded to the complainant's further investigation and explained that [REDACTED] should keep certain data such as booking documents concerning its previous orders for accounting purposes.
- [REDACTED] did not hear from the complainant after March 2019. In order to avoid any doubt, [REDACTED] again confirmed to the CNPD that the claimant's account data (including the above mentioned data elements relating to the claimant's [REDACTED] device) have been deleted (with the exception of the data retained for tax, legal and accounting reasons referred to above).
- For the sake of completeness, [REDACTED] again wrote to the complainant explaining in more detail what data is stored for specific legal, tax and accounting reasons.

3. Outcome of the case

15. The Plenary Training therefore considers that, following the investigation of this complaint, the controller has taken the appropriate steps to grant the request for the right to erasure and the request for the right of access of the complainant, in accordance with Articles 17 and 15 of the General Data Protection Regulation.
16. Therefore, in the light of the foregoing, and the residual nature of the gravity of the alleged facts and the degree of impact on fundamental rights and freedoms, it does not appear necessary to continue to deal with that complaint.
17. The CNPD then consulted the supervisory authority of Bavaria (Germany) under Article 60(1) if it agreed to close the case. The supervisory authority of Bavaria (Germany) replied in the affirmative, with the result that the CNPD came to the conclusion that no further action was necessary and that the cross-border complaint could be closed.

In view of the above, the CNPD, sitting in plenary and deliberating unanimously, decided:

- Close Claim File No. 3.800 upon completion of its investigation, in accordance with the complaints procedure before the CNPD and after obtaining the agreement of the authority concerned.



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Thus decided in Belvaux on 10 June 2022.

The National Commission for Data Protection



Chair



Commissioner Commissioner



Indication of remedies

This Administrative Decision may be the subject of an appeal for amendment within three months of its notification. Such an action must be brought by the interested party before the administrative court and must be brought by a lawyer at the Court of one of the Bar Associations.