

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 of 1 August 2018 on the organisation of the National Data Protection Commission and the General Data Protection Regime (hereinafter referred to as the ‘**Law of 1 August 2018**’);

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

Having regard to the complaints procedure before the National Data Protection Commission 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 the 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 concerned authority: LDA-1085.1-311/20-F) via IMI in accordance with Article 56 procedure - 156252.
2. The complaint was lodged against the controller [REDACTED], who has its main establishment in Luxembourg. Under Article 56 GDPR, the CNPD is therefore competent to act as the lead supervisory authority.
3. The original IMI claim stated the following:

“The Controller sent a non-ordered credit card to the complainants address (with correct surname but other name). Therefore the complainant fears the illegal use of his data. In the communication with us he additionally claims that he contacted the controller and requested for access but didn't get any answer.”

4. In essence, the complainant asks the CNPD to:
 - check on the lawfulness of the processing,
 - order the controller to comply with the complainant's access request.
5. The complaint is therefore based on Articles 5, 6 and 15 GDPR.
6. On the basis of this complaint and in accordance with 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, and in particular with regard to the lawfulness of the processing and his access request.
7. The CNPD received the requested information within the deadlines set.

II. In law

1. Applicable legal provisions

8. Article 77 GDPR provides that *“without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, (...) if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.”*
9. Pursuant to Article 5 (1) (a) (f) of the 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) ("GDPR"), personal data shall be *“processed lawfully, fairly and in a transparent manner in relation to the data subject* ('lawfulness, fairness and transparency'). Article 6 (1) GDPR specifies the conditions for the lawfulness of processing.
10. In accordance with Article 15 of the GDPR *“The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information (...);”*

Deliberation No. 59/RECL19/2022 of 2 December 2022 of the National Data Protection Commission, in a plenary session, on complaint file No 5.904 lodged against the company [REDACTED] via IMI Article 56 procedure 156252

11. Article 56(1) GDPR provides that “(...) *the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided 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 in an endeavour to reach consensus. The lead supervisory authority and the supervisory authorities concerned shall exchange all relevant information with each other*”;
13. According to Article 60(3) GDPR, “*The lead supervisory authority shall, without delay, communicate the 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 for their opinion and 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 complainant’s name is [REDACTED] and the credit card was sent to [REDACTED].
 - they did not in the past and did not currently process any personal data of [REDACTED]. As a result, they were unable to give him access to the personal data that is in the name of another person.
 - the personal data they had stored was for [REDACTED] who placed an order for the card. That card was indeed shipped out to the address of the complainant, as requested by [REDACTED]. during the order process of this [REDACTED] prepaid card.

3. Outcome of the case

15. The CNPD, in a plenary session, therefore considers that, at the end of the investigation of the present complaint, the controller has taken appropriate measures to demonstrate the lawfulness of the processing, in accordance with



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Articles 5 and 6 of the GDPR. As for the right of access, article 15.4 GDPR applies in this case.

16. Thus, 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, pursuant to Article 60(1), whether it agreed to close the case. The Supervisory Authority of Bavaria, Germany, has responded affirmatively, so that the CNPD has concluded that no further action was necessary and that the cross-border complaint could be closed.

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

- to close the complaint file 5.904 upon completion of its investigation, in accordance with the Complaints Procedure before the CNPD and after obtaining the approval of the concerned supervisory authority(s).

Thus decided in Belvaux, dated 2 December 2022

The National Data Protection Commission

[REDACTED]
Chair

[REDACTED]
Commissioner

[REDACTED]
Commissioner

[REDACTED]
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.