

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:

# 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 Mr. (national reference of the concerned authority: LDA-1085.3-687/21-I) via IMI in accordance with Article 61 procedure 318402.
- 2. The complaint was lodged against the controller 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 complainant states that he has neither	an Internet connection, nor an e-mail
address, nor even a customer account with	, but has obviously been the
victim of identity theft.	

He does not want any direct contact with \_\_\_\_\_, but would like to ensure that his personal data is deleted from \_\_\_\_\_."



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- 4. In essence, the complainant asks the CNPD to request to delete his personal data.
- 5. The complaint is therefore based on Article 17 GDPR.
- 6. On the basis of this complaint and in accordance with Article 57(1)(f) GDPR, the CNPD requested to take a position on the facts reported by the complainant and to evaluate whether any of the complainant's personal data has been unlawfully entered into the controller's platform. Moreover, the CNPD required to proceed to the deletion of the complainant's personal data as soon as possible, unless legal reasons prevent the former from doing so.
- 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 17 GDPR, a data subject may request the erasure of his or her personal data and the controller must erase the data subject's personal data without undue delay if one of the grounds provided for in Article 17 (1) GDPR applies unless the controller can demonstrate that the processing falls within the scope of one of the exceptions set out in Article 17 (3) GDPR.
- 10. Article 5(1) (f) stipulates that "[p]ersonal data shall be [...] processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality')".
- 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



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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:
  - A third party created a customer account using the complainant's full name and placed a single order, to be delivered to the complainant's postal address, using the payment method "Monthly Invoice" on the same day. To the controller, this appeared to be a genuine order from a first time customer;
  - was made aware of the identity theft by a police office acting on behalf of the complainant on 15 January 2021. The controller then immediately took action, blocked the account to make any further access by the bad actor impossible and stopped the dunning process immediately after receiving this information. Any orders or payments made or requested have been reversed, as is its standard policy. Moreover, is currently maintaining the account in a blocked state for the purpose of subsequent fraud prevention;
  - There are many different ways how the complainant's name and address
    could have been obtained outside of \_\_\_\_\_\_, such as public mailing lists,
    phone books or breaches on other websites. In the complainant's case, a
    brief online search revealed that his full name, postal address and phone



number were publicly available in a patent registration and via a genealogic website;

• If the controller has security measures in place to detect fraudulent behavior and maintains physical, electronic as well as procedural safeguards, it states that identity theft which takes place outside of can hardly be prevented by the controller.

#### 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 remedy to the situation by blocking the account in order to prevent further access or actions by the bad actor.
- 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 that the complainant did not respond to their letter and reminder, and that consequently, they consider the case closed. The CNPD has therefore concluded that no further action was necessary and that the cross-border complaint could be closed.

In light of the above developments, the National Data Protection Commission, in a plenary session, after having deliberated, decides:

 To close the complaint file 7.435 upon completion of its investigation, in accordance with the Complaints Procedure before the CNPD and after obtaining the agreement of the concerned supervisory authority(s).

Belvaux, dated 7 June 2024

The National Data Protection Commission



Chair Commissioner 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.