

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-1085-14902/19-S) via IMI in accordance with Article 61 procedure 12577.
- 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.
 The original IMI claim stated the following:

"The complainant states that did not act on his request to provide him access to his personal data is processing and subsequently to erase such data."

4. In essence, the complainant asks the CNPD to request to grant him access to his data and subsequently to erase such data. But the focus of the complainant is mainly on the closure of his account and the deletion of his data. In this sense, the complainant considers that the procedure of the controller in



order to verify the identity of the complainant before deletion of the account is too burdensome.

- 5. The complaint is therefore mainly based on Articles 12 and 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 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 his right to erasure.
- 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. In accordance with Article 17 (1) 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. Furthermore, in application of Article 12.2 of the GDPR "the controller shall facilitate the exercise of data subject rights under Articles 15 to 22". Recital 59 of the GDPR emphasises that "Modalities should be provided for facilitating the exercise of the data subject's rights under this Regulation, including mechanisms to request and, if applicable, obtain, free of charge, in particular, access to and rectification or erasure of personal data and the exercise of the right to object. The controller should also provide means for requests to be made electronically, especially where personal data are processed by electronic means."
- 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. As a preliminary note the CNPD states there has been a considerable exchange of communication between the different actors (the complainant, the CNPD, the controller and the German supervisory authority) regarding the present case.
- 15. Following the intervention of the Luxembourg supervisory authority, the Controller confirmed that:
 - the complainant, who had submitted his requests via an e-mail which was not directly linked to the account registered with the Controller, refused to verify his identity claiming that he had already verified his identity in December 2019;
 - the processing of a deletion request is only possible after verification of the applicant's identity;
 - the verification carried out by the applicant in December 2019 was limited to the applicant's request for data access and at that point in time, the verification from 2019 was in any case outdated;
 - therefore the verification of the identity of the complainant was necessary prior to the processing of the data deletion request;



 the Controller has contacted the complainant in order to propose to him different means to verify his identity and to explain that no further verification would be necessary in case the request would be submitted via the account the complainant had registered with the controller.

3. Outcome of the case

- 16. The CNPD, in a plenary session, therefore considers that, at the end of the investigation of the present complaint, the processing of the controller was in line with Articles 12 and 17 of the GDPR.
- 17. Indeed, the CNPD considers that in the present case, the risks that would arise if the controller processed the deletion request without taking further measures to verify the identity must be weighed against the additional burden for the data subject resulting from the verification measures required by the controller.
- 18. With regard to the risks of processing without verification, the CNPD notes that third parties may submit to the controller unauthorised requests for data erasure.
- 19. Given that the data stored by the controller in relation to an account often contain sensitive and important information (in particular proof of transactions), deletion of such data at the request of an unauthorised third party would possibly be associated with considerable risks for the actual account holder (eg loss of proof of transactions).
- 20. By contrast, it should be noted that the controller offers relatively low-threshold and, from a data protection perspective, unproblematic options for confirming the identity of the data subject (e.g.: verification via logging into the customer account or via a telephone call).
- 21. In the light of the above, the CNPD considers that given the fact that the verification carried out in 2019 is in any case outdated today, it seemed reasonable that the controller wished to verify the identity of the data subject prior to processing of the erasure the request.
- 22. 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.
- 23. 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 light of the above developments, the National Data Protection Commission, in a plenary session, after having deliberated, decides:

 To close the complaint file 5.192 upon completion of its investigation, in accordance with the Complaints Procedure before the CNPD and after obtaining the approval of the concerned supervisory authority.

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.