

Deliberation no 36/RECL10/2024 of 7 June 2024 of the National Data Protection Commission, in a plenary session, on complaint file No 6.461 lodged against the company via IMI Article 61 procedure 177768

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 Rhineland-Palatinate, Germany, submitted to the National Data Protection Commission (hereinafter: the "CNPD") the complaint of Mr (national reference of the concerned authority: 4.02.21.021) via IMI in accordance with Article 61 procedure 177768.
- The complaint was lodged against the controller (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 has asked for access and erasure and has not received an answer."
- 4. In essence, the complainant asks the CNPD to request the controller to grant him access to his personal data and subsequently request the erasure of the data.
- 5. The complaint is therefore based on Articles 15 and 17 GDPR.



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- 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 right of access and the erasure of the data.
- 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 15 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 (...)";
- 10. In accordance with 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.
- 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



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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 had asked for a credit card cancellation which has been processed following an e-mail communication;
  - Afterwards, the complainant sent a communication attached as an annex which has been processed by a call center agent;
  - This letter included the request to cancel the credit card but also the GDPR requests (access and erasure requests) in the following pages.
  - The call center agent closed the case because the first page related to the card cancellation which has already been done and the page was numbered ("Page 1 von 1\*), and therefore he did not read the other pages regarding the GDPR requests.
  - The controller confirms that this is a human error and that the call center agent has been strongly reminded that he should be more cautious about this and in case of GDPR requests or questions, to forward this to the controller's specialized teams and/or it's DPO.
  - Finally, the controller communicated to the CNPD it's letter to the complainant in which it demonstrated to having granted access and confirmed the erasure of the personal data after the legal retention periods.



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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 grant the complainant's right of access and erasure, in accordance with Articles 15 and 17 GDPR.
- 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 CSA pursuant to Article 60(1), whether it agreed to close the case. The CSA, has responded affirmatively, so that the CNPD has concluded that no further action was necessary and that the cross-border complaint could be closed. The complainant himself confirmed that everything was settled for him.

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

 to close the complaint file 6.461 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).

Belvaux, dated 7	June 2024		
The National Da	ta Protection Commission		
Chair	Commissioner	Commissioner	Commissioner



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## **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.