

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 (hereinafter: 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 framework (hereinafter: the '**Law of 1 August 2018**');

Having regard to the Rules of Procedure of the National Data Protection Commission adopted by Decision No 07AD/2024 of 23 February 2024 (hereinafter: the '**ROP**');

Having regard to the Procedure for complaints 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") a complaint (national reference of the concerned authority: LDA-1085.4-5202/18-I) via IMI in accordance with Article 56 procedure - 52853.
2. The complaint was lodged against the controller [REDACTED] (hereafter "[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 complainant alleges that [REDACTED] has transferred its personal data to [REDACTED]. In addition, he had unsuccessfully tried to find the name and e-mail address of the company's data protection officer on the [REDACTED] website. An inquiry and request to [REDACTED], to which third parties his personal data have been transmitted or may have been transmitted, has remained unanswered."

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4. In essence, the complainant asks the CNPD to order the controller to comply with the complainant's access request as well as to inquire whether [REDACTED] communicated his personal data to a third party.
5. The complaint is therefore based on Articles 5(1)(b) and 15 GDPR.
6. On the basis of this complaint and in accordance with Article 57(1)(f) GDPR, the CNPD requested [REDACTED] to take a position on the facts reported by the complainant and to provide a detailed description of the issue relating to the processing of the complainant's personal data, in particular with regard to his right of access and the purpose limitation of the processing.
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 15(1) 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: (...) (c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations; (...)"*;
11. Furthermore, in application of Article 12(2) GDPR *"the controller shall facilitate the exercise of data subject rights under Articles 15 to 22".* Recital 59 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.”

12. Article 5(1)(b) GDPR sets out that personal data shall be “collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes (‘purpose limitation’)”;
13. 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*”;
14. 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*”;
15. 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

16. Following the intervention of the Luxembourg supervisory authority, the controller confirmed that:
 - The complainant contacted the controller’s customer service via telephone on 30 May 2018 because he was waiting for his delivery to arrive. He provided his phone number to the customer service agent and asked to be contacted by the driver since his delivery address was difficult to find and the delivery time critical for him. The customer service agent forwarded the customer’s request to the delivery driver who was on his way to deliver the customer’s order. This was outside of [REDACTED]’s standard process, whereby drivers have a secure way of contacting customers through our

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delivery technology without a customer's contact details being visible to the driver. Then, the delivery driver tried to contact the customer under the telephone number provided by the complainant for that purpose. The delivery driver apparently used the telephone number to contact the customer via [REDACTED]. Delivery drivers are instructed to use the telephone number to call or send a text message directly without using communication services like [REDACTED].

- In this case the driver nonetheless used [REDACTED] to contact the customer. It was an individual mistake, and the controller took this example to further train the drivers and customer service associates.
- However, at no point, [REDACTED] provided the customers personal data to [REDACTED] as the complainant thought. To the contrary, the customer was already using [REDACTED] with his phone number otherwise the driver would have not been able to contact the customer via [REDACTED]. To use [REDACTED], both parties, caller and receiver, must have the application installed on their respective smartphones.
- The complainant then contacted the customer service during the following days of June 2018 because of the failed delivery. The controller apologized for the inconvenience and focused on getting the ordered items to the customer as quickly as possible.
- Following receipt of the CNPD's letter, the complainant also provided to the customer information about [REDACTED] sharing customer data with third parties.

3. Outcome of the case

17. The CNPD, in a plenary session, therefore considers that, at the end of the investigation of the present complaint, the controller has shown compliance both with the complainant's right to be informed as well as with the principle of purpose limitation.
18. 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.
19. 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 has indicated



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that the case is now closed for him. 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 3.216 upon completion of its investigation, in accordance with the Complaints Procedure before the CNPD and after obtaining the agreement of the concerned supervisory authority. As per Article 60(7) GDPR, the lead supervisory authority shall adopt and notify the decision to the main establishment or single establishment of the controller.

Belvaux, dated 23 April 2025

The National Data Protection Commission

[REDACTED]
Chair

[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.