

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 ‘**Act 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-1085.3-4752/21-I) via IMI in accordance with Article 61 procedure 332127.
2. The complaint was lodged against the controller [REDACTED] ([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’s lawyer first submitted a request to [REDACTED] Germany on 27.02.2021 for information pursuant to Art. 15 GDPR, after an unknown person had ordered goods there using the name of the complainant. In addition, he has requested the deletion of the customer account pursuant to Art. 17 GDPR which was created in this context. [REDACTED] Germany has not responded to this. On 18.05.2021 the lawyer again submitted a request for information as well as for deletion of the customer account. This time at [REDACTED] Luxembourg. [REDACTED] Luxembourg sent only a confirmation of receipt on 18.05.2021. [REDACTED] has not

yet complied with the request for information pursuant to Art. 15 GDPR and the request for deletion pursuant to Art. 17 GDPR.”

4. In essence, the complainant asks the CNPD to contact [REDACTED] in order for the complainant to be granted her the right of access as well as the right to erasure.
5. The complaint is therefore based on Article 15 and 17 of the 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 son's data, and in particular with regard to the right of access and the 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 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 (...) (g) where the personal data are not collected from the data subject, any available information as to their source”;*
10. In accordance with Article 17 of the GDPR *“The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies (...)”;*
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*

Deliberation N° 101/RECL38/2023 of 10 November 2023 of the National Data Protection Commission, in a plenary session, on complaint file N° 7.690 lodged against the company [REDACTED] via IMI Article 61 procedure 332127

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, [REDACTED] confirms that:
 - [REDACTED] has investigated the matter and confirms that it was in touch with [REDACTED]'s lawyer in May 2021 regarding the overdue notice she received from [REDACTED] on 18 February 2021;
 - The underlying order was placed via a third-party customer account, using [REDACTED]'s full name and address;
 - In line with [REDACTED]'s standard procedure, this third-party customer account has now been sanitized and [REDACTED]'s name and contact details stored therein have been deleted;
 - [REDACTED] has reached out to [REDACTED]'s lawyer to respond to his specific questions and provide a copy of the correspondence to the CNPD.

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 right of erasure, in accordance with Articles 15 and 17 of the 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 supervisory authority of Bavaria (Germany), pursuant to Article 60 (1), whether it agreed to close the case. The supervisory authority of Bavaria has responded that the complainant's lawyer has indeed agreed, 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 7.690 upon completion of its investigation, in accordance with the Complaints Procedure before the CNPD and after obtaining the agreement of the complainant's lawyer via the concerned supervisory authority.

Belvaux, dated 10 November 2023

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.