

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:

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-1085.3-4572/21-I) via IMI in accordance with Article 61 procedure - 318645.
2. The complaint was lodged against the controller [REDACTED] (hereinafter [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 criticizes the form of providing information. He does not consider the provision of information by simple e-mail to be sufficiently legally secure and court-proof. He expects information to be provided by letter, fax or e-mail with a qualified signature."

4. In reality, the complainant indicated that in February 2021, he purchased several items on [REDACTED], using both an [REDACTED] voucher and his credit card as combined means of payment. However, [REDACTED] rejected the credit card of the complainant and the complainant was therefore afraid that the rejection of his credit card would result in a bad report from [REDACTED] to credit agencies. So he asked [REDACTED] whether [REDACTED] transferred information about him to credit agencies or not. The complainant requested a reply by registered letter.
5. The complaint is therefore based on Article 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 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 of access.
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(1) 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: (...) (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; (...)"*
10. Pursuant to Article 15(3) the GDPR, *"The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form."*

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. Following the intervention of the Luxembourg supervisory authority, [REDACTED] confirmed that:
 - The payment method of the complainant was indeed refused due to an internal error, and the complainant was informed about this (so the next day, he could repeat the order without any issues).
 - [REDACTED] does not transfer information to third parties, such as credit or collection agencies (eg [REDACTED] or [REDACTED] in Germany), in case the payment method is rejected.
 - [REDACTED] has send to the complainant the information again in writing by post and informed him about [REDACTED] standard procedure for a data subject access request.

3. Outcome of the case

15. The CNPD sitting, in plenary session, therefore considers that, at the end of the investigation of the present complaint, the controller has taken appropriate measures to comply with the complainant's right of access, in accordance with Article 15 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 (Germany) responded affirmatively, confirming that the response was assumed satisfactory.
18. Thus, the CNPD 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 7.442 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 11 January 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.