

Deliberation No 22/RECL12/2022 of 10 June 2022 of the National Commission for Data Protection sitting in plenary session on complaint file No 4.130 lodged against [REDACTED]

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 of¹ August 2018 on the organisation of the National Commission for Data Protection and the General Data Protection Regime (hereinafter referred to as the ‘**Law of August 2018**’);

Having regard to the Rules of Procedure of the National Commission for Data Protection adopted by Decision No 3AD/2020 of 22 January 2020 (hereinafter referred to as the ‘**ROI**’);

Having regard to the complaints procedure before the National Commission for Data Protection 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 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 authority concerned: Lda-1085.4-9559/18-I) via IMI in accordance with Article 56-61900 procedure.
2. The complaint was lodged against the controller [REDACTED] which has its principal place of business in Luxembourg. Under Article 56 GDPR, the CNPD is therefore competent to act as the lead supervisory authority.
3. The initial claim in IMI stated the following:

The complainant submits that in a letter dated 30 August 2018 he applied to [REDACTED] for information pursuant to Art. 15 DS-GVO. Initially, this letter was not answered by the

company. Following a reminder dated 08.10.2018, the complainant received a standardised reply on 16.10.2018 in which the company referred to its website, in which the applicant could search for the desired information. The complainant looks this as a violation if information and the handing over of a copy of the data are discarded in this form.

4. In essence, the claimant asks the CNPD to ask [REDACTED] to grant it access to its data, but without using the download tools in the [REDACTED] account.
5. The complaint is therefore based on Article 15 GDPR.
6. On the basis of this complaint and pursuant to 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 as regards his right of access.
7. The controller provided the requested information within the time limits set by the CNPD.

II. In law

1. Applicable legal provisions

8. Article 77 GDPR provides that *“without prejudice to any other administrative or judicial remedy, any data subject shall have the right to lodge a complaint with a supervisory authority, (...) if he considers that the processing of personal data concerning him or her constitutes a breach of this Regulation.”*
9. In accordance with Article 15 GDPR *“The data subject shall have the right to obtain from the controller confirmation that personal data concerning him or her are or are not being processed and, where such data are processed, access to such personal data and the following information (...);”*
10. Article 56(1) GDPR states that *“the supervisory authority of the main establishment or single establishment of the controller or processor shall be competent to act as the lead supervisory authority in respect of the cross-border processing carried out by that controller or processor in accordance with the procedure laid down in Article 60”;*

11. According to Article 60(1) GDPR, "*The lead supervisory authority shall cooperate with the other supervisory authorities concerned in accordance with this Article by endeavouring to reach consensus. The lead supervisory authority and the supervisory authorities concerned shall exchange any relevant information;*
12. According to Article 60(3) GDPR, "*The lead supervisory authority shall, without delay, communicate 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 with a view to obtaining their opinion and shall take due account of their views*";

2. In the present case

13. Following the intervention of the Luxembourg supervisory authority, the controller confirmed that:
 - [REDACTED] did not receive the first letter of August 2018, as it was not sent to the appropriate address of the data controller in Luxembourg (which is clearly stated in [REDACTED]'s privacy policy).
 - [REDACTED] received the reminder letter on 15 October 2018 and sent a reply on 16 October inviting him to use the download tools in the [REDACTED] account, as it is still the easiest way for the customer to identify and submit his request via the designated contact form.
 - [REDACTED] clearly reaffirms that if the customer does not wish, [REDACTED] will not deny other channels of access and use of other means of identification.
 - However, in this scenario, [REDACTED] must correctly identify the applicant as the respective customer account holder in order to ensure that personal data is disclosed only to the data subject.
 - On the basis of the letter received on 15 October 2018, [REDACTED] did not refuse the request for access to the data, but the controller was not able to correctly identify [REDACTED] on the basis of the information provided in the letter. [REDACTED] found only one customer account linked to the email address mentioned in the complainant's letter header and therefore sent an email on 16 October 2018 with detailed

instructions on how to submit the access request via the designated contact form in its customer account.

- Subsequently, the controller had no further contact with [REDACTED] regarding the request for access.
- Following receipt of CNPD's letter concerning this claim, [REDACTED] again sent an email to the claimant asking it to confirm that it requested access to its data. [REDACTED] will then send the dataset to the complainant upon receipt of the complainant's affirmative reply.

3. Outcome of the case

14. The Plenary Training therefore considers that, following the investigation of this complaint, the controller has taken the appropriate steps to grant the request for the right of access of the complainant, in accordance with Article 15 of the General Data Protection Regulation.
15. Therefore, 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.
16. The CNPD then consulted the supervisory authority of Bavaria (Germany) under Article 60(1) if it agreed to close the case. The supervisory authority of Bavaria (Germany) replied in the affirmative, with the result that the CNPD came to the conclusion that no further action was necessary and that the cross-border complaint could be closed.

In view of the above, the CNPD, sitting in plenary and deliberating unanimously, decided:

- To close claim file No. 4.130 upon completion of its investigation, in accordance with the complaints procedure before the CNPD and after obtaining the agreement of the authority concerned.



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Thus decided in Belvaux on 10 June 2022.

The National Commission for Data Protection



Chair



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.