

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-1085.3-5613/20-I) via IMI in accordance with Article 61 procedure 176552.
2. The complaint was lodged against the controller [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 employer of the complainant operates a business account at [REDACTED], so that his employee there has access to all areas important to him, he must be authorized. To do this, the employer must pass on the following data to [REDACTED]: Name, nationality, country of birth, Date of birth, identity card number + expiry date, private home address and a receipt (Private bill from a utility company to me, on which my private address is evident) [REDACTED] justifies this because of the prevention of money laundering etc., but the entry guide states that it is nevertheless ""entitled to payment"". He wants to know why it is not sufficient for the employer to insure his identity."*

4. In essence, the complainant asks the CNPD to advise him whether [REDACTED]'s data collection is lawful.
5. The complaint is therefore based on Articles 5 (1) (b) and 5 (1) (c) GDPR.
6. On the basis of this complaint and in accordance with Article 57(1)(f) GDPR, the CNPD requested [REDACTED] to review the matter at hand and take a position regarding the complainant's request, and in particular with regard to the lawfulness 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 5 (1) (b) GDPR, personal data shall be *“collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes (purpose limitation)”*
10. Article 5 (1) (c) GDPR stipulates that personal data shall be *“adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (data minimisation).”*
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:
- When registering a seller on the [REDACTED], all users must be verified in accordance with Know-Your Customer ("KYC") policy, and that in particular [REDACTED], i.e. the entity providing payment processing services on the [REDACTED], is subject to specific obligations. These obligations include the verification of sellers' identity and address, as per the harmonised EU anti-money laundering and terrorist financing regime, and also extend to individuals who manage the account;
  - In particular, the information [REDACTED] requested is part of the due diligence information (including proof of personal address) [REDACTED] collects pursuant to Article 3(6) of the Luxembourg Law of 12 November 2004 on the fight against money laundering and terrorist financing (as amended). This is based on Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC;
  - This also applies to the supporting document for [REDACTED]'s personal address, which [REDACTED] requested to verify his identity and address;
  - The information on [REDACTED]'s KYC-requirements is provided during the seller registration process and is also available to sellers at any time in the Seller Central tool under program policy "Information Required to Sell on [REDACTED]";
  - [REDACTED] contacted the complainant again to share the above-mentioned references.

### **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 demonstrated the lawfulness of the processing, in particular the principles of purpose limitation and data minimisation.
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 affirmatively, 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 6.423 upon completion of its investigation, in accordance with the Complaints Procedure before the CNPD and after obtaining the agreement of the concerned supervisory authority.

Belvaux, dated 10 November 2023

The National Data Protection Commission

[REDACTED]  
Chair

[REDACTED]  
Commissioner

[REDACTED]  
Commissioner

[REDACTED]  
Commissioner



**Deliberation N° 99/RECL36/2023 of 10 November 2023 of the National Data Protection Commission, in a plenary session, on complaint file N° 6.423 lodged against the company [REDACTED] via IMI Article 61 procedure 176552**

### **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.