

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-1085.3-204/21-I) via IMI in accordance with Article 61 procedure - 185910.
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:

“After the complainant has deleted his sales account, he still receives mails from the [REDACTED] Service. Due to the deletion of the seller account, the complainant cannot unsubscribe from this mail as [REDACTED] only tells him to log in to the sellers account and change his email settings. There is no unsubscribe link with the mails themselves.

His request for deleting his email address from further mailings keeps stuck in this problem”.

4. In essence, the complainant asks the CNPD to request [REDACTED] to comply with his request to be removed from [REDACTED] mailing lists.
5. The complaint is therefore based on Articles 17 and 21 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 to erasure and to object.
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 17 GDPR, the data subject may request the erasure of his or her personal data and the controller must erase the data subject's personal data without undue delay if one of the grounds provided for in Article 17 (1) GDPR applies unless the controller can demonstrate that the processing falls within the scope of one of the exceptions set out in Article 17 (3) GDPR.
10. In accordance with Article 21(2) of the GDPR, *“Where personal data are processed for direct marketing purposes, the data subject shall have the right to object at any time to processing of personal data concerning him or her for such marketing, which includes profiling to the extent that it is related to such direct marketing”*.
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] informed the CNPD that:
 - [REDACTED] was unable to identify any seller account linked with the complainant's email address;
 - [REDACTED] needed additional information to be able to deal with this complaint (i.e., whether the complainant had a seller account or a vendor account with [REDACTED], and a sample of the marketing emails received by the complainant).
15. After having received the requested additional information, [REDACTED] confirmed that:
 - As the complainant clarified that – contrary to what he had previously claimed – the emails that he received were linked with a vendor account and not a seller account, [REDACTED] were able to engage the specialist team responsible for vendors in dealing with the complaint;
 - The complainant's “advantage vendor account”, through which the complainant offered his product, was in fact still active, contrary to what he had previously claimed;
 - [REDACTED] does not have any record of the complainant requesting deletion of his vendor account;



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- Finally, [REDACTED] has reached out to the complainant for him to confirm the closure of his advantage vendor account and deletion of his data.

3. Outcome of the case

16. 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 to erasure and to object, in accordance with Articles 17 and 21 of the GDPR.
17. 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.
18. 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 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 6.661 upon completion of its investigation, in accordance with the Complaints Procedure before the CNPD and after obtaining the agreement of the concerned supervisory authority(s).

Belvaux, dated 10 November 2023

The National Data Protection Commission

[REDACTED]
Chair

[REDACTED]
Commissioner

[REDACTED]
Commissioner

[REDACTED]
Commissioner



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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.