



Unofficial translation

Our reference number: LDA-1085.3-4314/20-I

Controller: [REDACTED]

On the basis of the draft decision of the Luxembourg supervisory authority, the Bavarian State Office for Data Protection Supervision (BayLDA) adopts pursuant to Article 60(8) GDPR the following:

Final decision:

The complaint is dismissed.

Justification:

The complaint was received by the BayLDA on 5.5.2020 and was forwarded via IMI to the Luxembourg Supervisory Authority as the lead data protection supervisory authority of the controller.

On 5.12.2022, the Luxembourg supervisory authority submitted draft Decision No DD 462168 to the supervisory authorities concerned, with the following content:

I. Facts and procedures

1. Within the framework of European cooperation pursuant to Chapter VII of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data, on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR), the Bavarian State Office for Data Protection Supervision, the National Data Protection Commission (hereinafter: "the CNPD") the complaint by [REDACTED] (national reference number of the authority concerned: Lda-1085.3-4314/20-I) via the IMI procedure referred to in Article 61 – 180323.
2. The complaint was lodged against the controller [REDACTED] ([REDACTED]), which has its main establishment in Luxembourg. In accordance with Art. 56 GDPR, the CNPD is therefore the lead competent data protection supervisory authority.

3. The original IMI application states:

"The complainant has submitted a request for information pursuant to Article 15 of the GDPR, which has been rejected by reference to accessible data on the Internet. Even after the request for further information had been clarified and formulated concretely, the complainant's request for further information was not adequately answered. Subsequently, the complainant received data in various formats (including [REDACTED])"

However, the complainant had not received a concrete and comprehensible response to his request."

4. Essentially, the applicant tried to submit a “*product review*” to ██████ regarding a product purchased by him. He was then informed by ██████ that his product review has been removed according to ██████ guidelines.

The complainant therefore asked ██████ to provide him with a copy of his personal data and in particular requested to obtain the algorithm and the specific data ██████ used to remove the product evaluation. The complainant did not receive the requested information and therefore considers that ██████ did not properly reply to its request for access.

5. The complaint is therefore based on Art. 15 GDPR.
6. On the basis of this complaint and in accordance with Article 57(1)(f) of the GDPR, CNPD invited ██████ to comment on the facts the complainant had submitted and, in particular, to provide a detailed description of the problem relating to the processing of the complainant’s data, in particular with regard to his right of access and the reasons why ██████ did not provide the complainant with the information requested by him.
7. The CNPD received the requested information within the deadlines set.

II. In law

1. Applicable legislation

8. Article 77 of the GDPR provides: ‘Without prejudice to any other administrative or judicial remedy, any data subject shall have the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.’
9. Pursuant to Article 15(1) of the GDPR, the data subject has the right to obtain confirmation from the controller as to whether or not he or she is processing personal data and, if so, access to the personal data and the following information.
10. Article 15(3) of the GDPR provides: ‘The controller shall provide a copy of the personal data in the 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. According to Article 15(4) of the GDPR, “the right to receive a copy in accordance with paragraph 3 shall not affect the rights and freedoms of others.”
12. Article 56(1) of the GDPR provides: ‘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.’
13. In accordance with Article 60(1) of the GDPR, “the lead supervisory authority shall cooperate with the other supervisory authorities concerned in accordance with this Article in endeavour to reach consensus. The lead supervisory authority and the supervisory authorities concerned shall exchange all relevant information with each other.
14. In accordance with Art. 60 para. 3 GDPR: ‘The lead supervisory authority shall transmit the relevant information to the other supervisory authorities concerned without delay. It shall without delay submit a draft decision to the other supervisory authorities concerned for comments and shall give due consideration to its views;

2. In the present case,

15. Following the intervention of the Luxembourg supervisory authority, ██████ confirmed:

- *The non-acceptance of the product review by the applicant in this case (but also in the case of product evaluation of other users) is based on ██████'s terms of use (in particular, ██████'s "Community Guidelines" → "What is not allowed").*
- ██████ informed the complainant as follows: *We have reviewed your information and found that your review has been removed in accordance with our policies. Our data shows that some elements of your ██████ account match Elements other ██████ accounts that rated the same product.*
- ██████ did not provide the complainant with the information it requested (i.e. the algorithm and the specific data on which ██████ based its decision) such information would mean that ██████ would have to provide the custodian with information about ██████ fraud prevention procedures that are confidential and protected. A more precise indication of individual cases would entail risks affecting the integrity of these processes (e.g. allowing bad actors to reverse develop ██████ protection measures and circumvent them in a way that could harm the responsible).
- In addition, ██████ was unable to provide the complainant with the information it requested because they contain information about the account of other ██████ users.
- Therefore, Article 15 (4) GDPR is applicable and ██████ did not have to provide the requested information to the complainant in this case, as this would have affected the rights and freedoms of others.

3. Outcome of the case

16. At the plenary session on the basis of the information provided, the CNPD did not identify any breach by the controller of the obligation under Regulation (EU) 2016/679 (GDPR).

17. Therefore, after the completion of the processing of the present case and in the light of the foregoing considerations, the CNPD considered it appropriate to reject the serious under Article 60(8) GDPR.

18. The CNPD then consulted the Bavarian State Office for Data Protection Supervision (Germany) in accordance with Article 60(1) on whether it agreed to discontinue the case. The Bavarian State Office for Data Protection Supervision (Germany) has affirmed and confirmed that there is no breach of Article 15 GDPR.

19. The CNPD therefore concluded that no further action was necessary and that the cross-border complaint could be closed by rejection. By way of derogation from Art. 60(7) GDPR, the supervisory authority to which the complaint has been lodged adopts the decision in the event of rejection or rejection of a complaint, informs the complainant and fails to comply with the controller thereof.

As the supervisory authorities concerned (including BayLDA) have not objected to this draft decision, the BayLDA adopts this draft decision as a final decision under Article 60(8) of the GDPR. In accordance with paragraph 239 of Guidelines 02/2022, we ask the CNPD to inform the controller of the decision on our behalf.

Ansbach, 24.5.2024