

Deliberation n° 50/recl17/2024 of 26 July 2024 of the National Data Protection Commission, in a plenary session, on complaint file n° 10.110 lodged against the company [REDACTED] via IMI Article 60 procedure 479524

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-1085.4-6917/22-T) via IMI in accordance with Article 60 procedure - 479524.
2. The complaint was lodged against the controller [REDACTED] [REDACTED] (“[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 email address has been changed for the [REDACTED] customer account. This email address is only used for the [REDACTED] customer account. After placing an order, the customer received two phishing emails to this e-mail address. The first phishing email was received one week after the order was made on 17.8.2022. The second phishing email took place on 1.9.2022. The company was contacted on 1.9.2022. In a response email to the customer, the company has confirmed that the emails received are not [REDACTED] emails.”

4. In essence, the complainant asks the CNPD to inquire:
 - into the reasons why he received what at first looks like a fishing email on an email address that he only communicated to [REDACTED] and did not use for any other purposes;
 - whether [REDACTED] communicated this email address to a third party or suffered a data breach.
5. The complaint is therefore based on Articles 5 and 32 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 email address.
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) f) of the GDPR personal data shall be *“processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (‘integrity and confidentiality’).”*
10. Pursuant to Article 32 (1) of the GDPR *“Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement*

appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate (...)."

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, the controller confirmed that:
 - [REDACTED] expert teams reviewed the complainant's request again and confirmed that the marketing emails received by the complainant were in fact authentic [REDACTED] Business emails;
 - the messages were mistakenly categorized as emails not sent by [REDACTED] by the respective customer service agent;
 - Upon learning of this, [REDACTED] immediately reached out to the complainant and explained the situation while also apologizing for the inconvenience. [REDACTED] has assured the complainant that his personal data has not been compromised;
 - Finally, [REDACTED] has taken appropriate steps to retrain their teams.

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 that the



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integrity and confidentiality of the complainant's personal data had not been altered, in accordance with Article 5 (1) f) of the GDPR. In addition, the controller has informed the CNPD to have retrained its staff to avoid that wrong information is provided to customers about the authenticity of [REDACTED] marketing emails.

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, 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 10.110 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 26 July 2024

The National Data Protection Commission

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

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.