

Deliberation N° 97/RECL34/2023 of 10 November 2023 of the National Data Protection Commission, in a plenary session, on complaint file N° 6.346 lodged against the company [REDACTED] via IMI Article 61 procedure 174345

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 Mr [REDACTED] (national reference of the concerned authority: LDA-1085.3-3445/20-I) via IMI in accordance with Article 61 procedure - 174345.
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 complainant submits that copies of invoices requested by him have been sent by the respondent to his former employer. He had also used his private client account to make purchases for his former employer, which is why some invoices were addressed to his former employer. When he requested copies of invoices for his private client account, all invoices, both those with his private address and those with his former employer’s address, were sent to his former employer. As a result, the former employer could view all invoices.”

4. In essence, the complainant asks the CNPD to request [REDACTED] to investigate whether his personal data have been disclosed to his former employee and, if so to take appropriate measures to prevent similar measures in the future.
5. The complaint is therefore based on Article 5(1) (f) 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 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. Pursuant to Article 5 (1) (a) (f) of the 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 (General Data Protection Regulation) ("GDPR"), personal data shall be *“processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’)*. More precisely, Article 5 (1) (f) of the GDPR states that *“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. 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”;

11. 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”;*
12. 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

13. Following the intervention of the Luxembourg supervisory authority, [REDACTED] confirmed that:
 - the controller investigated the case based on the attachment in the CNPD's letter;
 - the information available to [REDACTED] was limited since the account related to the case was already closed at the request of the data subject, but that [REDACTED] still retains records of the purchases made by this account;
 - that usually, [REDACTED] did not send invoices by post to their customers, but that it sent payment reminders where orders had not yet been paid off;
 - that a letter for an unpaid order had been sent on 21 March 2020 to the complainant's billing address in the city of F., where according to the attachment in the CNPD's letter, was also the location of the complainant's former employer;
 - that [REDACTED] surmised that the complainant had added his former employer's billing address to his account by himself at some point in the past;

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- that the controller had taken the necessary measures to ensure that no further payment reminders are sent to the address in F.;
- that, furthermore, [REDACTED] informed the CNPD that the complainant had other customer accounts related to other email addresses and, that several of those other accounts were currently blocked due to the irregularities/fraudulent activity. (For instance, [REDACTED] claimed it had records that the complainant repeatedly requested refunds for orders but did not return the products or returned materially different products.)

3. Outcome of the case

14. 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 of integrity and confidentiality of the processing of the complainant's personal data, in accordance with Article 5 (1) (f) of the GDPR and has ensured that no further payment reminders are sent to the address in F.
15. 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.
16. 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 that the complainant did not respond to their letter and reminder, and that consequently, they consider the case closed. The CNPD has therefore 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 6.346 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



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The National Data Protection Commission

[REDACTED]
Chair

[REDACTED]
Commissioner

[REDACTED]
Commissioner

[REDACTED]
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.