

Deliberation No 44/RECL17/2023 of 9 June 2023 of the National Data Protection Commission, in a plenary session, on complaint file No 6.648 lodged against the company [REDACTED] via IMI Article 61 procedure 185283

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-1085.3-7692/20-I) via IMI in accordance with Article 61 procedure - 185283.
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 states that he operated a business and was active as a seller on the [REDACTED] platform. His company no longer exists since 2014. On [REDACTED]'s platform, the company is still listed as a seller and the company refuses or is unable to delete this data. In the above-mentioned data record, he is named and published with his first and last name as a shareholder of the company, so that the scope of application of the GDPR is opened. He wishes the deletion of his personal data."

4. In essence, the complainant asks the CNPD to delete his personal data relating to a former [REDACTED] seller account, which had been closed in 2014.
5. The complaint is therefore based on Article 17 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.
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 of the GDPR *"The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies (...)"*;
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 account had indeed been closed and the imprint with the personal data has been removed from the website [REDACTED].
- [REDACTED] has deactivated the link and has deleted the complainant's data on [REDACTED]'s website.

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 to erasure, in accordance with Article 17 of the GDPR.

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 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.



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In light of the above developments, the National Data Protection Commission, in a plenary session, after having deliberated, decides:

- to close the complaint file 6.648 upon completion of its investigation, in accordance with the Complaints Procedure before the CNPD and after obtaining the approval of the concerned supervisory authority.

Belvaux, dated 9 June 2023

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.