

Final decision

The present decision refers to the complaint of [REDACTED] lodged with the supervisory authority of Austria (national reference D130.270) and submitted to the Luxembourg supervisory authority via IMI under Article 56 procedure 70691.

The complaint was lodged against the controller [REDACTED] (hereinafter “[REDACTED]”), which has its main establishment in Luxembourg. Pursuant to Article 56 GDPR, the Luxembourg National Data Protection Commission (“CNPD”) is therefore competent to act as lead supervisory authority.

Scope of the complaint and assessment of the case

In the initial complaint on IMI, the representative (lawyer) of the complainant sent a copy of the letter in which he stated that the controller did not react to the access request as per Article 15 GDPR. More precisely, he explained that the complainant had an insurance relationship with the controller, that the complainant exercised his right to access with e-mail from 29.10.2019 and that the controller did not react to the request. The complainant requested in particular specific documents as the insurance application, the original policy and the policy conditions relating to the contract, the repurchase statement (etc).

The complaint is thus based on Article 15 GDPR.

Based on said complaint, the CNPD requested [REDACTED] to provide a detailed description of the issue relating to the complainant’s data processing as per Article 58.1 a), in particular as regards the right of access of [REDACTED] to his personal data processed by the company, in particular by the Austrian branch named [REDACTED]. The CNPD requested [REDACTED] to provide (1) to the CNPD with the reasons why [REDACTED] has not been informed, within one month, of the actions taken for his access request and (2) to act on [REDACTED] access request, or provide CNPD with the reasons that would justify not to act on this access request.

The CNPD received the requested information within the set timeframe.

Outcome of the case

Following the enquiry by the Luxembourg supervisory authority, the controller has given the following explanations:

- The company [REDACTED] (“[REDACTED]”) has been recently set-up in Luxembourg in order to allow the [REDACTED] (“[REDACTED]”), [REDACTED], to continue to serve its in force European insurance portfolio post Brexit under EU passporting rules. [REDACTED] (“[REDACTED]”), through its legacy [REDACTED] brand, previously distributed life insurance business to customers in the European Economic Area (EEA) outside the United Kingdom. The principal markets were [REDACTED].
- Incorporated on [REDACTED], [REDACTED] obtained a life insurance licence from the Luxembourg regulator (Commissariat aux Assurances) on [REDACTED].
- Effective [REDACTED], the in force European insurance portfolio transferred from [REDACTED] to [REDACTED] (the “Transfer”). For the avoidance of doubt, any residual current or future liabilities relating to closed (i.e. not in force) policies remained with [REDACTED].
- The policy of [REDACTED], a [REDACTED], had started on 23 July 2007, was assigned on 16 February 2016 and surrendered by the assignee on 8 August 2018. A revocation request was made on 19 December 2018 and rejected on 18 January 2019. On 29 March 2019, this policy was no longer in force and so any residual liabilities therefore remain with [REDACTED].
- [REDACTED] indeed received the Data Subject Access request (“DSAR”) via a letter dated 21 November 2018 but the DSAR request was accidentally closed rather than processed. No communication has been sent to [REDACTED] or his lawyer and no contact has been made by the lawyer requesting the DSAR until the receipt of CNPD letter. According to [REDACTED], measures have been taken at pace to understand the exact root cause and ensure this does not happen again.
- [REDACTED] then confirmed that it had acted on the DSAR request and that the relevant data pack was posted using registered mail.

Thus, based on the information that was provided, the CNPD is of the view that the issue has been resolved and that the controller has taken quick appropriate measures to satisfy the complainants’ right of access.

As the complaint had only a limited personal impact, the CNPD has consulted the supervisory authority of Austria to determine whether the case could be closed. The CNPD and the supervisory authority of Austria agreed that, in view of the above, no further action or additional measures are needed and that the cross-border complaint should be closed.

Notwithstanding the closure of this case, the Luxembourg supervisory authority might carry out subsequent actions in exercise of its investigative and corrective powers regarding the data processing activities in the event of a new complaint.

A draft decision has been submitted by the CNPD to the other supervisory authorities concerned as per Article 60.3 GDPR (IMI entry number 294704).

As none of the other concerned supervisory authorities has objected to this draft decision within a period of four weeks, the lead supervisory authority and the supervisory authorities concerned shall be deemed to be in agreement with said draft decision and shall be bound by it.

For the National Data Protection Commission