

RE: XX v Groupon International Limited
DPC Ref: C-XX-X-XX
Date: 16 December 2020
To: XX
To: Groupon International Limited

This document is a decision of the Data Protection Commission (“the **DPC**”) regarding the complaint received by XX (“the **complainant**”) against Groupon International Limited (“**Groupon**”), and pursuant to the Data Protection Act 2018 (“the **Act**”) and the General Data Protection Regulation (“the **GDPR**”). Groupon International Limited is the data controller for the Groupon service and it has its main establishment in the European Union in Ireland (with an address at 1 Burlington Rd, Ballsbridge, Dublin 4, D04 N9W8). As such, the DPC acts as the Lead Supervisory Authority (LSA) for Groupon International Limited and has the power to make this decision pursuant to section 113(2)(a) of the Act and Article 60 of the GDPR.

The right of the complainant to bring this complaint against Groupon arises from the fact that Groupon is the controller of his personal data. The complainant held an account with Groupon, he made an erasure request to Groupon in response to which Groupon engaged with the complainant on the basis that it was the controller of his personal data in this instance.

1. Overview of Complaint dated 4 June 2018

- 1.1. The complainant alleges that Groupon infringed upon his rights under the GDPR by way of its requirements in relation to the verification of his identity before his request for erasure of personal data could be carried out. Specifically, he alleges that Groupon’s requirement that he provide a copy of a national identity document in order for Groupon to verify his identity, before it could give effect to his erasure request, constitutes a contravention of the GDPR.
- 1.2. The complainant initially brought this alleged infringement to the attention of Groupon directly, and subsequently submitted a complaint, dated 4 June 2018, to his local data protection supervisory authority in Poland, the Office for the Protection of Personal Data. The Polish Office for the Protection of Personal Data uploaded the complaint onto the communication system on 29 June 2018 and the DPC accepted its role as LSA on 5 July 2018. Accompanying the complaint, which was received by the DPC in Polish with an English translation, the Office for the Protection of Personal Data provided a document containing links to copies of Groupon’s terms of use of its website and its privacy policy. The IMI case file was also included. A timeline of communications, with dates where available, between the complainant and Groupon in respect of this complaint, and as taken from correspondence received from both parties to this complaint, is provided in section 2 below.

2. Complaint Timeline

- 2.1. The complainant contacted Groupon by email to request erasure of his personal data, pursuant to Article 17 of the GDPR, on 26 May 2018. He received an email from Groupon acknowledging receipt of his request on the same date.
- 2.2. On the same date, the complainant received an email from a representative of Groupon, advising him that, in order to enable Groupon to give effect to his request, he would be required to submit a copy of a national ID card in order to verify his identity. Correspondence provided to the DPC from Groupon also indicates that the complainant received a phone call from a representative of Groupon on the same day, advising him of this requirement.
- 2.3. The complainant replied to Groupon’s email on the same day, indicating that he was not prepared to submit a copy of a national ID card as he believed the requirement for same was not compliant with the GDPR.

- 2.4. On 29 May 2018, the complainant received further communication from a representative of Groupon, directing him towards an online portal via which he could progress his request without the submission of a copy of a national ID card. The complainant advises that he accessed the portal on the same date and followed the instructions provided to him, attaching various pieces of information that he was happy to provide to Groupon, but not including a copy of his ID card.
- 2.5. The complainant received a further response from Groupon on 4 June 2018, to the effect that his request for erasure could not be progressed in the absence of a copy of a national ID card. He lodged a complaint with the Office for the Protection of Personal Data on the same date.
- 2.6. According to correspondence received from Groupon, the complainant submitted a second request for deletion of personal data pursuant to Article 17 on 17 July 2019, and his personal data was deleted in completion of this request on 14 August 2019.

3. Fair Procedures and Complaint Handling Process

- 3.1. The complainant was informed by the DPC of his rights pursuant to section 108 of the Act.
- 3.2. The complainant was provided with the opportunity to be heard by being sent regular updates in relation to the DPC's investigation of the complaint.
- 3.3. Groupon was also provided with the opportunity to be heard by being notified of the complaint, and through the DPC's regular engagement with it throughout the process. Groupon was also given the opportunity to provide submissions on a draft of this decision (see section 7 below). Groupon was also given the opportunity to provide additional submissions on a revised draft of this decision (see section 10 below).
- 3.4. Under section 109(2) of the Act, the DPC may, where it considers that there is a reasonable likelihood of the parties reaching, within a reasonable time, an amicable resolution of the subject matter of the complaint, take such steps as it considers appropriate to arrange or facilitate such a resolution. The DPC engaged with both parties to attempt to achieve an amicable resolution of the complaint. However, these attempts were ultimately unsuccessful.

4. Investigation

- 4.1. The DPC commenced an examination of the subject matter of this complaint upon receipt of same.
- 4.2. The DPC engaged with Groupon on 1 February 2019 and, in a response to the DPC received on 11 February 2019, Groupon confirmed that the complainant had submitted a request through the Groupon Privacy Portal at <http://gr.pn/privacy> for deletion of his personal data on 29 May 2018. Groupon further confirmed that there was no ID attached to the request, and that on the same day it had requested that he provide a valid ID, in accordance with the requirements that Groupon had in place at the time. Groupon further confirmed that the complainant rejected this request by email dated 4 June 2018.
- 4.3. In its response to the DPC, Groupon further advised that it had changed its requirements in respect of identity documents in October 2018. It stated: *"We now to seek to authenticate an email address in order to ensure that the request is valid in accordance with GDPR requirements. This has replaced the requirement for photo ID"* (**correspondence from Groupon to the DPC, 11 February 2019**).
- 4.4. Following the failure of the DPC's attempts to bring this matter to an amicable resolution (see paragraph 3.3 above), the DPC advised the complainant that it would revert to him in due course to inform him of the outcome of the complaint. The DPC also advised Groupon, by way of email dated 29 March 2019, of the failure of the amicable resolution procedure.
- 4.5. In this correspondence of 29 March 2019, the DPC reiterated the parameters of the complaint and set out further items of information it required from Groupon in order to assist it in progressing the matter. In particular, the DPC requested details, *inter alia*, of how Groupon considered it was in compliance with Article 5 of the GDPR and how it considered it was in compliance with Articles 12 and 17 of the GDPR.
- 4.6. By way of email dated 11 April 2019, Groupon responded to the DPC's requests in this regard, stating that it had processed the complainant's personal data in compliance with Article 5 of the GDPR. In particular, with reference to the principle of Data Minimisation under Article 5(1)(c), it stated that the personal data processed was adequate, relevant and limited to the purposes for which it was processed, ie. opening and operating his account.

- 4.7. In relation to Articles 12 and 17 of the GDPR, Groupon stated that it was in compliance as it believed it was not in a position to verify the complainant's identity, based on its requirements in place at the time. In the context of a request for erasure of personal data under Article 17, Article 12(6) allows a controller to request the provision of additional information necessary to confirm the identity of the requesting data subject, where it has reasonable doubts concerning his or her identity. In the case at hand, Groupon has not indicated or otherwise demonstrated that it had reasonable doubts as to the identity of the complainant. Rather, the standard procedure it had in place at the time the complainant made his request for erasure required submission of a copy of a national identity card by default. In circumstances where no identity card was required upon the opening of the account, it is not considered in any case that submission of a copy of a national identity card could have allayed any such concerns as to the complainant's identity (as there was no pre-existing identity card held by Groupon against which a copy of a national identity card submitted in the context of the erasure request could have been compared). This calls into question the relevance and proportionality of seeking a copy of a national identity card even where reasonable doubts existed concerning the identity of the requester.
- 4.8. Groupon also clarified that it had reviewed its procedures one month after GDPR had come into effect, and had determined that it was sufficient to verify ownership of the email address provided at the time the account was opened. It stated that this new policy was implemented on 8 October 2018.
- 4.9. In its email of 11 April 2019, Groupon also indicated to the DPC that it was now in a position to delete the complainant's information, if required. Groupon also expressed its apologies to the complainant for any inconvenience and upset the delay in effecting his request had caused.
- 4.10. By way of email dated 12 April 2019, the DPC reverted to Groupon seeking certain further clarifications. Among other information, the DPC requested a copy of the privacy policy Groupon had in place at the time the complainant made his erasure request and copy of the webform available via web portal that would have been available to the data subject when he was directed to same subsequent to his initial request on 26 May 2018.
- 4.11. Groupon responded to the DPC by way of email dated 18 April 2019, providing a copy of the privacy policy it had in place on 26 May 2018 and a copy of the webform that was available to the complainant via Groupon's portal on 26 May 2018.
- 4.12. The DPC uploaded correspondence to the IMI on 11 July 2019 for onward transmission to the complainant by the Office for the Protection of Personal Data. In this correspondence, the DPC advised the complainant that, should he wish to proceed with the deletion of his account, it would not affect the outcome of his complaint. The DPC advised the complainant of Groupon's statement, in its correspondence of 11 April 2019, that it was now in a position to delete his personal data, and advised him that the DPC was not in a position to make a request for deletion for him. The DPC received no further direct correspondence from the complainant in response to this letter.
- 4.13. Subsequently, on 22 November 2019, the DPC wrote to Groupon to seek confirmation that the complainant's personal data had been deleted pursuant to his request of 26 May 2018. On 2 December 2019, the DPC received confirmation from Groupon that the complainant's personal data had been deleted on 14 August 2019, subsequent to its receipt of a second request for erasure of personal data, dated 17 July 2019.

5. Applicable Law

- 5.1. Article 5(1)(c) of the GDPR states that personal data shall be "*adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation')*".
- 5.2. Article 12(2) of the GDPR states that "*The controller shall facilitate the exercise of data subject rights under Articles 15 to 22. In the cases referred to in Article 11(2), the controller shall not refuse to act on the request of the data subject for exercising his or her rights under Articles 15 to 22, unless the controller demonstrates that it is not in a position to identify the data subject*".
- 5.3. Article 12(6) of the GDPR states that "*Without prejudice to Article 11, where the controller has reasonable doubts concerning the identity of the natural person making the request referred to in Articles 15 to 21, the controller may request the provision of additional information necessary to confirm the identity of the data subject*".
- 5.4. Article 6(1) of the GDPR sets out the grounds upon which personal data may be lawfully processed.

- 5.5. Article 17(1) of the GDPR sets out the grounds upon which an individual may assert a right to erasure of personal data.

6. Main Findings of Investigation

- 6.1. It is noted that Groupon's requirement that data subjects provide a copy of a national ID card in order to verify their identity when making a data protection request was in place for just over four months following the introduction of the GDPR on 25 May 2018, until 8 October 2018.
- 6.2. The complainant argued that this requirement constitutes an infringement of the principle of data minimisation, pursuant to Article 5(1)(c) of the GDPR. For instance, the complainant stated: *"In this application, I again pointed out that the transfer of the ID card is too far-reaching and dangerous and is not based on the GDPR...Deleting an account should be as easy as registering it. At registration, no ID is scanned, which would be excessive in my opinion in relation to the principle of minimization"* (**initial complaint by A.B. to the Office for the Protection of Personal Data, 4 June 2018**).
- 6.3. Groupon, for its part, asserted that it complied with the principle of data minimisation in the context of its initial processing of the complainant's personal data, stating that *"...the Complainant's personal data was adequate, relevant and limited to the purposes for which it was processed, i.e. opening and operating his account. The data consisted of his first name, last name, home address and email address"* (**correspondence from Groupon to the DPC, 11 April 2019**). Groupon did not specifically comment on how its requirement for a copy of a national ID card in the context of a data subject erasure request complied with the principle of data minimisation¹. It is, of course, this data processing that is at the heart of this complaint. In this case, Groupon in effect required the data subject to submit a copy of a national ID card in order to process his erasure request even though the provision of a copy of such data was not a requirement at account opening stage and, therefore, Groupon had no means to check the veracity of any national ID card information that the data subject may have submitted.
- 6.4. Having regard to the above, the DPC determines that Groupon infringed Article 5(1)(c), by its failure to adhere to the principle of data minimisation. In particular, this infringement occurred when Groupon required submission of a copy of a national ID card in order to verify account ownership for the purposes of processing an erasure request, in circumstances where no such verification was obtained or required in order to initially open an account. It is clear that a less data-driven means of verification (namely by confirmation of email address) was available to Groupon, and this is reflected in Groupon's subsequent change to its privacy policy post-8 October 2018, whereby the requirement to submit a copy ID was discontinued.
- 6.5. In addition, Groupon has not demonstrated or indicated that it had reasonable doubts as to the complainant's identity, such as would have justified it in requesting the provision of additional information to confirm his identity (in the form of a copy of a national identity card) under Article 12(6) of the GDPR. The fact that Groupon ultimately gave effect to the erasure request in the absence of the submission of a copy of a national identity card demonstrates that no such reasonable doubts concerning the identity of the complainant existed. As such, the request for additional identification was an infringement of Article 12(2) of the GDPR.
- 6.6. In summary, Groupon should not have requested that the complainant provide a copy of a national identity card when he submitted his request for erasure of his personal data without establishing that there was a

¹ Groupon's quoted statement here was in response to previous DPC correspondence to it that stated: *"The Complainant contends that Groupon's request for an identification document was contrary to Article 5 principle of "data minimisation". He states that other identifiers already known to Groupon could have been used for this purpose... Please demonstrate how Groupon, acting as a controller in the context of its service within the EU, processed and continues to process the Complainant's information in a manner that was compliant with Article 5 of the GDPR."*

reasonable doubt concerning his identity or whether the requested document was relevant and proportionate.

7. Submissions from Groupon

- 7.1. By email dated 5 March 2020, the DPC provided Groupon with a draft of this decision, and invited it to make any submissions that it wished the DPC to consider.
- 7.2. By email of 20 March 2020, Groupon responded with its submissions in respect of the draft decision, as follows:

“Amicable resolution of the Complaint

We consider that the process that we engaged in with the DPC met the spirit of the amicable resolution process described in the DPC’s email of 1 February 2019, namely “working through the substance of the complaint and identifying a resolution”. We are surprised that the DPC considers that the Complaint has not been amicably resolved given that all parties now appear to be satisfied with the outcome:

Mr. X now appears to be satisfied with the resolution of the Complaint. On 11 February 2019, in an effort to facilitate an amicable resolution, Groupon invited Mr. X to submit a further request for erasure of his personal data, which would not require him to submit a copy of his national ID card. Although Mr. [B.] did not accept this invitation at this time, he did submit such a further request for erasure of his personal data on 17 July 2019. Groupon verified Mr. X’s identity using the process it implemented on 8 October 2018, and complied with the request on 14 August 2019. We understand that the DPC did not receive further correspondence from Mr. X after 11 April 2019, which suggests that he had no further concerns about Groupon’s processing of his personal data.

We had understood that the DPC also was satisfied with the resolution of the Complaint following Groupon’s erasure of Mr. X’s personal data and our process for verifying the identity of data subjects that the DPC considers satisfies the requirements of the GDPR.

Accordingly, we respectfully request that the DPC consider whether it is necessary to follow the process described in ss. 109(4) and 113(2) of the Data Protection Act 2018 (referred to in your letter of 5 March 2020).

Groupon’s reasonable doubts as to Mr. X’s identity

Given the nature of our systems and the efforts necessary to mitigate fraud on our platform, we believe it is appropriate to take steps to verify a requestor’s identity beyond asking them to submit their full name and email address.

In accordance with the principle of data minimisation, Groupon has always strived to collect (and only collected at the time of the Complaint) a limited amount of data when an individual creates a

Groupon account, specifically the individual's name, email address and password. Groupon is mindful that data subjects' rights are a key part of the protection of individuals' right to data protection under Article 8 of the EU Charter of Fundamental Rights, and has deliberately chosen not to force individuals to log in to an account to exercise rights under the GDPR. This design choice enables all data subjects, not just those with active Groupon accounts, to exercise their rights.

To verify data subjects' identities and mitigate the risk that Groupon might disclose personal data relating to individual A to individual B, or might delete data related to an individual that wishes to continue to use their Groupon account, Groupon considers it is adequate, relevant and necessary to take additional steps to verify an individual's identity (e.g., by asking for a copy of photo ID or conducting email address verification)".

- 7.3. In relation to Groupon's first submission ("Amicable resolution of the Complaint"), while there can be no doubt that Groupon engaged with the DPC in the spirit of the amicable resolution process, the DPC does not accept the proposition that the complainant considered the matter amicably resolved. The complainant, in his correspondence to the DPC, indicated that the contrary was the case, stating in an email of 7 March 2019, in response to proposals put forth by Groupon by way of amicable resolution, "*I hereby declare, that I do not agree to process my complaint in the manner stated by Groupon..... it is necessary to conclude my complaint with a formal decision*". The DPC advised Groupon by email dated 29 March 2019 that amicable resolution had not been accepted by the complainant and that accordingly the matter would proceed in accordance with section 109(4) of the Act.
- 7.4. In relation to Groupon's second submission ("Groupon's reasonable doubts as to Mr. X's identity"), the DPC recognises that Groupon has striven to comply with the principle of data minimisation, in particular by way of amending its procedures since 8 October 2018 to enable data subjects who wish to make a request for access or erasure to verify their account ownership by way of confirming their email address. However, it remains the DPC's analysis that the procedure in place between 25 May 2018 and 8 October 2018 (whereby a requesting data subject was required to submit ID, where no such requirement for ID was in place at the time a data subject opened a Groupon account) constituted an infringement of Groupon's obligations as a data controller under the GDPR, as outlined in section 11, below.
- 7.5. The DPC has considered Groupon's submissions fully and considers that no amendments to this decision are required on foot of same.

8. Communication of draft decision to Concerned Supervisory Authorities (CSAs)

- 8.1. On 25 May 2020, a draft of this decision was transmitted to Concerned Supervisory Authorities (CSAs) across the EU and EEA, pursuant to Article 60.3 of the GDPR, which provides that the LSA "*...shall without delay submit a draft decision to the other supervisory authorities concerned for their opinion and take due account of their views*".
- 8.2. Subsequently, the DPC received 'relevant & reasoned objections' from a number of CSAs, pursuant to Article 60.4 of the GDPR. The DPC also received a number of opinions from other CSAs. All of the correspondence received from CSAs in this regard is attached in full at Appendix A, and is examined in section 9 below.

9. Analysis of relevant and reasoned objections received from CSAs

- 9.1. The DPC received relevant and reasoned objections from two CSAs, namely the Berliner Beauftragte für Datenschutz und Informationsfreiheit ("the Berlin data protection authority") and the UODO ("the Polish data protection authority"). The DPC also received opinions on the draft of this decision from the Comissão Nacional de Protecção de Dados ("the Portuguese data protection authority"), the Datatilsynet ("the Danish data protection authority"), the Autoriteit Persoonsgegevens ("the Dutch data protection authority"), and the Garante Per La Protezione Dei Dati Personali ("the Italian data protection authority").

- 9.2. The relevant and reasoned objections received from the Berlin data protection authority and supported by the Polish data protection authority included criticism of the DPC's draft decision in that the DPC sought to exercise no corrective power in respect of the identified infringements of the GDPR. Both CSAs advocated the application of a reprimand and/or an administrative fine. In their opinions, the Danish data protection authority and the Italian data protection authority also advocated the application of a reprimand and/or administrative fine.
- 9.3. The DPC has carefully considered this matter further. Having done so, on balance it considers that a reprimand is the appropriate corrective measure to be applied in this decision. Accordingly, the DPC has amended section 13 of this decision below ("Exercise of Corrective Power by the DPC") to apply a reprimand to Groupon, pursuant to Article 58(2)(b) of the GDPR in respect of the infringements identified in this decision.
- 9.4. In its comment in relation to the DPC's draft decision, the Italian data protection authority also suggested that the DPC might also make an order requiring the controller to bring processing operations into compliance, pursuant to Article 58(2)(d) of the GDPR. The DPC considers that, on balance, this measure is not necessary in circumstances where Groupon has already amended its procedures in relation to verification of identity, thereby bringing said procedures into compliance.
- 9.5. The Berlin data protection authority and the Italian data protection authority also raised the matter of further possible contraventions that they identified. In particular, these are as follows:
- (i) *an alleged infringement of Article 12(3) of the GDPR*
 - (ii) *an alleged infringement of Article 17(1)(a) of the GDPR*
 - (iii) *an alleged infringement of Article 6(1) of the GDPR.*
- 9.6. In relation to (i) *an alleged infringement of Article 12(3) of the GDPR*, the DPC notes the concerns of the CSAs and it has carefully considered the matter further. Article 12(3) provides that "*The controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request*". The objecting CSAs argue that, by not so advising the complainant in this instance of any action it took in respect of his request, Groupon infringed Article 12(3).
- 9.7. For the following reasons, the DPC does not propose to follow the objections raised by the CSAs in this regard. In correspondence to the DPC dated 11 April 2019, Groupon stated that "*We informed the Complainant of our requirements clearly and in a transparent manner and that we would delete his information*" upon receipt of a copy ID card (as was Groupon's requirement at the time of this communication), and further that "*We believed that we were not in a position to identify the Complainant, based on our identification requirements at that time*". Notwithstanding the fact that, as outlined above, the requirement that a data subject submit a copy national ID card has been subsequently adjudged to not be in compliance with the GDPR, it remains a matter of fact that this was Groupon's requirement at the time of the complainant's request. The fact that the complainant's failure to submit a copy of a national ID card in order to verify his identity was the reason for Groupon being, at the time, unable to comply with his request was clearly communicated to him without delay (as required by Article 12.4 of the GDPR), and in any case within one month of his request (it appears to have been initially communicated by way of a telephone call to the complainant by a Groupon representative on 26 May, 2018, the same day on which he made his request). It is very clear, in fact, from the timeline set out in paragraphs 2.1 to 2.5 above that having received the erasure request from the data subject Groupon contacted the data subject on 26 May, 2018 (twice), on 29 May, 2018 and on 4 June, 2018. Those contacts, which set out Groupon's requirements to the data subject, demonstrated the actions that Groupon was taking at that time in relation to his erasure request.
- 9.8. In relation to (ii) *an alleged infringement of Article 17(1)(a) of the GDPR*, the DPC notes the concerns of the CSAs and it has carefully considered the matter further. Article 17(1)(a) provides for a right of erasure of personal data where "*the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed.*" The CSAs argue that, as the complainant indicated that he

- was no longer interested in maintaining a business relationship with Groupon, the latter's failure to erase his personal data upon being requested to do so constitutes an infringement of Article 17(1)(a).
- 9.9. It is the case that, upon receipt of the complainant's request for erasure of his personal data, the data may have been no longer necessary in relation to the purposes for which they were collected or otherwise processed (namely, the performance of a contract between Groupon and the complainant – as the latter, by way of his request for erasure, had clearly signalled his intention to discontinue the contract). It should be noted in this regard that Groupon asserted that, in the absence of a copy national ID that it had originally requested, the continued processing of the complainant's personal data was necessary in order to continue to perform the contract (in circumstances where, from Groupon's perspective, the complainant had not satisfied the account verification requirements to allow the contract to be discontinued, and the personal data erased).
- 9.10. The DPC notes that it raised with Groupon the matter of its compliance with Article 17 by way of correspondence dated 29 March 2019. Groupon responded by way of correspondence to the DPC dated 11 April 2019, stating that its retention of the complainant's personal data subsequent to the receipt of his request for erasure *"...was necessary for us to continue to perform the contract with him and operate the account. We informed the Complainant of our requirements clearly and in a transparent manner and that we would delete his information on completion of these requirements... [Groupon] has complied with Articles 12 and 17 of the GDPR in relation to the Complainant's request for the erasure of his account. We believed that we were not in a position to identify the Complainant, based on our identification requirements at that time"*.
- 9.11. In this regard, noting the submissions made by the parties to the complaint including the views of the CSAs, the DPC determines that Groupon infringed the complainant's right to erasure under Article 17(1)(a) of the GDPR when it failed to comply with his erasure request of 26 May 2018. As outlined at paragraph 6.4 above, the requirement in place at the time for a requesting data subject to provide a copy national ID card in order to give effect to the request is adjudged to be inconsistent with the principle of data minimisation as set out in Article 5(1)(c) of the GDPR. As such, it was not valid for Groupon to seek to rely on this requirement as a basis on which not to comply with the complainant's request for erasure of his personal data. The DPC accepts the arguments put forward by the CSAs on this point, and it has amended section 11 below ("Decision on infringements of the GDPR") accordingly.
- 9.12. In relation to (iii) *an alleged infringement of Article 6(1) of the GDPR*, the DPC notes the concerns of the CSAs and it has carefully considered the matter further. Article 6(1) of the GDPR provides for a number of lawful bases upon which personal data may be processed. The objection of the CSAs in this regard is predicated upon the view that, between 26 May 2018 (when the complainant submitted his request for erasure) and 14 August 2019 (when the complainant's personal data was deleted), Groupon continued to process the complainant's personal data without a lawful basis, in contravention of Article 6(1).
- 9.13. The DPC notes that it raised with Groupon the matter of its compliance with Article 6 of the GDPR by way of correspondence dated 29 March 2019. Groupon responded by way of correspondence to the DPC dated 11 April 2019, expressing the view that said processing was lawful by virtue of the necessity of the processing in order to continue to perform the contract between the parties (pursuant to Article 6(1)(b) of the GDPR).
- 9.14. In this regard, and noting the submissions made the parties to the complaint including the views of the CSAs, the DPC determines that Groupon infringed Article 6(1) of the GDPR by continuing to process the complainant's personal data following receipt of his request for erasure. The complainant's request for erasure was valid, and had a basis under Article 17; and Groupon's request for verification is adjudged to have been inconsistent with the principle of data minimisation pursuant to Article 5(1)(c) of the GDPR, as outlined above at paragraph 6.4. As such, Groupon's requirement for a copy of a national identity document was invalid and the request for erasure should have been complied with when received, subject to the complainant's account ownership being verified. In addition, subsequent to the change of policy by Groupon which took effect on 8 October 2018, the complainant's personal data could have been erased at

that point without a need for further action by the complainant as his email address had already been verified by Groupon (the complainant provided his email address to Groupon by way of his original emailed request for deletion of his personal data on 26 May 2018; in later correspondence to the DPC dated 7 March 2019, he stated: “*Groupon can delete my personal data at any given time, without an additional verification on my part, since my e-mail address...has been already verified*”). The DPC accepts the arguments put forward by the CSAs with regard to the lawful basis under Article 6(1) for continued processing of the complainant’s personal data after his request for erasure was made to Groupon. Therefore, the DPC has amended section 11 below (“Decision on infringements of the GDPR”) accordingly.

- 9.15. In addition to the further alleged infringements, outlined at points (i), (ii) and (iii) of paragraph 9.5 above, the Berlin data protection authority has suggested a possible infringement of Article 32 of the GDPR. The DPC notes the concerns of the Berlin data protection authority in this regard and it has carefully considered the matter further. In particular, the DPC notes the Berlin authority’s statement that “*It must also be clarified by what means the complainant should submit the scan of his or her ID card, because the non-encrypted or only transport-encrypted sending of an ID card scan by e-mail is regularly a violation of Art. 32 GDPR due to the high risk of abuse*”.
- 9.16. For the following reasons, the DPC does not propose to follow this objection. In the course of the DPC’s examination of this complaint, at no stage was any *prima facie* evidence adduced which would suggest that Groupon’s obligations under Article 32 of the GDPR (to “*...implement appropriate technical and organisational measures to ensure of a level of security appropriate to the risk*” for the rights and freedoms of natural persons) were not being met. In addition, an alleged infringement of Article 32 was not raised as a ground of complaint (although the complaint did refer in general terms to hypothetical security risks associated with the transmission of identity documents) and did not form part of the DPC’s complaint-handling process; as such, an examination of Groupon’s compliance with Article 32 falls outside the scope of the complaint and of this decision.
- 9.17. In the Polish data protection authority’s objection to the DPC’s draft decision, it raised further possible contraventions of the GDPR, as follows:

- (iv) *an alleged infringement of Article 17(1)(b) of the GDPR, in conjunction with Article 7(3) of the GDPR*
- (v) *an alleged infringement of Article 25 of the GDPR*
- (vi) *potential infringements of Articles 5(1)(e) and 5(1)(f) of the GDPR*
- (vii) *a potential infringement of Article 24 of the GDPR.*

- 9.18. In relation to (iv) *an alleged infringement of Article 17(1)(b) of the GDPR, in conjunction with Article 7(3) of the GDPR*, the DPC notes the concerns of the Polish data protection authority and it has carefully considered the matter further.
- 9.19. For the following reasons, the DPC does not propose to follow this objection. Article 17(1)(b) of the GDPR provides for a right of erasure of personal data where “*the data subject withdraws consent on which the processing is based...*”. Article 7(3) of the GDPR states that “*The data subject shall have the right to withdraw his consent at any time...it shall be as easy to withdraw as to give consent*”. The right of erasure under Article 17(1)(b) only arises in circumstances where the processing at issue is based on data subject consent, pursuant to Article 6(1)(a) or Article 9(2)(a) and where there is no other legal ground for the processing. In addition, in relation to Article 7(3), the view of the DPC is that Article 7 of the GDPR (“Conditions for Consent”) by definition addresses situations where consent is the lawful basis for processing cited by the controller.
- 9.20. In this case, Groupon has not sought to rely on data subject consent, pursuant to Article 6(1)(a) of the GDPR, for the processing at issue. Rather, Groupon cites Article 6(1)(b) of the GDPR (processing necessary for the performance of a contract) as the lawful basis for the processing. Accordingly, the DPC’s view is that an infringement of Article 17(1)(b) could not arise where Groupon did not rely on the consent of the complainant for the processing.

- 9.21. In relation to *(v) an alleged infringement of Article 25 of the GDPR*, the DPC notes the concerns of the Polish data protection authority and it has carefully considered the matter further. Article 25 of the GDPR provides for data protection by design and default, and requires controllers to put in place measures to implement data protection principles, such as data minimisation, in an effective manner. Moreover, Article 25 requires controllers to implement appropriate technical and organisational measures to ensure that, by default, only personal data which are necessary for each specific purpose of the processing are processed.
- 9.22. For the following reason, the DPC does not propose to follow this objection. In the course of the DPC's examination of this complaint, an alleged infringement of Article 25 was not raised as a ground of complaint and did not form part of the DPC's complaint-handling process; as such, an examination of Groupon's compliance with Article 25 falls outside the scope of the complaint and of this decision.
- 9.23. In relation to *(vi) potential infringements of Articles 5(1)(e) and 5(1)(f) of the GDPR*, the DPC notes the concerns of the Polish data protection authority and it has carefully considered the matter further. Article 5(1)(e) of the GDPR provides that personal data may be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; while Article 5(1)(f) states that personal data shall be processed in a manner that ensures appropriate security of the personal data.
- 9.24. For the following reasons, the DPC does not propose to follow this objection. In the course of the DPC's examination of this complaint, at no stage was any *prima facie* evidence adduced which would suggest that Groupon's obligations under Articles 5(1)(e) or 5(1)(f) of the GDPR were not being met. In addition, an alleged infringement of Article 5(1)(e) or 5(1)(f) was not raised as a ground of complaint and did not form part of the DPC's complaint-handling process; as such, an examination of Groupon's compliance with these articles of the GDPR falls outside the scope of the complaint and of this decision.
- 9.25. In relation to *(vii) a potential infringement of Article 24 of the GDPR*, the DPC notes the concerns of the Polish data protection authority and it has carefully considered the matter further. Article 24 of the GDPR provides that the controller shall put in place technical and organisational measures to ensure and be able to demonstrate that its processing is GDPR-compliant, taking into account the nature, scope, context and purposes of the processing, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons. In this regard, the Polish data protection authority argues that the DPC should examine "...whether it [Groupon] has carried out appropriate risk assessment and whether is [sic] able to argue why he [sic] has chosen such an intrusive form of identity verification".
- 9.26. For the following reasons, the DPC does not propose to follow this objection. Groupon amended its policy in relation to data subject identity verification as of 8 October 2018. As such, the DPC does not consider it necessary at this remove to make further inquiries from the perspective of Article 24 in relation to the compliance or otherwise of the identity verification policy for data subjects that Groupon had in place prior to 8 October 2018. In addition, an alleged infringement of Article 24 was not raised as a ground of complaint and did not form part of the DPC's complaint-handling process; as such, an examination of Groupon's compliance with this article of the GDPR falls outside the scope of the complaint and of this decision.
- 9.27. In its objection to the DPC's draft decision, the Polish data protection authority also suggested an infringement of Article 32(1) of the GDPR. The DPC has addressed this point at paragraphs 9.15 and 9.16 above.
- 9.28. In its objection to the DPC's draft decision, the Polish data protection authority also raised the issue of the complainant's concerns regarding the security of the transmission of the copy of his national identity card, and about the potential risk of a data breach. The DPC notes the concern of the Polish authority in this regard and it has carefully considered the matter further.
- 9.29. The DPC does not consider that further inquiries are warranted in this regard and it considers that, in circumstances where the complainant in fact did not supply a copy of his identity card, the risk of a breach of his personal data did not arise. In the context of the wider (now discontinued) practice of Groupon requesting copies of national identity cards from data subjects seeking to exercise their data protection rights, the DPC considers that this issue does not fall within the scope of the current complaint, especially

- in circumstances where no *prima facie* evidence were adduced during the complaint handling process to suggest any security failings on the part of Groupon.
- 9.30. In its objection to the DPC's draft decision, the Polish data protection authority also proposes that the DPC should further examine whether Groupon has in fact changed its procedures in relation to the verification of data subject identity. The Polish authority states in this regard that "...even after the 8th October 2018 several SAs have received complaints about controller's [sic] identity verification procedure which necessitated a delivery of a copy of an identity card in this draft decision by the LSA". The DPC notes the concern of the Polish authority in this regard and it has carefully considered the matter further.
- 9.31. The DPC does not accept this proposal. The DPC has reviewed the active and concluded complaints against Groupon that it has received from other supervisory authorities in this regard, and cannot identify a complaint or complaints that suggest that data subjects have been required to submit a copy of a national identity document following the changes to Groupon's identity verification procedures introduced in October 2018. In particular, while a small number of complaints in relation to Groupon's requirement for a copy of a national identity document have been received by the DPC from other supervisory authorities post-8 October 2018, in each of these cases the initial request to Groupon and/or the initial complaint to the supervisory authority was made prior to 8 October 2018, ie before Groupon amended its procedures in this regard. The DPC is aware of one exception to this, where a complaint was received by the DPC from a supervisory authority regarding a request made to Groupon in 2019, in response to which the requestor was asked to provide a copy of a national identity card. In the course of the DPC's examination of that complaint, Groupon advised that in this case a customer service operative had used an old Standard Operating Procedure script in error, which had contained a reference to its identity verification requirements in place before the change of policy on 8 October 2018. Accordingly, the DPC does not consider that a body of evidence exists to suggest that data subjects continued to be required by Groupon, as a matter of policy, to verify their identity by way of the submission of a copy of a national identity card after 8 October 2018.
- 9.32. In its objection to the DPC's draft decision, the Polish data protection authority also refers to a number of what it refers to as "*clerical errors*" in relation to dates referred to in the draft. In relation to the Polish authority's statement that "*Point 1.2. indicates that the complaint was received by the Polish supervisory authority on 4 June 2018, but the complaint was received by that authority on 8 June 2018*". The DPC notes that the complainant's letter of complaint is dated 4 June 2018. Point 1.2 has been re-worded to reflect this.
- 9.33. The Polish data protection authority further states that point 1.2 "...indicates that the complaint was transmitted to the Irish SA on 11 July 2018. Please indicate why the date indicated in the draft decision is 11 July 2018 and not 5 July 2018 which is the date when the Irish SA accepted its role as the lead authority for the cross-border processing in question". The DPC has amended the wording of point 1.2 to reflect the date on which the DPC accepted its role as LSA in respect of this matter.
- 9.34. The Polish data protection authority further states that "*In point 4.2. it is indicated that the complainant's request was received by the controller on 29 May 2018 instead of indicating a proper date - 26 May 2018*", the DPC would observe that 29 May 2018 is the date on which the complainant made a request for erasure of personal data through Groupon's privacy portal (as he had been directed to do by Groupon). This does not contradict the fact that the complainant's initial request was made by email on 26 May 2018, a fact explicitly recognised at paragraph 2.1 of this decision. As such the DPC does not consider that this constitutes a clerical error.
- 9.35. The Dutch data protection authority, in its comment on the DPC's draft decision, put forward the view that supervisory authorities are free to structure their complaint handling as they wish and that finding a breach of the GDPR does not automatically mean that corrective measures need be imposed. The DPC notes this view, and considers that no further analysis is required in this regard.
- 9.36. The Portuguese data protection authority, in its comment on the DPC's draft decision, was to the effect that it agreed with the DPC's draft decision. The DPC notes this view, and considers that no further analysis is required in this regard.

10. Submissions from Groupon on Revised Draft Decision



- 10.1. By correspondence dated 5 October 2020, the DPC forwarded the revised draft decision (incorporating its analysis of the relevant and reasoned objections, and opinions, received from CSAs) to Groupon and invited it to revert with any final submissions it wished to make.
- 10.2. By email dated 13 October 2020, Groupon reverted with a number of submissions that it wished to be taken into account. These were as follows:
- 10.3. Under the heading '*Infringement of Data Minimisation Principle*', Groupon stated as follows:

"Groupon notes the DPC's finding that requesting data subjects to verify their identity by way of submission of a copy of a national ID document constituted an infringement of Article 5(1)(c) of the GDPR in the circumstances of this complaint (para 10.1 of the draft decision).

In this connection, and in respect to the DPC's comments in paragraph 6.3 that Groupon did not specifically comment on how its requirement for a copy of a national ID in this context complied with the data minimisation principle, Groupon's response is as follows. Groupon's reason for requesting a copy of a photo ID from the complainant was to ensure that it was reasonably satisfied of his identity, and in particular that Groupon had sufficient information to assess whether the person making the request was the individual to whom the personal data that Groupon held related.

While Groupon did not have a copy of a national identity card to which a copy could be compared due to the limited amount of data collected when an individual creates an account (and ultimately in compliance with the data minimisation principle), it nevertheless requested a photo ID in order to be satisfied that it had robustly verified the identity of the complainant. In particular, the process was aimed at ensuring that the name of the complainant matched the name of the individual for which a Groupon account was held and that the complainant could reasonably demonstrate, by way of providing a photo ID, that they were the individual concerned. Had the photo ID been provided by the complainant, Groupon would have only used the requested information for this limited purpose, i.e. to confirm the complainant's identity, and would not have taken further action such as adding a copy to the complainant's Groupon account, which would have been subsequently deleted in any event.

In particular, Groupon's intention behind requesting the photo ID was not to collect excessive, irrelevant or unnecessary information contrary to the data minimisation principle. Groupon was concerned to ensure that in honouring the request to delete information in respect of the complainant, it did not delete data relating to an individual that wished to continue to use his or her Groupon account. Groupon was also particularly concerned to ensure the security of the personal data under its control in accordance with Article 5(1)(f) GDPR, and in an effort to mitigate the risk of fraud on its platform, sought to take reasonable and appropriate steps to verify the complainant's identity beyond asking him to submit his name and email address.

Ultimately ensuring compliance with the principle of data minimisation on one hand and accuracy and security on another in the context of erasure requests requires a delicate balancing exercise in practice. In order to better strike this balance, in October 2018 Groupon amended its procedures in relation to verification of identity and now uses an email verification technique whereby data subjects are sent an email to the email address provided for their Groupon Account that must be accessed to confirm the requestor's identity in order to exercise the individual rights afforded by the GDPR. Above all, Groupon wants to reassure the DPC and CSAs that it strives to meet the GDPR requirements in the course of carrying out its business operations and will continue to do so".

- 10.4. Under the heading '*Infringement of Article 12(2)*', Groupon stated as follows:

"Groupon also notes the DPC's finding that Groupon infringed Article 12(2) of the GDPR by requesting additional information as to the complainant's identity at the time he made his request for erasure, in circumstances where it has not demonstrated that reasonable doubts existed

concerning the complainant's identity that would have necessitated the application of Article 12(6) of the GDPR (paragraph 10.2 of the draft decision).

In response to the DPC's comments in paragraph 6.5 that Groupon has not demonstrated or indicated that it had reasonable doubts as to the complainant's identity, Groupon would like to reiterate the points made above. In particular, Groupon sought additional information from the complainant in order to achieve an appropriate balance between ensuring that Groupon had robustly identified the individual to whom the request related, while also ensuring the accuracy and security of its platform. Groupon honoured the complainant's request when he subsequently followed the email verification process as this enabled Groupon to verify account ownership and appropriately identify the data subject.

10.5. Under the heading '*Infringement of Article 17(1)(a) GDPR*', Groupon stated as follows:

"In respect of the DPC's finding that Groupon infringed the complainant's right to erasure under Article 17(1)(a) of the GDPR, I would simply point out that the right to erasure in Article 17 is subject to the requirements of Article 12. Groupon did not comply with the complainant's original erasure request of 26 May 2018 because Groupon believed at the time it was not in a position to verify the identity of the complainant, based on its identity requirements at the time.

However, I would please urge you to note that once the complainant followed Groupon's revised process to verify his identity, Groupon duly complied with his second erasure request within the timeframe required by Article 12 and in compliance with Article 17. Accordingly it is not entirely appropriate to say that Groupon's reason for not complying with the complainant's first erasure request was due to a systemic failure to meet the requirements of Article 12 and Article 17. In light of this, we ask the DPC to reconsider its findings in paragraph 10.3 of the draft decision".

10.6. Under the heading '*Infringement of Article 6(1) GDPR*', Groupon stated as follows:

"Groupon notes the DPC's finding in paragraph 10.4 that Groupon continued to process the complainant's personal data without a lawful basis, following its receipt from the complainant on 26 May 2018 of a valid request for erasure of his personal data. We have set out above why in Groupon's view it was justified in not handling the original request for erasure and why it continued to process the personal data in question and therefore we ask the DPC to reconsider its findings in paragraph 10.4.

We understand that in the DPC's opinion we may have got that balance wrong in respect of this particular complaint, but we trust the changes we made to our processes in October 2018 reassure the DPA and CSAs that Groupon has taken appropriate steps to ensure that its processes are aligned with the requirements of the GDPR going forward and that no further action in this connection is necessary. Ultimately, Groupon has taken onboard all recommendations and adapted its compliance practices accordingly, which means that the purpose of the regulatory action envisaged by the GDPR has fully fulfilled its purpose".

10.7. The DPC has carefully considered Groupon's submissions in relation to the finding of infringement of the principle of data minimisation (at point 10.3 above). In particular the DPC notes Groupon's stated view that its reason for requesting a copy of a national identity card was to ensure that it was reasonably satisfied of the complainant's identity, and in particular that Groupon had sufficient information to assess whether the person making the request was the individual to whom the personal data that Groupon held related. Furthermore, the DPC notes that Groupon's intention by way of this practice was not to collect excessive, irrelevant or unnecessary information contrary to the data minimisation principle, and that its concern was to ensure that in honouring the request to delete information in respect of the complainant, it did not delete data relating to an individual that wished to continue to use his or her Groupon account. The DPC further notes that Groupon was anxious to ensure the security of the personal data under its control in accordance with Article 5(1)(f) GDPR, and in an effort to mitigate the risk of fraud on its

- platform. Moreover, the DPC notes that Groupon would have only used the requested information for this limited purpose, i.e. to confirm the complainant's identity, and would not have taken further action such as adding a copy to the complainant's Groupon account, and that the identity document would have been deleted in due course.
- 10.8. Nonetheless, the DPC's view remains that the procedure in place between 25 May 2018 and 8 October 2018 (whereby a requesting data subject was required to submit ID, where no such requirement for ID was in place at the time a data subject opened a Groupon account) constituted an infringement of the principle of data minimisation, as outlined in section 11 below. This is especially so in light of the fact that an alternative, less data-driven means of verifying the complainant's identity – while still meeting its other obligations such as ensuring the security of processing – was available to Groupon, as evinced by the change in its verification procedures after 8 October 2018.
 - 10.9. The DPC has carefully considered Groupon's submissions in relation to the finding of infringement in respect of Article 12(2) of the GDPR (at point 10.4 above). In particular, the DPC notes that Groupon's concern in seeking additional information (in the form of a copy of a national identity card) was to achieve an appropriate balance between ensuring that Groupon had robustly identified the individual to whom the request related, while also ensuring the accuracy and security of its platform. The DPC also notes that Groupon honoured the complainant's request when he subsequently followed the email verification process.
 - 10.10. This notwithstanding, the DPC maintains its position that Article 12(2) of the GDPR was infringed in circumstances where Groupon did not demonstrate that it had reasonable doubts concerning the complainant's identity, such as would have necessitated the application of Article 12(6) of the GDPR. In particular, it is clear that the request for a copy of a national identity card was not made on foot of any specific doubt as to the complainant's identity, but rather was a result of the policy that was in place in Groupon at the time.
 - 10.11. The DPC has carefully considered Groupon's submissions in relation to the finding of an infringement of Article 17(1)(a) of the GDPR (at point 10.5 above). In particular the DPC notes Groupon's statement that it did not comply with the complainant's original erasure request of 26 May 2018 because Groupon believed at the time it was not in a position to verify the identity of the complainant, based on its identity requirements at the time. The DPC also notes that Groupon complied with the complainant's second erasure request within the timeframe required by Article 12 and in compliance with Article 17.
 - 10.12. However, the DPC does not accept Groupon's view that the above factors should lead the DPC to resile from its finding that an infringement of Article 17(1)(a) occurred. The DPC maintains its position that, in circumstances where Groupon's requirement for the complainant to submit a copy of a national identity card has been adjudged to have been non-compliant with the GDPR, and that an alternative, less data-driven means of verification was available to Groupon, it infringed Article 17(a) of the GDPR when it failed to act on the complainant's request for erasure of his personal data, on the basis that he had not provided a copy of a national identity card.
 - 10.13. The DPC has carefully considered Groupon's submissions in relation to the finding of an infringement of Article 6(1) of the GDPR (at point 10.6 above). The DPC notes Groupon's statements and, in particular, the DPC notes that Groupon has taken steps to ensure that its processes are aligned with the requirements of the GDPR going forward. The DPC further notes Groupon's view that it was justified in not handling the original request for erasure and why it continued to process the personal data in question, for the reasons it outlines.
 - 10.14. This notwithstanding, the DPC maintains its position that, in circumstances where Groupon's request for verification of the complainant's identity has been adjudged to have been inconsistent with the principle of data minimisation pursuant to Article 5(1)(c) of the GDPR (and where, as such, Groupon's requirement for a copy of a national identity document was invalid) the request for erasure should have been complied with when received, subject to the complainant's account ownership being verified. In addition, subsequent to the change of policy by Groupon which took effect on 8 October 2018, the complainant's personal data could have been erased at that point without a need for further action by the complainant. Thus the continued processing of the complainant's personal data following receipt of his request for erasure constituted an infringement of Article 6(1) of the GDPR.

11. Communication of revised draft decision to CSAs

- 11.1. On 20 October 2020, a revised draft of this decision was transmitted to CSAs pursuant to Article 60.3 of the GDPR.
- 11.2. Subsequently, the DPC received one objection and a number of comments from CSAs in respect of the revised draft decision, as follows:
- 11.3. The Berlin data protection authority submitted an objection to the draft decision as revised, maintaining its objections to the first draft of the decision and reiterating its view that the imposition of a fine was warranted in the circumstances.
- 11.4. The Portuguese data protection authority submitted a comment, indicating that it did not object to the draft decision as revised.
- 11.5. The Polish data protection authority submitted a comment, indicating that it had nothing further to add to the draft decision as revised. The DPC subsequently clarified that the Polish data protection authority was not maintaining the objections it had raised to the initial draft, with the Polish authority stating that “We find that your draft decision answers all our concerns which we enlisted in the form of the RRO at the draft decision step. Thus, we agree that the final version of the decision can be published”.
- 11.6. On 14 December 2020, the DPC received confirmation from the Berlin data protection authority that it had withdrawn its objection to the draft decision as revised.
- 11.7. The correspondence from the CSAs in this regard is attached in full at Appendix B.

12. Decision on infringements of the GDPR

- 12.1. The DPC finds that Groupon’s requirement that the complainant verify his identity by way of submission of a copy of a national ID document constituted an infringement of the principle of data minimisation, pursuant to Article 5(1)(c) of the GDPR. This infringement occurred in circumstances where no such requirement for ID was in place at the time a data subject opened a Groupon account, and a less data-driven solution to the question of identity verification (namely by way of confirmation of email address) was available to Groupon. The DPC notes that this infringement continued from 25 May 2018, when the GDPR came into effect, until 8 October 2018, when Groupon amended its privacy policy and discontinued its requirement for requesting data subjects to verify their identity by way of submission of a copy of a national ID document.
- 12.2. The DPC finds that Groupon infringed Article 12(2) of the GDPR by requesting additional information as to the complainant’s identity at the time he made his request for erasure, in circumstances where it has not demonstrated that reasonable doubts existed concerning the complainant’s identity that would have necessitated that application of Article 12(6) of the GDPR.
- 12.3. As outlined at point 9.11 above, following an analysis of a relevant and reasoned objection received in relation to the first draft of this decision, the DPC finds that Groupon infringed Article 17(1)(a) of the GDPR. This infringement occurred when Groupon failed to comply with the complainant’s erasure request of 26 May 2018, in circumstances where its requirement that the complainant submit a copy of a national identity card is adjudged to not have been in compliance with the GDPR.
- 12.4. As outlined at point 9.14 above, following an analysis of a relevant and reasoned objection received in relation to the first draft of this decision, the DPC finds that Groupon infringed Article 6(1) of the GDPR. This infringement occurred when Groupon continued to process the complainant’s personal data without a lawful basis, following its receipt from the complainant on 26 May, 2018 of a valid request for erasure of his personal data.

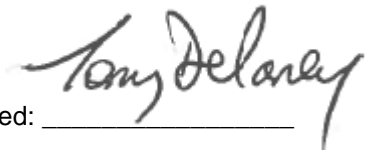
13. Remedial Measures by Groupon

- 13.1. In respect of these infringements, it is noted that Groupon has taken certain remedial measures. Regarding the principle of data minimisation pursuant to Article 5(1)(c) of the GDPR, Groupon has discontinued its practice of requiring a data subject to submit a copy national ID card when making a request to Groupon, in order to verify their identity. Groupon now verifies a data subject’s identity by way of the data subject confirming their email address, and has updated its privacy policy to reflect this change.

13.2. In respect of the complainant's request for erasure of personal data pursuant to Article 17(1) of the GDPR, it is noted that Groupon has erased the complainant's personal data, albeit it did not act on the request for erasure made on 26 May 2018 but on the basis of a second erasure request made in July 2019.

14. Exercise of Corrective Power by the DPC

14.1. In light of the extent of the infringements identified above, the DPC hereby issues a reprimand to Groupon, pursuant to Article 58(2)(b) of the GDPR.

Signed: 

Deputy Commissioner
On behalf of the Data Protection Commission

Appendix A:

Objections and opinions received from CSAs to draft decision

1. Objection received from the Berliner Beauftragte für Datenschutz und Informationsfreiheit



Berliner Beauftragte
für Datenschutz
und Informationsfreiheit

XXX.XX.X

22 June 2020

Relevant and reasoned objection against the Draft Decision XXXXXX

The Berlin Commissioner for Data Protection and Freedom of Information expresses a relevant and reasoned objection against the Draft Decision XXXXXX of the Data Protection Commission in Ireland (DPC) with regard to the controller Groupon International Limited (Groupon).

1. Procedural law

From a procedural point of view, the Berlin Commissioner for Data Protection and Freedom of Information criticises that the DPC has taken no measures provided for in Art. 58(2) GDPR, even though the DPC found that there had been data protection infringements of Art. 5(1)(c), Art. 12(2) and (6) GDPR.

In contrast to Directive 95/46/EC, the GDPR requires the supervisory authority to use its corrective power under Art. 58(2) GDPR in the event of data protection infringement being identified by the supervisory authority. In this way, the legislator wanted to contribute to the effective implementation of data protection provisions. Furthermore, in proceedings under Art. 77 GDPR and in contrast to the mere petition procedure still provided for in Directive 95/46/EC, the complainant can also expect that in the case of an established violation of his or her rights, a corrective power appropriate to the violation is exercised.

The lead supervisory authority has indeed a discretion as to which of the measures referred to in Art. 58(2) GDPR it takes. If - as in this case - the controller independently remedies the infringement in the course of the proceedings, there is no need, for example, for using the measures under Art. 58(2)(c) or (d) GDPR. Nevertheless, the lead supervisory authority must examine whether the infringement is to be punishable by a fine pursuant to Art. 58(2)(i) GDPR or whether the lead supervisory authority leaves it at a reprimand pursuant to Art. 58(2)(b) GDPR, which is intended for cases in which - as in this case - an infringement has been established but is considered minor. In the specific case, however, it must be noted that there has been a systematic violation of data subjects' rights (see point 3).

In any event, the complete waiver of exercising a corrective power constitutes a misuse of discretion, since the legal consequence chosen is not included in the options for action provided for under Art. 58(2) GDPR.²

The monitoring of Groupon as proposed by the DPC is at most one of the investigative powers provided for in Art. 58(1) GDPR and does not constitute a corrective power on the part of the supervisory authority under Art. 58(2) GDPR. For this reason alone, the DPC's Draft Decision erred in law. However, because of the data protection infringements against Art. 5(1)(c), Art. 12(2) and (6) GDPR identified by the DPC, Groupon should at least be issued with a reprimand in accordance with Art. 58(2)(b) GDPR. This is also to be extended to the infringements of Art. 6(1), the first sentence of Art. 12(3) and Art. 17(1)(a) GDPR. Since there is a systematic infringement of the rights of the data subjects (see point 3), it must also be questioned whether a fine can actually be avoided.

2. Substantive law

Furthermore, the Berlin Commissioner for Data Protection and Freedom of Information criticises the lack of a substantive assessment of Groupon's infringements of Article 6(1), the first sentence of Article 12(3), and Article 17(1)(a) GDPR.

According to the first sentence of Art. 12(3) GDPR, the controller must provide the data subject with information on the measures taken upon request pursuant to Art. 15 to 22 GDPR without delay as a rule, but in any case within one month of receipt of the request. This means that the controller must confirm the deletion or at least state why this is not possible within the deadline. This period may exceptionally be extended by a further two months if this is necessary in view of the complexity and number of applications. However, the GDPR does not provide for a routine and blanket extension of the deadline without examining the individual case. Nor has Groupon informed the complainant of any extension of the deadline and the reasons for it.

According to the "Main Findings" contained in the DPC's Draft Decision under 6.4. and 6.5., Groupon has not proved or submitted any evidence that at the time of the complainant's request for erasure on 26 May 2018 there were indeed justified doubts as to the identity of the complainant.

Consequently, the reply to the complainant's request for erasure of 26 May 2018 was submitted late, on 14 August 2019. This also constitutes a violation of Article 12(3) GDPR by Groupon. Since the complainant made it clear with the request for erasure of his account that he was no longer interested

¹ If the complete waiver of a corrective measure were a permissible option in the case of minor infringements that the controller has already remedied, the institution of the reprimand would be rendered meaningless, since it is envisaged precisely for such cases.

in any further business relationship with Groupon, his data had to be deleted under Article 17(1)(a) GDPR because the processing was no longer necessary for the purposes for which they were collected or otherwise processed. This was not done, so there is also a violation of Art. 17(1)(a) GDPR. Further, between 26 May 2018 and 14 August 2019, an unauthorised processing of the complainant's personal data took place and thus a violation of Article 6(1) GDPR, because the legal basis for the processing ceased to exist when the necessity for processing for the original purposes ceased to exist.

Since Groupon - as it has itself submitted - has systematically and unlawfully requested the submission of an ID scan on the basis of its internal guidelines, it must also be assumed that a large number of other persons are affected and will have submitted an ID scan after or at Groupon's request. This would constitute unauthorized processing of personal data by Groupon. Since this is an obvious violation that came to light in the course of the handling of the complaint, this aspect must also be clarified and, if necessary, sanctioned. It must also be clarified by what means the complainant should submit the scan of his or her ID card, because the non-encrypted or only transport-encrypted sending of an ID card scan by e-mail is regularly a violation of Art. 32 GDPR due to the high risk of abuse.

3. Systematic infringement, fine

Groupon has - as presented itself - systematically requested the ID card scan for all erasure requests based on its internal guidelines. This systematically violated data subjects' rights. As a result, personal data were systematically processed without authorization. With the systematic denial of the data subjects' right to request erasure, the substance of the corresponding data subject right was violated.

Hence, this cannot in any way be assumed to be a minor breach because there is a considerable danger to the data subjects' data protection rights, because the concerned duty to erase is affected in its substance and because the breach indicates a systemic problem or lack of suitable procedures (all criteria in favour of the imposition of a fine, see WP253 III.a)). Further, the infringement was intentional (see WP253 III.b)). Moreover, the specific infringement was not remedied independently by Groupon after it had been identified, but only after the complainant had submitted a new request for erasure on 17 July 2019, although even this request - taking into account the fact that it was only processed just under a month after it had been lodged - was apparently not processed in time. Groupon thus did nothing to remedy the damage resulting from the complainant's loss of control, but deliberately maintained this state of affairs even after Groupon had become aware of the unlawfulness of its actions and the supervisory authority had intervened (see WP253 III.c), f)).

After all this, the imposition of a fine in this case seems to be mandatory.

2. Objection received from the Office of Personal Data Protection (UODO) of Poland

**REASONED AND RELEVANT OBJECTION OF THE POLISH SA
to the draft decision no. XXXXXX.X concerning Groupon**

Polish SA expresses a relevant and reasoned objection to the draft decision no. 127084 issued by the Irish SA and supports the relevant and reasoned objection expressed by the Belin SA. The Polish SA considers that issuance of the reprimand to the controller is not sufficient by taking into account the findings of this procedure. An administrative fine should be imposed in addition to, or instead of a reprimand.

Polish SA wishes to underline that the systemic nature of the infringement is also supported by the fact that the Irish supervisory authority has received a number of complaints about the controller's behaviour consisting of unlawful requesting of the copy of an ID card (cases no. C-XX-XX-XXX; C-XX-XX-XXX; C-XX-XX-XXX; C-XX-X-XX; C-XX-X-XXX, C-XX-X-XXX and C-XX-X-XXX) and about the implemented (probably also currently) mechanism for identifying data subjects through a third party (One Trust). The Irish SA decided to merge all these cases into two case registers – no. 47718.1 and 112546.1. However, until now, even after establishing that the issue has a systemic nature, and even after receiving number of complaints, the Irish SA has not yet initiated an ex officio action against the controller which might seek to clarify any doubts relating to these processes.

Polish SA wishes to indicate that the complainant in his complaint has submitted that art. 17(1)(b) GDPR in conjunction to art. 7(3) GDPR has been infringed. The complainant pointed out that withdrawal of consent should be as easy as giving it, but at the time of registration he was not required to attach a photograph of his identity card. Furthermore, he stated that the data requested by the controller was excessive. Moreover, the complainant states that the controller has not indicated why he needs to verify his identity and that he is afraid of a data leak which could probably even lead to taking loans or credits by using his data. This means that the complainant has shown that the controller may have committed, in addition to a breach of art. 17(1)(b) in conjunction with art. 7(3) of the GDPR, a breach of Articles 5, 12(6) and 32(1) of the GDPR. The draft decision of the Irish SA does not analyse art. 7(3) fourth sentence GDPR nor does it analyse art. 32(1) GDPR. In the opinion of the Polish SA every problem identified in the complaint should be analysed and assessed for the existence of an infringement.

It follows from the established facts of the case that by introducing an identity verification procedure consisting of attaching a copy of the identity card to every request for the exercise of data subjects' rights, the controller not only unduly impeded, but even prevented the exercise of data subjects' rights and thus infringed art. 12(2) GDPR and 12(6) GDPR, as well as, to a high degree of probability, also violated the first and fourth sentences of Article 7(3) GDPR, as it appears that the controller did not accept the withdrawal of the complainant's consent. The execution of complainant's right to withdraw his consent should have been examined in detail by the LSA, but it appears from the wording of the draft decision that this aspect of the complaint has not been taken into account.

The complainant was also concerned about the security of the transmission of the data in the form of a copy of an identity card and about the potential risk of data breach, but this problem was also not tackled in this draft decision by the LSA.

The Polish SA wishes to highlight that it is still to establish whether the controller indeed resigned from

the verification procedure, since even after the 8th October 2018 several SAs have received complaints about controller's identity verification procedure which necessitated a delivery of a copy of an identity card and about its use of third parties to carry out this verification process.

The LSA should also consider whether the cross-border processing described in the complaint has not violated or continues to violate the principles of privacy-by-design and privacy-by-default stemming from Article 25 of the GDPR, which are closely linked to the identified breach of the data minimisation principle.

It should also be examined whether the controller has breached the principle of storage limitation (Article 5(1)(e)) and the principle of confidentiality and integrity (Article 5(1)(f)). In addition, it should be examined whether the controller has acted in accordance with Article 24 of the GDPR, i.e. whether it has carried out appropriate risk assessment and whether is able to argue why he has chosen such an intrusive form of identity verification.

The Polish SA indicates that several clerical errors can be found in the content of the draft decision. In point 4.2. it is indicated that the complainant's request was received by the controller on 29 May 2018 instead of indicating a proper date - 26 May 2018. Point 1.2. indicates that the complaint was received by the Polish supervisory authority on 4 June 2018, but the complaint was received by that authority on 8 June 2018. The same point indicates that the complaint was transmitted to the Irish SA on 11 July 2018. Please indicate why the date indicated in the draft decision is 11 July 2018 and not 5 July 2018 which is the date when the Irish SA accepted its role as the lead authority for the cross-border processing in question.

3. Opinion received from the Portuguese Comissão Nacional de Protecção de Dados (CNPD)



OPINION/XXXX/XX

**I. Case XXXXXXXXXXXX
(...)**

II. Assessment of the CNPD

23. Article 5(1)(c) of the GDPR provides that personal data must be “adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (“data minimisation”)”.
24. Article 12(2) of the GDPR provides that ‘the controller shall facilitate the exercise of data subject’s rights in accordance with Articles 15 to 22. In the cases referred to in Article 11(2), the controller shall not refuse to act on the request of the data subject for exercising his or her rights under Articles 15 to 22, unless the controller demonstrates that it is not in a position to identify the data subject”.
25. Article 12(6) of the GDPR provides that “[W]ithout prejudice to Article 11, where the controller has reasonable doubts concerning the identity of the natural person making the request referred to in Articles 15 to 21, the controller may request the provision of additional information necessary to confirm the identity of the data subject”.
26. The controller required the data subject to submit a copy of his identity card to process the deletion request although the availability of such data was not a requirement at the account opening stage and, therefore, there was no way to verify later the accuracy of the information

27. In submitting the application for the exercise of rights – in this case of deletion – the data subject must identify himself strictly but does not have to provide more personal data than those processed by the controller at the time of the opening of the account.
28. The CNPD therefore agrees with the legal classification of the infringements registered by the LSA: there is a violation of Articles 5(1)(c), 12(2) and (6) of the GDPR.
29. However, the controller adopted, long before the Irish supervisory authority intervened, corrective and less intrusive measures regarding the identity verification procedure following which he guaranteed the data subject's right to erasure.
30. In short, the right of the data subject was safeguarded and the procedures of the controller rectified in accordance with the GDPR.
31. Therefore, as a supervisory authority concerned, the CNPD agrees with the draft decision submitted by the Irish supervisory authority.
32. This Opinion shall be made known to the lead supervisory authority and the other supervisory authorities concerned.

Lisbon, 23 June 2020

Filipa Calvão (President)

4. Opinion received from the Danish Datatilsynet

Dear colleagues,

The Data Protection Agency agrees that the controller infringed Article 5(1)(c) and Article 12(2) and 12(6) of the GDPR. The Danish Data Protection Agency considers that an infringement such as that referred to in the case should lead to a reprimand pursuant to Article 58(2)(b). In this context, the Danish Data Protection Agency may refer to the decision made by the DPA in IMI case XXXXX, which also concerned a controller's request for ID validation in connection with a request from the data subject.

Kind regards

Added by: DK - SA Denmark (Data Protection Agency)

Added on: 23/06/2020 13:31 CEST

5. Opinion received from the Dutch Autoriteit Persoonsgegevens

Given some of the objections/comments, our general comment is that -in our view- SAs are free to structure their complaint handling process in such way that it includes arrangements for amicable settlement or alternative complaint resolution, provided that they respect their obligations under the OSS system and their obligations with regard to informing the complainant, including statement of the reasons for having closed the complaint. Also, procedural safeguards must be in place to make sure alternative complaint handling does not render it too difficult to exercise the rights derived from the GDPR or foreclose ways to effectively address complaints via procedures in national law.

NL SA notes that finding of a breach of the GDPR does not automatically mean that corrective measures must be imposed per se. It requires a case-by-case assessment to find an appropriate regulatory response. e.g. Where a controller already has implemented changes, a corrective measure may not be necessary.

Added by: NL - SA The Netherlands (Authority for Personal Data)

Added on: 23/06/2020 15:26 CEST

6. Opinion received from the Italian Garante Per La Protezione Dei Dati Personali

We would like to point out a few criticalities in respect of the draft decision submitted by the DPC, which in our view should be reconsidered as to its relevance and consequences.

- First of all, it is worth underlining that the DPC has not opened an Informal consultation with the CSAs in order to share the outcomes of its investigation and thereby facilitate the achievement of consensus before submitting a formal draft decision.
- As to the merits of the case, the DPC reports that the complainant refused the amicable settlement attempted and establishes that two violations of the GDPR took place in the case

at issue, namely concerning Article 5 (1) (c) and Article 12(2) and (6). The DPC itself notes that this infringement continued from 25 May 2018, when the GDPR came into effect, until 8 October 2018, when Groupon amended its privacy policy and discontinued its requirement whereby data subjects had to verify their identity by way of submission of a copy of a national ID document. The DPC also finds that Groupon infringed Article 12(2) of the GDPR by requesting additional information as to the complainant's identity at the time he made his request for erasure, in circumstances where it has not been demonstrated that reasonable doubts existed concerning the complainant's identity such as to necessitate application of Article 12(6) of the GDPR.

- In addition, as outlined by the Hessen colleagues, we would argue that Article 12 (3) and Article 17 GDPR were also infringed. Indeed, the reply to the complainant's request for erasure of 26 May 2018 was provided by Groupon belatedly, on 14 August 2019 – that is, beyond the term set forth by article 12(3) GDPR. Furthermore, as the complainant made it clear with the request for erasure of his account that he was no longer interested in any further business relationship with Groupon, his data had to be deleted under Article 17(1)(a) GDPR because the processing was no longer necessary for the purposes for which the data had been collected or otherwise processed. This was not done until 14 August 2019, so that between 26 May 2018 and 14 August 2019 unauthorised processing of the complainant's personal data took place resulting into a violation of Article 6(1) GDPR, because the legal basis for the processing ceased to exist when the necessity for processing for the original purposes ceased to exist.
- In light of the above, taking into account that the infringements at issue are considered to be especially serious under Article 83(5) of the GDPR, and given that these violations were not remedied independently by Groupon after they had been detected as the required steps were taken only after the complainant had submitted a new request (which is clearly evidenced by the report submitted by the DPC), we deem that an administrative fine is appropriate in this case to stigmatize the failure by such a major controller to be fully and proactively accountable for its data processing policies. Alternatively, we would suggest considering imposition of a reprimand under Article 58(2)b as a way to signal the incorrect handling of the case by the controller and, more generally, the lack of suitable arrangements for dealing with this and similar cases in terms of data protection. In either case, one might also consider whether an order for the adoption of specific measures should also be issued by the DPC (under Article 58(2)d) by having regard to the organisational failure brought to light by the complaint, which would enable the DPC to set a specific deadline for compliance rather than envisaging the possibility of considering such measures 'in future'.

Best regards

The Italian DPA

Appendix B:

Objections and comments received from CSAs to revised draft decision

1. Objection received from the Berliner Beauftragte für Datenschutz und Informationsfreiheit



Berliner Beauftragte
für Datenschutz
und Informationsfreiheit

DPA Ref: XXX.XX
DPC Ref: C-XX-X-XX

Relevant and Reasoned Objection against the Revised Draft Decision XXXXXX

The Berlin Commissioner for Data Protection and Freedom of Information expresses a relevant and reasoned objection against the Revised Draft Decision 157898 of the Data Protection Commission in Ireland (DPC) with regard to the controller Groupon International Limited (Groupon).

I. However, first of all we would like to point out that in this case the issuance of a Revised Draft Decision is inadmissible from the outset and instead, according to Article 60(4) GDPR, the DPC has to initiate the consistency mechanism according to Article 63, 65(1)(a) GDPR. We therefore ask the DPC to submit the matter to the Board immediately for the following reasons.

II. According to Article 60(5) GDPR, the issuance of a Revised Draft Decision is permissible only in the case that the lead supervisory authority intends to follow all relevant and reasoned objection made. In its Revised Draft Decision, the DPC explicitly states that it does not intend to follow several of the relevant and reasoned objections made by the Berlin Commissioner for Data Protection and Freedom of Information and the Polish DPA. According to Article 4 No. 24 GDPR, a relevant and reasoned objection must relate to whether there is an infringement of the GDPR, or whether envisaged action in relation to the controller or processor complies with the GDPR, which is the case here. Hence, Article 60(4) GDPR requires the DPC being the lead supervisory authority in this case to submit the matter to the consistency mechanism referred to in Article 63 GDPR.

III. We expressly maintain our reservations about the substance of the Draft Decision to the extent that the DPC has not accepted them. Further, if the DPC's assessment of whether Groupon has not breached Article 12(3) GDPR were correct, there at least were a breach of Article 12(4) GDPR.

IV. The question of whether there is an infringement of Article 32 GDPR cannot be disregarded for the very reason that the complainant has explicitly described the procedure used by Groupon as "dangerous". It should be kept in mind that a complainant is a natural person who may express concerns, but cannot be expected to have in-depth knowledge. Rather, it is the task of a data protection supervisory authority, to enforce the application of the GDPR and to protect the rights of the data subjects. Therefore, the lead supervisory authority is also obliged to examine and, if

necessary, sanction such aspects even if they are not expressly mentioned by the complainant but which come to light in the course of the investigation of the complaint, in particular if – as in the present case – they directly relate to the very substance of the complaint.

V. Moreover, we state that, according to the wording of the Draft Decision, the DPC has not even considered the imposition of a fine, although we have shown in detail the reasons for the imposition of a fine.

Hence, the question of whether the alleged infringements of the GDPR actually exist and whether a fine should be imposed is therefore a matter for the Board to decide.

2. Comment received from the Portuguese Comissão Nacional de Protecção de Dados (CNPd)

Case XXX/XXXX/XX



COMISSÃO NACIONAL
DE PROTEÇÃO DE DADOS

OPINION/2020/132

1. Pursuant to Article 60(5) of Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR), the Irish Supervisory Authority, as the lead supervisory authority (LSA), submitted a revised draft decision (Case XXXXXXXXXXXX) which it submitted to the supervisory authorities concerned, including the CNPD.
2. This draft follows relevant and reasoned objections raised by several supervisory authorities concerned to the original draft decision issued in Case XXXXXXXXXXXX concerning a complaint by a data subject against Groupon International Limited (Groupon) as controller.
3. In the revised draft decision submitted by the LSA, it is now proposed to apply to the controller a corrective measure under Article 58(2)(b) of the GDPR (cf. facts of the case described in CNPD's Opinion/XXXX/XX), following a position expressed by some concerned authorities.
4. The aim is to achieve greater consistency in the implementation of the GDPR, taking into account more recent decisions by several authorities, including the CNPD, in which that coherence objective was taken into consideration.
5. Thus, in so far as the revised draft decision does not alter the legal classification of the registered infringements (cf. Articles 5(1)(c) and 12(2) and (6) of the GDPR), with which the CNPD has agreed, and considering that no risk to the rights, freedoms and guarantees of the data subjects arises from the application of a sanction (reprimand) - on the contrary, it may have a deterrent effect on conducts which do not fully comply with the GDPR - the CNPD does not oppose the revised draft decision.
6. This opinion shall be made known to the Irish Supervisory Authority and the other supervisory authorities concerned.

Lisbon, 2 November 2020
Filipa Calvão (President)

3. Comment received from the Office of Personal Data Protection (UODO) of Poland

Comment: (en) The Polish SA does not introduce any further comments to the revised draft decision.

Added by: PL - SA Poland (Office for the Protection of Personal Data)

Added on: 03/11/2020 18:47 CET