

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the ‘**GDPR**’);

Having regard to the Act of 1 August 2018 on the organisation of the National Data Protection Commission and the General Data Protection Regime (hereinafter referred to as the ‘**Law of 1 August 2018**’);

Having regard to the Rules of Procedure of the National Data Protection Commission adopted by Decision No 3AD/2020 of 22 January 2020 (hereinafter referred to as the ‘**ROP**’);

Having regard to the complaints procedure before the National Data Protection Commission adopted on 16 October 2020 (hereinafter referred to as the ‘**Complaint Procedure before the CNPD**’);

Having regard to the following:

I. Facts and procedure

1. In the framework of the European cooperation, as provided for in Chapter VII of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR), the Supervisory Authority of Spain submitted to the National Data Protection Commission (hereinafter: “the CNPD”) the complaint of [REDACTED] (national reference of the concerned authority: [REDACTED]) via IMI in accordance with Article 56 procedure - 61804.
2. The complaint was lodged against the controller [REDACTED] ([REDACTED]), who has its main establishment in Luxembourg. Under Article 56 GDPR, the CNPD is therefore competent to act as the lead supervisory authority.
3. Pursuant to the original IMI request, the complainant’s son, aged three year, received a promotional (paper) mail regarding [REDACTED], whilst the latter has never been in any commercial relation with the Controller.
4. The complaint thus concerns the origin and subsequently the objection to any further use of the personal data for marketing reasons.

5. In essence, the complainant asks the CNPD to check on the origin of the personal data of his son and requires his right to object.
6. The complaint is therefore based on Articles 15 and 21 of the GDPR.
7. On the basis of this complaint and in accordance with Article 57(1)(f) GDPR, the CNPD requested the controller to take a position on the facts reported by the complainant and in particular to provide a detailed description of the issue relating to the processing of the complainant's son's data, and in particular with regard to the the origin of the personal data with the controller and the right to erasure.
8. The CNPD received the requested information within the deadlines set.

II. In law

1. Applicable legal provisions

9. Article 77 GDPR provides that *“without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, (...) if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.”*
10. In accordance with Article 15 of the GDPR *“The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information (...) (g) where the personal data are not collected from the data subject, any available information as to their source”;*
11. In accordance with Article 21 (2) of the GDPR, *“where personal data are processed for direct marketing purposes, the data subject shall have the right to object at any time to processing of personal data concerning him or her for such marketing”;*
12. Article 56(1) GDPR provides that *“(…) the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing*

carried out by that controller or processor in accordance with the procedure provided in Article 60”;

13. According to Article 60(1) GDPR, *"The lead supervisory authority shall cooperate with the other supervisory authorities concerned in accordance with this Article in an endeavour to reach consensus. The lead supervisory authority and the supervisory authorities concerned shall exchange all relevant information with each other”;*
14. According to Article 60(3) GDPR, *"The lead supervisory authority shall, without delay, communicate the relevant information on the matter to the other supervisory authorities concerned. It shall without delay submit a draft decision to the other supervisory authorities concerned for their opinion and take due account of their views”;*

2. In the present case

15. Following the intervention of the CNPD, the Controller confirmed that:
 - a customer of the controller different from the complainant (someone close to the complainant's son), who was eligible for the promotional direct mail campaign, used the name, surname and address of the complainant's son as the delivery and billing address information on his account. Whilst the promotional mail was intended for this customer of the controller, the mail was sent to the complainant's son, which was not the intention of the controller.
 - the controller has ensured that no future promotional mailing and marketing will be sent to the name, surname and address of the complainant's son.
 - the controller responded to the complainant to inform him that the controller has taken the above actions.
 - as an additional information, the controller only directs its promotional communications to existing customers (who have registered active accounts with the controller) who have not exercised their choice to opt out of receiving direct mail marketing. (Customers in Spain can change this preference at any time, via [REDACTED]; which is also explained in the controller's Privacy Notice, under the heading "What Choices Do I Have?") In this sense, the controller uses eligible customers' last used billing address as the address to send the direct mail.



Deliberation No 82/RECL28/2023 of 22 September 2023 of the National Data Protection Commission, in a plenary session, on complaint file No 2.888 lodged against the company [REDACTED] via IMI Article 56 procedure 61804

3. Outcome of the case

16. The CNPD, in a plenary session, therefore considers that, at the end of the investigation of the present complaint, the controller has taken appropriate measures to provide the complainant the necessary information and honored the right to object, in accordance with Articles 15 and 21 of the GDPR.
17. Thus, in the light of the foregoing, and the residual nature of the gravity of the alleged facts and the degree of impact on fundamental rights and freedoms, it does not appear necessary to continue to deal with that complaint.
18. The CNPD then consulted the supervisory authority of Spain, pursuant to Article 60(1), whether it agreed to close the case. The Supervisory Authority of Spain, has responded affirmatively, so that the CNPD has concluded that no further action was necessary and that the cross-border complaint could be closed.

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

- To close the complaint file 2.888 upon completion of its investigation, in accordance with the Complaints Procedure before the CNPD and after obtaining the approval of the concerned supervisory authority.

Belvaux, dated 22 September 2023

The National Data Protection Commission

[REDACTED]
Chair

[REDACTED]
Commissioner

[REDACTED]
Commissioner

[REDACTED]
Commissioner



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Indication of remedies

This Administrative Decision may be the subject of an appeal for amendment within three months of its notification. Such an action must be brought by the interested party before the administrative court and must be brought by a lawyer at the Court of one of the Bar Associations.