

**Deliberation No 19/RECL9/2022 of 10 June 2022 of the National Commission for Data Protection sitting in plenary session on complaint file No 2.887 lodged against [REDACTED]**

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<sup>1</sup> August 2018 on the organisation of the National Commission for Data Protection and the General Data Protection Regime (hereinafter referred to as the '**Law of<sup>1</sup> August 2018**');

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

Having regard to the complaints procedure before the National Commission for Data Protection 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 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 Lower Saxony (Germany) submitted to the National Data Protection Commission (hereinafter: "the CNPD") the complaint of [REDACTED] (national reference of the authority concerned: LFD 5.22-025-011-19/013) via IMI according to procedure Article 56-61808.
2. The complaint was lodged against the controller [REDACTED] which has its sole establishment in Luxembourg. Under Article 56 GDPR, the CNPD is therefore competent to act as the lead supervisory authority.
3. The initial claim in IMI stated the following:

*The complainant is bothered with unwanted fax advertisement by the controller [REDACTED]. A written request of the complainant to stop sending direct Marketing has been ignored by the controller.*

4. In essence, the complainant asks the CNPD to ask the controller to respect his right to object.

5. The complaint is therefore based on Article 21 GDPR.
6. On the basis of this complaint and pursuant to Article 57(1)(f) GDPR, the CNPD asked the controller to comment on the facts reported by the complainant and in particular to provide a detailed description of the issue relating to the processing of the complainant's data, and in particular as regards his right to object.
7. The controller provided the requested information within the time limits set by the CNPD.

## II. In law

### 1. Applicable legal provisions

8. Article 77 GDPR provides that *“without prejudice to any other administrative or judicial remedy, any data subject shall have the right to lodge a complaint with a supervisory authority, (...) if he considers that the processing of personal data concerning him or her constitutes a breach of this Regulation.”*
9. In accordance with Article 21(2) GDPR *“Where personal data are processed for marketing purposes, the data subject shall have the right to object at any time to the processing of personal data relating to him or her for such marketing purposes, including profiling insofar as it is linked to such a marketing”;*
10. Article 56(1) GDPR states that *“the supervisory authority of the main establishment or single establishment of the controller or processor shall be competent to act as the lead supervisory authority in respect of the cross-border processing carried out by that controller or processor in accordance with the procedure laid down in Article 60”;*
11. According to Article 60(1) GDPR, *“The lead supervisory authority shall cooperate with the other supervisory authorities concerned in accordance with this Article by endeavouring to reach consensus. The lead supervisory authority and the supervisory authorities concerned shall exchange any relevant information”;*
12. According to Article 60(3) GDPR, *“The lead supervisory authority shall, without delay, communicate 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 with a view to obtaining their opinion and shall take due account of their views”;*

## **2. In the present case**

13. Following the intervention of the Luxembourg supervisory authority, the controller confirmed that:

- In fact, the complainant received unsolicited faxes, but they were addressed to another person (who could have been the former owner of the fax number),
- The personal data concerned was deleted without delay, preventing any other commercial messages.

## **3. Outcome of the case**

14. The Plenary Training therefore considers that, following the investigation of this complaint, the controller has taken the appropriate steps to grant the complainant's request for a right of objection, in accordance with Article 21(2) of the General Data Protection Regulation.

15. Therefore, in the light of the foregoing, and the residual nature of the gravity of the alleged facts and the degree of impact on fundamental rights and freedoms, it does not appear necessary to continue to deal with that complaint.

16. The CNPD then consulted the supervisory authority of Lower Saxony (Germany) under Article 60(1) if it agreed to close the case. The Lower Saxony supervisory authority replied in the affirmative, with the result that the CNPD came to the conclusion that no further action was necessary and that the cross-border complaint could be closed.

**In view of the above, the CNPD, sitting in plenary and deliberating unanimously, decided:**

- Close complaint file No. 2.887 upon completion of its investigation, in accordance with the complaints procedure before the CNPD and after obtaining the agreement of the authority concerned.



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Thus decided in Belvaux on 10 June 2022.

The National Commission for Data Protection

[REDACTED]  
Chair

[REDACTED] [REDACTED]  
Commissioner Commissioner

**Indication of remedies**

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