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DI 2020-10545, IMI case no.
66536

Date of decision:
2023-10-17

Final decision under the General Data Protection Regulation – H & M Hennes & Mauritz GBC AB

Decision of the Swedish Authority for Privacy Protection

The Swedish Authority for Privacy Protection finds that H&M Hennes & Mauritz GBC AB has processed personal data in breach of Article 12.3 and 21.3 of the General Data Protection Regulation (GDPR)¹ by

- regarding complaint 1: continuing to process personal data for direct marketing purposes after the complainant objected to such processing on 5 April 2019 in accordance with the right under Article 21(2),
- regarding complaint 2: continuing to process personal data for direct marketing purposes after the complainant objected to such processing on 4 July 2019 in accordance with the right under Article 21(2),
- regarding complaint 3: continuing to process personal data for direct marketing purposes after the complainant objected to such processing on 3 September 2019 in accordance with the right under Article 21(2),
- regarding complaint 4: continuing to process personal data for direct marketing purposes after the complainant objected to such processing on 31 July 2018 in accordance with the right under Article 21(2),
- regarding complaint 5: continuing to process personal data for direct marketing purposes after the complainant objected to such processing on 1 July 2018 in accordance with the right under Article 21(2),
- regarding complaint 6: continuing to process personal data for direct marketing purposes after the complainant objected to such processing on 8 August 2019 in accordance with the right under Article 21(2).

Postal address:
Box 8114
104 20 Stockholm

Website:
www.my.se

E-mail:
my@my.se

Phone:
08 657 61 00

¹ 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 (General Data Protection Regulation)

The Swedish Authority for Privacy Protection finds that H&M Hennes & Mauritz GBC AB has processed personal data in breach of Article 6.1 of the General Data Protection Regulation by

- regarding complaint 1: processing the complainant's personal data for direct marketing purposes between 7 April 2019 and 2 August 2019 without having a legal basis after the complainant objected to such processing,
- regarding complaint 2: processing the complainant's personal data for direct marketing purposes between 6 July 2019 and 3 October 2019 without having a legal basis after the complainant objected to such processing,
- regarding complaint 3: processing the complainant's personal data for direct marketing purposes between 5 September 2019 and 5 February 2020 without having a legal basis after the complainant objected to such processing,
- regarding complaint 4: processing the complainant's personal data for direct marketing purposes between 2 August 2018 and 16 February 2020 without having a legal basis after the complainant objected to such processing,
- regarding complaint 5: processing the complainant's personal data for direct marketing purposes between August 2018 and May 2019 without having a legal basis after the complainant objected to such processing,
- regarding complaint 6: processing the complainant's personal data for direct marketing purposes between 10 August 2019 and 15 September 2019 without having a legal basis after the complainant objected to such processing,

The Swedish Authority for Privacy Protection finds that H&M Hennes & Mauritz GBC AB, regarding six complaints, has processed personal data in breach of Article 12(2) of the GDPR by not ensuring systems and procedures that have sufficient factored the complainants' exercise of the right to object to direct marketing.

On the basis of Articles 58(2) and 83 of the GDPR, the Swedish Authority for Privacy Protection decides that H&M Hennes & Mauritz GBC AB shall pay an administrative fine of SEK 350 000 (ca 31 000 €) for the infringements found.

Presentation of the supervisory case

The Swedish Authority for Privacy Protection (IMY) has initiated supervision regarding H&M Hennes & Mauritz GBC AB (H&M or the company) due to six complaints. The complaints have been submitted to IMY, as responsible supervisory authority for the company's operations pursuant to Article 56 of the GDPR. The handover has been made from the supervisory authority of the countries where the complainants have lodged the complaints (Poland, Italy and The United Kingdom) in accordance with the provisions of the GDPR on cooperation in cross-border processing.

The case has been handled through written procedure. In the light of the complaint relating to cross-border processing, IMY has used the mechanisms for cooperation and consistency contained in Chapter VII of the GDPR. The supervisory authorities concerned have been the data protection authorities in Germany, Slovenia, France, Denmark, Spain, Norway, Italy, Finland, Poland, Belgium, Portugal, Cyprus, Estonia and Netherlands.

As complaints 4 and 5 have been submitted by the United Kingdom, which has left the Union during the period of the supervisory procedure, IMY has been in contact with the UK Supervisory Authority (ICO) to ensure that a necessary demonstration is avoided. The ICO has no information that it has taken any corrective action in regards to the complaints. It is noted that the ICO's retention period for complaints is two years and therefore they have not kept any information on the complaints. Furthermore, IMY notes that the controller's question, while communicating with IMY, has not indicated that any such measures had been taken by the ICO. It is apparent from Article 3 of the GDPR that the provisions of that regulation apply to a processing of personal data carried out in the context of the activities of the controller's establishment within the Union, whether or not the processing was carried out within the Union. IMY therefore considers that there is no impediment to the inclusion of complaints 4 and 5 in IMY's supervision.

What the complainants and Hennes & Mauritz GBC AB has stated in general

According to the complaints, the complainants received unwanted newsletters from the company even though they objected to having their personal data processed for direct marketing purposes.

The company has stated that it is the data controller for the processing to which the complaints relate.

The company offers its customers three different ways to oppose marketing via newsletters. Customers can change their subscription status under their account settings, unsubscribe via a link provided in each newsletter mailing or contact the company's customer service. The company handles a very large number of subscribers annually and only in a very small part of deregulation cases does some sort of problem arise.

The company confirms that it has received the complainants' objections in a complaint. However, the company has no documented correspondence with the complainants as the retention period for communication with customer service has passed. The company intends to review its retention period when communicating with customer service for the purpose of demonstrating what measures have been taken to comply with data subjects' rights.

Below follows a description of the arguments put forward by the complainants and the company in relation to each complaint.

Complaint 1 (from Poland with national reference number: ██████████)

The complainant states that they objected to receiving direct marketing by filling in the company's forms via account settings and by contacting customer service repeatedly, without success. The complainant contacted both the Polish (obsluga.klienta.p@hm.com) and the UK (customerservice.UK@hm.com) customer service. According to the e-mail correspondence attached to the complaint, the

company informed the complainant on 8 April 2019 that they would not receive any further newsletters. The complainant submitted a summary of e-mails received up until the 1 August 2019.

The company has stated that it unsubscribed the complainant's subscription from the general newsletter on 5 April 2019 but accidentally (and contrary to the internal instructions) did not unsubscribe the complainant from the newsletter linked to the customer club. On 2 August 2019 newsletters related to the customer club were terminated and the complainant has not received any marketing since then. The company has admitted that it did not handle the request in accordance with its procedures but that the mistake cannot occur again because it is no longer technically possible for customer service to unsubscribe a customer from only one type of newsletter.

Complaint 2 (from Italy with national reference number: ██████████)

The complainant states that they objected to receiving direct marketing by using the unsubscribe link in the newsletter e-mail, and by contacting customer service on three occasions without success. In an e-mail to the company on 4 July 2019, the complainant states that they tried to use the unsubscribe link about ten times. The complainant has been in contact with the Italian customer service via service.ent.t@hm.com. On 4 July 2019, the company informed the complainant that customer service had forwarded the case to the competent department and that it might take some time before the complainant's request was fully met. Since then, the complainant has continued to receive newsletters until 3 October 2019.

The company has stated that it unsubscribed the complainant's subscription from the general newsletter on 4 July 2019 but accidentally (and contrary to the internal instructions) did not unsubscribe the complainant from the newsletter linked to the customer club. On 2 October 2019 newsletters related to the customer club were terminated and the complainant has not received any marketing since then. The company has admitted that it did not handle the request in accordance with its procedures but that the mistake cannot occur again because it is no longer technically possible for customer service to unsubscribe a customer from only one type of newsletter.

Complaint 3 (from Italy with national reference number: ██████████)

According to the e-mail correspondence that the complainant attached to the complaint, the complainant contacted the company on 3 September 2019 to object to direct marketing. On the same day, the complainant received e-mails from the company stating that the subscription has been completed. On 7 September 2019, the complainant contacted the company again by e-mail stating that they still receive unwanted e-mails. The complainant received a reply from the company the same day with instructions to change settings under "my pages" and to use the unsubscribe link at the bottom of the company's marketing mails. The complainant replied that they had previously tried the proposed measures about ten times. The complainant has been in contact with the Italian customer service via service.ent.t@hm.com.

The company has stated that it unsubscribed the complainant's subscription from the general newsletter on 3 September 2019 but accidentally (and contrary to the internal instructions) did not unsubscribe the complainant from the newsletter linked to the customer club. On 5 February 2020 newsletters related to the customer club were

terminated and the complainant have not received any marketing since then. The company has admitted that it did not handle the request in accordance with its procedures but that the marketing cannot occur again because it is no longer technically possible for customer service to unsubscribe a customer from only one type of newsletter.

Complaint 4 (from the United Kingdom with national registration number:

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The complainant states that they objected to receiving direct marketing by repeatedly using the unsubscribe link in the newsletter e-mails, by calling customer service and by contacting the company via e-mail on at least two occasions. The complainant has been in contact with the customer service via the e-mail address customerservice@arket.com. The complainant submitted e-mail correspondence with the company and a notification from the company from 26 July 2018 stating that an attempt to unsubscribe had failed. The complainant states in the complaint to the UK Supervisory Authority that they contacted H&M on 31 July 2018. The complainant attached an e-mail from Arket's customer service dated 31 July 2018 containing instructions on what further steps may be taken to object to direct marketing. The complainant also attached e-mail correspondence dated 14, 15, 17 and 18 August 2018. On 18 August 2018, the company informed the complainant that customer service had transferred the case to the competent department and that it could take three to four working days before the complainant's request was fully met. Subsequently, the complainant continued to receive newsletters, later a mail on 2 September 2018, according to a copy of marketing e-mail attached to the complaint.

In its reply, the company stated that it has limited information on the case. The company's customer system shows that the complainant received newsletters up to and including 16 February 2020. Since then, the company has not sent the complainant any newsletters.

Complaint 5 (from the United Kingdom with national registration number:

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The complainant states that they objected to receiving direct marketing by using the unsubscribe link five times without success. The complainant does not state an exact date for the objection. However, the complainant submitted a complaint to the UK data protection authority stating that they had attempted to unsubscribe from the company's newsletter five times during the last four-week period. The complainant also attached the company's latest marketing e-mail dated 18 July 2018.

In its reply, the company stated that the UK data protection authority (ICO)² contacted the company regarding this matter on 20 May 2019. On the same day, the company unsubscribed the complainant from the newsletter. Since then, the complainant has not received any newsletters. On 29 May 2019, ICO informed the company that the complainant had received information that the request had been dealt with. Finally, the company states that the complainant indicates that the company has responded to the complainant on several occasions.

² Information Commissioner's Office

Complaint 6 (from Poland with national registration number: [REDACTED])

The complainant states that they objected to receiving direct marketing by repeatedly using the unsubscribe link in the newsletter e-mails, and by contacting the company at least twice by e-mail and by filling out the company's forms via account settings, without success. The complainant has contacted the Polish customer service via obsugak.enta.p@hm.com. The company informed the complainant on 8 August 2019 that they had been unsubscribed from newsletters but that it may take up to 30 days before the request has been fully met. The complainant attached a copy of a newsletter sent by the company to the complainant's e-mail address on 15 September 2019.

In its reply, the company stated that it lacks information on the case because the complainant requested to have a personal data deleted.

What Hennes & Mauritz GBC AB has stated on measures taken

The company manages a very large number of subscribers annually. The company's assessment is that problems occur only in a small number of unsubscribe cases.

In October 2019, the company set up a special working group consisting of people from different areas of business and competence, e.g. IT development, data protection and marketing. The aim was to put additional resources and more focus on effective ways of solving situations where a few subscribers encountered obstacles.

During the continuous management and improvement work carried out on these issues, the company has identified several reasons that have been addressed by:

- bug fixes linked to customer service manual changes to a customer's subscription status;
- bug fixes associated with subscription status of a member/account holder's account settings and
- adjustment of procedures, working methods and further training of customer service staff.

The company further states that there are several systems involved in the sending of newsletters. In order to further reduce the risk of the consequences of bugs in the technical systems, the company implemented a manual routine in May 2020 to ensure that the update takes place in all systems. This made it possible to proactively correct the subscription status in communicating systems and avoid incorrect mailing of newsletters. This manual routine was automated in July 2020.

On December 8, 2020, the company implemented a technical solution that ensures that all systems involved receive updated information when a customer unsubscribes regardless of previous status.

The company has also introduced systematic flagging features when a subscriber clicks on a unsubscribe link more than once. This allows for measures to be taken to investigate whether there are any problems with the subscription.

Earlier when a customer clicked on the unsubscribe link, a signal was sent to one of the company's systems which in turn communicated with surrounding systems. Since December 2020, the signal is sent directly to the system that sends out the

newsletters. According to the company, this reduces the risk of unsubscribes not going through.

The company is also working to implement a monitoring system that will be able to flag if there are any system problems in connection with an unsubscribe case.

The company also intends to conduct a review of the subscribers of the company's customer club in order to ensure that all subscription statuses are correct.

Statement of reasons for the decision

Applicable provisions, etc.

In order for personal data processing to be considered lawful, at least one of the conditions set out in Article 6(1) of the GDPR must be fulfilled.

Article 21 of the GDPR provides the right to object to processing of personal data that are based on Article 6(1)(e) or 6(1)(f). According to Article 21(2) the data subject shall have the right to object at any time to the processing of personal data for direct marketing purposes concerning him or her. Article 21(3) stipulates that where the data subject objects to processing for direct marketing purposes, the personal data shall no longer be processed for such purposes.

According to Article 12(3) GDPR, a request under Article 21 of the GDPR is to be dealt with without undue delay and in any event no later than one month after receipt of the request. The period of one month may be extended by a further two months if the request is particularly complex or the number of requests received is high.

If the deadline of one month is extended, the controller shall inform the data subject of the extension. The extension of the time limit shall be notified within one month of receipt of the request. The controller shall also state the reasons for the delay.

Article 12(2) of the GDPR states that the controller shall facilitate the exercise of the data subject's rights under Articles 15–22.

According to recital 59 of the GDPR, modalities should be provided for facilitating the exercise of the data subject's rights under this Regulation, including mechanisms to request and, if applicable, obtain, free of charge, in particular, access to and rectification or erasure of personal data and the exercise of the right to object. The controller should also provide means for requests to be made electronically, especially where personal data are processed by electronic means.

Assessment of IMY

Has there been a breach of Article 12(2) GDPR?

IMY has to consider whether H&M is related to the six components sufficient to facilitate the controller's exercise of the right of objection in accordance with the GDPR. Consequently, IMY does not investigate the company's new procedures related to the period after the controller's requests have already been dealt with.

According to IMY, it follows from Article 12.2 and recital 59 of the GDPR that, in the present case, the company had an obligation to have internal procedures that enable data subjects to exercise their rights in a simple and effective manner. That obligation

requires that the controller regularly monitor and ensure that the procedures and systems used enable data subjects to easily exercise their rights.

The company has stated that it was possible, at the time of the complaints, to unsubscribe data subjects from different types of newsletters. As regards to complaints 1-3, the company found that the complainants were unsubscribed from the general newsletter but not from the newsletter linked to the customer club. Regarding complaints 4-6, the company lacks sufficient information. The company has stated that it is no longer possible for customer service to only unsubscribe from general newsletters and such errors can therefore not occur anymore.

Furthermore, regarding complaint 2-6, the complainants stated that they have used the unsubscribe link in the newsletter several times, in some cases up to a dozen, without the newsletter being discontinued. Five of the complainants, from three different countries, have repeatedly used of the unsubscribe link without success. The company has presented a number of general and extensive technical measures taken to reduce the risk of unsubscribing not going through.

The complainants in complaints 1, 2, 3, 4 and 6, having found that the unsubscribe link did not work, have contacted the company in various ways. The complainants have overall contacted the customer service in Italy, Poland and the United Kingdom and the customer service of the Arket brand on various occasions over a period of approximately one year without the customer service being able to correctly perceive and manage their requests.

In view of the fact that the company has already been made aware of deficiencies concerning, among other things, the unsubscribe function in June 2018, IMY considers that the company has waited too long (until October 2019) to initiate measures to resolve them.

In an overall assessment of the facts set out above, IMY finds that, with regard to the six complaints, there were deficiencies in the company's process to handle objections under Article 21(2) of the GDPR which resulted in complainants not being able to easily exercise their rights under the Regulation. The company has thus infringed Article 12(2) of the GDPR.

Right to object — has there been a breach of Article 21(3), Article 12(3) and Article 6(1) GDPR?

The overall context and starting point

If a data subject objects to direct marketing pursuant to Article 21(2) of the GDPR, personal data shall no longer be processed for such purposes pursuant to Article 21(3). In the case of a request pursuant to Article 21(2), the controller shall, in accordance with Article 12(3) of the GDPR, without undue delay and at the latest within one month of receipt of the request take action and provide information on the measures taken. A request for objection to direct marketing pursuant to Article 21(3) which is not met without undue delay therefore constitutes an infringement of both Article 21(3) and Article 12(3).

Following an objection, further processing of the data subject's personal data is no longer permitted for direct marketing purposes. There is thereafter no legal basis for the processing in accordance with Article 6(1). Further processing for marketing purposes, after the controller receives an objection and should have taken action

According to the objection pursuant to Article 21(3), therefore also constitutes an infringement of Article 6(1) of the GDPR. In order to determine when the company no longer had a legitimate basis for the processing, it must be assessed when an objection at least should have been dealt with.

Since the right to object to direct marketing under Article 21(2) of the GDPR is unconditional, there is no scope for individual examination of the admissibility of such an objection. The handling of objections to direct marketing should therefore be a routine measure for the controller and should be carried out expeditiously.

The GDPR emphasises the importance of properly evaluating and mitigating any risks to the rights and freedoms of individuals resulting from the processing of personal data. An example of a risk to individuals is that marketing may have the purpose of influencing data subjects' choices and purchasing habits, and it is therefore important that H&M as a big company, have functioning procedures and processes in place to handle data subjects' requests for objection promptly.

H&M has an automated system that aims to easily capture a data subject's intention to object to direct marketing and to unsubscribe from unwanted newsletters in a simple and quick way. Although the complainants' intentions, to object to direct marketing, have nevertheless had to be repeated. Furthermore, in complaints 1, 2, 3, 4 and 6, the complainants' objections had to be raised by various means of contact with the company, either by using the company's unsubscribe link or by contacting the company in different ways or by a combination of them.

It is particularly urgent for the company to act swiftly when receiving indications that the complainants are unable to exercise the right of objection because it could mean that the complainants receive marketing communications against their will despite previous objections. Which was the case in these six complaints.

In the view of the foregoing, IMY considers that the timeframe within which the company should have acted in these six individual cases should be very short. The duration of this period must be assessed in the light of the circumstances of the case and may vary, for example, depending on whether the request of unsubscription takes place automatically or manually. In the light of the circumstances of this case, IMY considers that two days was a reasonable time for the company to handle the objection in the six cases in question.

Starting point in the respective complaints

Complaint 1 (from Poland with national reference number: ██████████)

The complainant does not state exactly what date they first objected to direct marketing to the company by logging in the company's former account settings. However, the complainant attached e-mail correspondence with the company stating that the company informed the complainant on 8 April 2019 that it would not receive any further newsletters.

The company cannot confirm the date of the complainant's objection because the customer services correspondence with the complainant has been deleted.

The investigation does not make it possible to establish the exact date on which the complainant first objected to direct marketing. However, the investigation shows that, in any case, the complainant objected to direct marketing on 5 April 2019 since, in its

reply, the company stated that the complainant's subscription from its general newsletter was cancelled on that day.

After the complainant objected to the processing of its personal data for direct marketing purposes in any event on 5 April 2019, the company continued to send newsletters to the complainant until 2 August 2019.

In the present case, the sending of direct marketing continued another four months after the complainant's objection. IMY considers that H&M should have dealt with the complainant's objection within at least two days. The company has therefore not dealt with the complainant's objection without undue delay and thus acted in breach of Articles 12(3) and 21(3) of the GDPR.

Consequently, the company had no legal basis according to Article 6(1) of the GDPR for processing the complainant's personal data for direct marketing purposes after that period. Against this background, IMY finds that from 7 April 2019 until the newsletters ceased, H&M has processed the complainant's personal data in breach of Article 6(1) of the GDPR.

Complaint 2 (from Italy with national reference number: ██████████)

The complainant does not state exactly what date they first objected to direct marketing to the company by using the unsubscribe link. However, the complainant has attached e-mail correspondence with the company from 4 July 2019, which shows that the complainant had already attempted to use the unsubscribe link a dozen times.

The company cannot confirm the date of the complainant's objection because the customer services correspondence with the complainant has been deleted.

The investigation does not make it possible to establish the exact date on which the complainant first objected to direct marketing. However, the investigation shows that, in any event, the complainant objected to direct marketing on 4 July 2019 because, in its reply, the company stated that the complainant's subscription from its general newsletter was cancelled on that date.

Since the complainant objected to the processing of its personal data for direct marketing purposes in any case on 4 July 2019, the company continued to send newsletters to the complainant until 3 October 2019.

In the present case, the sending of direct marketing continued another three months after the complainant's objection. IMY considers that H&M should have dealt with the complainant's objection within at least two days. The company has therefore not dealt with the complainant's objection without undue delay and thus acted in breach of Articles 12(3) and 21(3) of the GDPR.

Consequently, the company has no legal basis according to Article 6(1) of the GDPR for processing the complainant's personal data for direct marketing purposes after that period. In view of this, IMY finds that from 6 July 2019, until the newsletters ceased, H&M has processed the complainant's personal data in breach of Article 6(1) of the GDPR.

Complaint 3 (from Italy with national reference number: ██████████)

The complainant does not state exactly what date they first objected to direct marketing to the company by using the unsubscribe link. However, the complainant submitted e-mail correspondence with the company from 3 September 2019. In the correspondence the complainant expresses a request to object to direct marketing. In subsequent correspondence, the complainant also stated that they had already used the unsubscribe link a dozen times.

The company cannot confirm the date of the complainant's objection because the customer services correspondence with the complainant has been deleted.

The investigation does not make it possible to establish the exact date on which the complainant first objected to direct marketing. However, the investigation shows that, in any event, the complainant objected to direct marketing on 3 September 2019, when the complainant contacted the company via e-mail.

After the complainant objected to the processing of its personal data for direct marketing purposes at least on 3 September 2019, the company continued to send newsletters to the complainant until 5 February 2020.

In the present case, the sending of direct marketing continued for another five months after the complainant's objection. IMY considers that H&M should have dealt with the complainant's objection within at least two days. The company has therefore not dealt with the complainant's objection without undue delay and thus acted in breach of Articles 12(3) and 21(3) of the GDPR.

Consequently, the company had no legal basis according to Article 6(1) of the GDPR for processing the complainant's personal data for direct marketing purposes after that period. Against this background, IMY finds that from 5 September 2019 until the sending ceased, H&M processed the complainant's personal data in breach of Article 6(1) of the GDPR.

Complaint 4 (from the United Kingdom with national registration number:

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The complainant does not state exactly what date they first objected to direct marketing to the company by using the unsubscribe link. However, the complainant has attached a copy of a notice from the company that an unsubscribe attempt failed on 26 July 2019 as well as e-mail correspondence with the company from 31 July 2019 in which the company gives further instructions on what can be done when the unsubscribe link does not work.

The company cannot confirm the date of the complainant's objection because the customer services correspondence with the complainant has been deleted.

The investigation does not make it possible to establish the exact date on which the complainant first objected to direct marketing. However, the investigation shows that, in any event, the complainant objected to direct marketing on 31 July 2018, when the company gave the complainant further instructions regarding the cancellation.

After the complainant objected to the processing of their personal data for direct marketing purposes in any event on 31 July 2018, the company continued to send newsletters to the complainant until 16 February 2020.

In the present case, the sending of direct marketing continued another 18 months after the complainant's objection. IMY considers that H&M should have handed the complainant's objection within at least two days. The company has therefore not dealt with the complainant's objection without undue delay and thus acted in breach of Articles 12(3) and 21(3) of the GDPR.

Consequently, the company had no legal basis according to Article 6(1) of the GDPR for processing the complainant's personal data for direct marketing purposes after that period. Against this background, IMY finds that from 2 August 2018 until the sending ceased, H&M processed the complainant's personal data in breach of Article 6(1) of the GDPR.

Complaint 5 (from the United Kingdom with national registration number:

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In its complaint to the ICO, the complainant attached a copy of the marketing e-mail they received from H&M dated 18 July 2018. The complainant states that it was the last newsletter received. The complainant also states that, during the four weeks before the complaint was lodged, the complainant attempted to unsubscribe from its marketing communications without success. It is not apparent from the complaint what date the complainant first objected to direct marketing.

The company states that it has received the complainant's objection but cannot confirm the date on which the objection was made. The company notes that the complainant indicates that it responded to the complainant on several occasions.

IMY considers that the investigation has shown nothing but that, at least by July 2018, when the complainant lodged a complaint with the UK data protection authority, the complainant has objected to the company's direct marketing. The assessments made, in particular, in the light of the shortcomings concerning the different handling of the general newsletter and the newsletter connected to the customer club at the time

of the complaint and that the complainant stated that they had tried to unsubscribe for a period of four weeks and that the company has stated that they had received the complainant's objection. On 20 May 2019, the complainant was unsubscribed from the company's newsletter.

In the present case, the sending of direct marketing continued for another 9 months after the complainant's objection. IMY considers that H&M should have dealt with the complainant's objection within at least two days. The company has therefore not dealt with the complainant's objection without undue delay and thus acted in breach of Articles 12(3) and 21(3) of the GDPR.

Consequently, the company has no legal basis according to Article 6(1) of the GDPR for processing the complainant's personal data for direct marketing purposes after that period. Against this background, IMY finds that from August 2018 until the sending ceased, H&M processed the complainant's personal data in breach of Article 6(1) of the GDPR.

Complaint 6 (from Poland with national registration number: [REDACTED])

The complainant does not state exactly what date they first objected to direct marketing to the company by using the unsubscribe link. However, the complainant has attached e-mail correspondence with the company from 8 August 2019. It is clear from the correspondence that the complainant received newsletters despite the frequent use of the unsubscribe link.

The company cannot confirm the date of the complainant's objection when the customer services correspondence with the complainant was deleted.

The investigation does not make it possible to establish the exact date on which the complainant first objected to direct marketing. On the other hand, the investigation shows that the complainant, in any event, objected to direct marketing on 8 August 2019, when the complainant e-mailed the company.

The company states that it lacks information on the complainant at issue. However, the complainant has attached a copy of the direct marketing mailing received on 15 September 2019. The e-mails addressed to the e-mail address used by the complainant in correspondence both with the company and with the Polish data protection authority. IMY has found no reason to question the documents submitted by the complainant. The complainant objected to direct marketing in any event on 8 August 2019 and IMY's assessment is that H&M has sent newsletters to the complainant until 15 September 2019. The company has not been able to show that it informed the complainant of the delay or that the delay was justified.

In the present case, the sending of direct marketing continued for a month and one week after the complainant's objection. IMY considers that H&M should have dealt with the complainant's objection in any event within two days. The company has therefore not dealt with the complainant's objection without undue delay and thus acted in breach of Articles 12(3) and 21(3) of the GDPR.

Consequently, the company had no legal basis according to Article 6(1) of the GDPR for processing the complainant's personal data for direct marketing purposes after that period. Against this background, IMY finds that from 10 August 2019 until the sending

ceased, H&M processed the complainant's personal data in breach of Article 6(1) of the GDPR.

Choice of corrective measure

Applicable provisions

It follows from Article 58(2) and Article 83(2) of the GDPR that IMY has the power to impose administrative fines in accordance with Article 83. Depending on the circumstances of the case, administrative fines shall be imposed in addition to or in place of the other measures referred to in Article 58(2), such as injunctions and prohibitions. In the case of a minor infringement, IMY may, as stated in recital 148, instead of imposing a fine, issue a reprimand pursuant to Article 58(2)(b). Account needs to be taken to the aggravating and mitigating circumstances of the case, such as the nature, gravity and duration of the infringement as well as past infringements of relevance.

Each supervisory authority shall ensure that the enforcement of administrative fines in each individual case is effective, proportionate and deterrent. This is stated in Article 83(1) of the GDPR. Article 83(2) states the factors to be taken into account in order to determine whether an administrative fine should be imposed, but also what should affect the size of the administrative fine.

When assessing the amount of the fine, account must be taken, inter alia, of Article 83(2)(a) (the nature, gravity and duration of the infringement), (c) (measures taken by the controller) and (k) (other aggravating or mitigating factor such as direct or indirect economic gain).

The European Data Protection Board (EDPB) has adopted guidelines on the calculation of administrative fines under the GDPR aimed at creating a harmonised methodology and principles for the calculation of fines.³

According to Article 83(5) GDPR, in case of breaches of Articles 6, 12 and 21 GDPR, administrative fines may be imposed up to EUR 20 million or, in the case of companies, up to 4% of the total global annual turnover of the previous financial year, whichever is higher. When determining the maximum amount for an administrative fine to be imposed on an undertaking, an undertaking should be understood to be an undertaking in accordance with Articles 101 and 102 TFEU (see recital 150 of the GDPR). The Court of Justice case law states that this includes any entity engaged in economic activities, regardless of the ultimate legal form and the way of its funding, and even if the ultimate legal sense consists of several natural or legal entities.⁴

Administrative fine

IMY has above assessed that the company, by continuing with direct marketing communications after the complainants objected to the processing of their personal data for such purposes, has infringed Articles 6(1), 12(2), 12(3) and 21(3) of the GDPR.

In the light of the fact that the company, in six separate cases, failed to properly deal with the complainants' requests for objection to direct marketing and that the company continued to process the complainants' personal data for direct marketing for up to 18

³ EDPB Guidelines 04/2022 on the calculation of administrative fines under the GDPR (finally adopted on 24 May 2023)

⁴ See judgement in Akzo Nobel C-516/15 EU C 2017 314 paragraph 48

months, the infringements cannot be considered minor. IMY therefore finds no reason to replace the administrative fine with a reprimand. An administrative fine must therefore be imposed on the company.

The same or linked processing operations

IMY has stated above that the company has acted in breach of several articles of the General Data Protection Regulation in relation to the six companies. However, the infringements have involved one and the same conduct in relation to the respective companies and thus constitute only one infringement per company. The infringements relating to the six companies in this case are all the result of the company's inability to properly address the companies' objections to direct marketing. The company's action in relation to the six objections to which the companies relate is therefore to be seen as six linked personal data processing operations. IMY therefore considers that the infringements in question consist of linked data processing operations resulting from Article 83(3).

Determination of an administrative fine

IMY considers that the company's turnover to be used as a basis for calculating the administrative fines that may be imposed on its parent company H&M Hennes & Mauritz AB (556042-7220). The information gathered shows that H&M Hennes & Mauritz AB's annual turnover for 2022 was approximately SEK 223 553 000 000. Since IMY has found infringements of Article 6(1) 12 2, 12(3) and 21, the maximum administrative fine that can be determined in the case pursuant to Article 83(5) of the GDPR is 4 per cent of this amount, i.e. SEK 8 942 120 000.

In assessing the seriousness of the infringements, IMY has considered the following factors. The right to object is a central right under the GDPR and there are high demands on controllers to put in place systems, processes and procedures in order to be able to continuously satisfy data subjects' right to object in an appropriate and timely manner. IMY notes that the duration of the infringements has been long, the deficiencies have been brought to attention to the company by several companies over a period from June 2018 to September 2019. The deficiency has affected data subjects in three different countries. The company should have acted on the alleged deficiency as early as it was brought to its attention in the context of the first company.

IMY notes that, in the context of the companies' objections, the company has taken measures, albeit inadequate, with an aim of cancelling the sending of the general newsletter. Furthermore, the infringements did not relate to sensitive personal data and the infringements were found to have affected six companies. In addition, two of the companies relate to a period close in time when the GDPR entered into force. IMY also notes that the company annually handles a very large number of subscribers and that, according to the company's own information, not only a small part of these errors occur. The nature of the infringements had limited negative effects on the data subjects.

Overall, considering the facts set out in this decision, IMY considers that the infringements in question are of a low degree of seriousness. The starting point for calculating the fine should therefore be set relatively low in relation to the maximum amount in question. In addition to assessing the gravity of the infringement, IMY shall assess whether there is any aggravating or mitigating circumstances that have a bearing on the amount of the fine.

IMY considers that there are no additional aggravating circumstances, other than those considered in the assessment of the severity above, which affect the amount of the fine. As a mitigating circumstance, IMY places particular emphasis on that the company in October 2019, set up a special working group aiming to put additional resources and more focus on effectively solving situations where a few subscribers encountered obstacles. The work has brought the company to identify several reasons that have been addressed such as bug fixes, adjustment of procedures, working methods and further training of customer service staff. Since there are several systems involved in the sending of newsletters the company implemented a manual routine in May 2020 to proactively correct the subscription status in communication systems and avoid incorrect mailing of newsletters. This manual routine was automated in July 2020.

In view of the nature and gravity of the infringements, aggravating and mitigating circumstances and the fact that the decision concerns the company's conduct in six individual cases, IMY sets the administrative fine for H&M Hennes & Mauritz GBC AB at SEK 350 000 (ca 31 000 €). IMY considers that this amount is effective, proportionate and dissuasive in the present case.

This decision has been made by [REDACTED], Head of Unit, after presentation by legal advisor [REDACTED]. [REDACTED] Director of Legal Affairs, has also participated in the final proceedings.