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) by

- regard ng comp a nt 1: cont ng comp to process personal data for direct market ng purposes after the comp a nt obj ected to such process ng on 5 April 2019 in accordance w th the rg ht under Art c e 21(2),

- regard ng comp a nt 2: cont ng comp to process personal data for direct market ng purposes after the comp a nt obj ected to such process ng on 4 July 2019 in accordance w th the rg ht under Art c e 21(2),

- regard ng comp a nt 3: cont ng comp to process personal data for direct market ng purposes after the comp a nt obj ected to such process ng on 3 September 2019 in accordance w th the rg ht under Art c e 21(2),

- regard ng comp a nt 4: cont ng comp to process personal data for direct market ng purposes after the comp a nt obj ected to such process ng on 31 July 2018 in accordance w th the rg ht under Art c e 21(2),

- regard ng comp a nt 5: cont ng comp to process personal data for direct market ng purposes after the comp a nt obj ected to such process ng on 8 August 2019 in accordance w th the rg ht under Art c e 21(2).

1 Regulation (EU) 2016/679 OF THE EUROPEAN PARL AMENT 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 Swed sh Author ty for Pr vacy Protect on f nds that H&M Hennes & Maur tz GBC AB has processed persona data n breach of Art c e 6.1 of the Genera Data Protect on Regu at on by

- regard ng comp a nt 1: process ng the comp a nant s persona data for d rect market ng purposes between 7 Apr 2019 and 2 August 2019 w thout hav ng a e ga bas s after the comp a nant objected to such process ng,

- regard ng comp a nt 2: process ng the comp a nant s persona data for d rect market ng purposes between 6 Ju y 2019 and 3 October 2019 w thout hav ng a e ga bas s after the comp a nant objected to such process ng,

- regard ng comp a nt 3: process ng the comp a nant s persona data for d rect market ng purposes between 5 September 2019 and 5 February 2020 w thout hav ng a e ga bas s after the comp a nant objected to such process ng,

- regard ng comp a nt 4: process ng the comp a nant s persona data for d rect market ng purposes between 2 August 2018 and 16 February 2020 w thout hav ng a e ga bas s after the comp a nant objected to such process ng,

- regard ng comp a nt 5: process ng the comp a nant s persona data for d rect market ng purposes between August 2018 and May 2019 w thout hav ng a e ga bas s after the comp a nant objected to such process ng,

- regard ng comp a nt 6: process ng the comp a nants persona data for d rect market ng purposes between 10 August 2019 and 15 September 2019 w thout hav ng a e ga bas s after the comp a nant objected to such process ng,

The Swed sh Author ty for Pr vacy Protect on f nds that H&M Hennes & Maur tz GBC AB, regard ng a s x comp a nts, has processed persona data n breach of Art c e 12(2) of the GDPR by not ensur ng systems and procedures that have suff c ent y fac tated the comp a nants exerc ese of the r rght to object to d rect market ng.

On the bas s of Art c es 58(2) and 83 of the GDPR, the Swed sh Author ty for Pr vacy Protect on dec des that H&M Hennes & Maur tz GBC AB sha pay an adm n strat ve f ne of SEK 350 000 (ca 31 000 €) for the nfr ngements found.

Presentation of the supervisory case

The Swed sh Author ty for Pr vacy Protect on (IMY) has n tated superv s on regard ng H&M Hennes & Maur tz GBC AB (H&M or the company) due to s x comp a nts. The comp a nts have been subm t ed to IMY, as respons b e superv sory author ty for the company s operat ons pursuant to Art c e 56 of the GDPR. The handover has been made from the superv sory author ty of the countr es where the comp a nants have odged the r comp a nts (Po and, Ita y and The Un ted K ngdom) n accord ance w th the prov s ons of the GDPR on cooperat on n cross-border process ng.
The case has been handled through written procedure. In the light of the consent, comp a nt re at ng to cross-border process ng, IMY has used the mechan sms for cooperat on and cons stency conta ned n Chapter VII of the GDPR. The superv sor y author tes concerned have been the data privacy protect on author t es n Germany, S oven a, France, Denmark, Spa n, Norway, Ita y, F n and, Po and, Be g um, Portuga , Cyprus, Eston a and Nether ans.

As comp a nts 4 and 5 have been subm ted by the Un ted K ngdom, wh ch has eft the Un on dur ng the per od of the superv sor y procedure, IMY has been n contact w th the UK Superv sor y Author ty (ICO) to ensure that a ne b s n dem s tuat on s avo ded. The ICO has no nformat on that t has taken any correct ve act on n regards to the comp a nts. It s noted that the ICO s retent on per od for comp a nts s two years and therefore they have not kept any nformat on on the comp a nts. Furthermore, IMY notes that the contro er n quest on, wh e commun cat ng w th IMY, has not nd cated that any such measures had been taken by the ICO. It s apparent from Art c e 3 of the GDPR that the prov s ons of that regu at on app y to a process ng of persona data carr ed out n the context of the act v tes of the contro er s estab lshmen t w th n the Un on, whether or not the process ng was carr ed out w th n the Un on. IMY therefore cons ders that there s no mped ment to the nc us on of comp a nts 4 and 5 n IMY s superv sor s on.

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

Accord ng to the comp a nts, the comp a nts rece ved unwanted news etters from the company even though they objected to hav ng the r persona data processed for d rect market ng purposes.

The company has stated that t s the data contro er for the process ng to wh ch the comp a nts re ate.

The company offers ts customers three d fferent ways to oppose market ng v a news etters. Customers can change the r subscr pt on status under the r account sett ngs, unsubscr be v a a nk prov ded n each news etter ma ng or contact the company s customer serv ce. The company hand es a very arge number of subscr bers annua y and on y n a very sma part of dereg strat on cases does some sort of prob em ar se.

The company conf rms that t has rece ved the comp a nts' object ons n a comp a nts. However, the company has no documented correspond ence w th the comp a nts as the retent on per od for commun cat on w th customer serv ce has passed. The company ntends to rev ew ts retent on per od when commun cat ng w th customer serv ce for the purpose of demonstrat ng what measures have been taken to comp y w th data subjects rghts.

Be ow fo ows a descr pt on of the arguments put forward by the comp a nts and the company n re at on to each comp a nt.

*Complaint 1 (from Poland with national reference number: [redacted])*

The comp a nant states that they objected to rece v ng d rect market ng by f ng n the company's forms v a account sett ngs and by contact ng customer serv ce repeated y, w th out success. The comp a nant contacted both the Po sh (obs ugak enta.p @hm.com) and the UK (customerserv ce.UK@hm.com) customer serv ce. Accord ng to the e-ma correspondence attached to the comp a nt, the
company nformed the comp a nant on 8 Apr 2019 that they wou d not rece ve any further new s et ters. The comp a nant subm tted a summary of e-ma s rece ved up un til the 1 august 2019.

The company has stated that t unsubsc rbed bed the comp a nant s subsc r pt on from the genera news etter on 5 Apr 2019 but acc denta y (and contrary to the r ntorna nstruct ons) d d not unsubsc rbe the comp a nant from the news etter nked to the customer c ub. On 2 August 2019 news et ters re ated to the customer c ub were term nated and the comp a nant have not rece ved any market ng s nce then. The company has adm tted that t d d not hand e the request n ac cordance w th ts procedures but that the m stake cannot occur aga n because t s no onger techn ca y poss b e for customer serv ce to unsubsc rbe a customer from on y one type of news etter.

Complaint 2 (from Italy with national reference number:)

The comp a nant states that they objected to rece v ng d rect market ng by us ng the unsubsc rbe nk n the news etter e-ma , and by contact ng customer serv ce on three occas ons w thout success. In an e-ma to the company on 4 Ju y 2019, the comp a nant states that they tr ed to use the unsubsc rbe nk about ten t mes. The comp a nant has been n contact w th the lta an customer serv ce v a serv z oc ent . t@hm.com. On 4 Ju y 2019, the company nformed the comp a nant that customer serv ce had forwarded the case to the competent department and that t mght take some t me before the comp a nant's request was fu y met. S nce then, the comp a nant has cont nued to rece ve news et ters unt 3 October 2019.

The company has stated that t unsubsc rbed bed the comp a nant s subsc r pt on from the genera news etter on 4 Ju y 2019 but acc denta y (and contrary to the r ntorna nstruct ons) d d not unsubsc rbe the comp a nant from the news etter nked to the customer c ub. On 2 October 2019 news et ters re ated to the customer c ub were term nated and the comp a nant have not rece ved any market ng s nce then. The company has adm tted that t d d not hand e the request n ac cordance w th ts procedures but that the m stake cannot occur aga n because t s no onger technca y poss b e for customer serv ce to unsubsc rbe a customer from on y one type of news etter.

Complaint 3 (from Italy with national reference number:)

Accord ng to the e-ma corre spon dence that the comp a nant attached to the comp a nt, the comp a nant conta cted the company on 3 September 2019 to obj ect to d rect mar ket ng. On the same day, the comp a nant rece ved e-ma s from the company stat ng that the unsubsc r pt on has been comp eted. On 7 September 2019, the comp a nant conta cted the company aga n by e-ma stat ng that they st rece ve unwant ed e-ma . The comp a nant rece ved a rep y from the company the same day w th nstruct ons to change sett ngs under “my pages” and to use the unsubsc rbe nk at the bottom of the company s mar ket ng ma ngs. The comp a nant rep ed that they had prev ous y tr ed the proposed measures about ten t mes. The comp a nant has been n contact w th the lta an customer serv ce v a serv z oc ent . t@hm.com.

The company has stated that t unsubsc rbed bed the comp a nant s subsc r pt on from the genera news etter on 3 September 2019 but acc denta y (and contrary to the r ntorna nstruct ons) d d not unsubsc rbe the comp a nant from the news etter nked to the customer c ub. On 5 February 2020 news et ters re ated to the customer c ub were
term nated and the comp a nant have not rece ved any market ng s nce then. The company has adm ted that t d d not hand e the request n accordance w th ts procedures but that the m stake cannot occur aga n because t s no onger techn ca y poss b e for customer serv ce to unsubscr be a customer from on y one type of news etter.

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

The comp a nant states that they objected to rece v ng d rect market ng by repeated y us ng the unsubscr be nk n the news etter e-ma , by ca ng customer serv ce and by contact ng the company v a e-ma on at east two occas ons. The comp a nant has been n contact w th the customer serv ce v a e-ma address customercserv ce@arket.com. The comp a nant subm ted e-ma correspondence w th the company and a not f cat on from the company from 26 Ju y 2018 stat ng that an attempt to unsubscr be had fa ed. The comp a nant states n the comp a nt to the UK Superv sory Author ty that they contacted H&M on 31 Ju y 2018. The comp a nant attached an e-ma from Ar ket’s customer serv ce dated 31 Ju y 2018 conta n ng nstruct ons on what further steps may be taken to object to d rect market ng. The comp a nant a so attached e-ma correspondence dated 14, 15, 17 and 18 August 2018. On 18 August 2018, the company nformed the comp a nant that customer serv ce had transferred the case to the competent department and that t cou d take three to four work ng days before the comp a nant’s request was fu y met. Subsequent y, the comp a nant cont nued to rece ve news etter s, n ter a a on 2 September 2018, accord ng to a copy of market ng e-ma attached to the comp a nt.

In ts rep y, the company stated that t has m ted nformat on on the case. The company’s customer system shows that the comp a nant rece ved news etter s up to and nc ud ng 16 February 2020. S nce then, the company has not sent the comp a nant any news etter s.

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

The comp a nant states that they objected to rece v ng d rect market ng by us ng the unsubscr be nk f ve t mes w thout success. The comp a nant does not state an exact date for the object on. However, the comp a nant subm ted a comp a nt to the UK data protect on author ty stat ng that they had attempted to unsubscr be from the company’s news etter f ve t mes dur ng the ast four-week per od. The comp a nant a so attached the company’s ast market ng e-ma dated 18 Ju y 2018.

In ts rep y, the company stated that the UK data protect on author ty (ICO)2 contac ted the company regard ng th s matter on 20 May 2019. On the same day, the company unsubscr bed the comp a nant from the news etter. S nce then, the comp a nant has not rece ved any news etter s. On 29 May 2019, ICO nformed the company that the comp a nant had rece ved nformat on that the request had been dea t w th. F na y, the company states that the comp a nt nd cates that the company has responded to the comp a nant on severa occas ons.

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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 repeated unsolicited email contact, and by contacting the company at least twice by email and by phone, the company forms a account settings without success. The complainant has contacted the Postmaster service by email at postmaster@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 fulfilled. The complainant attached a copy of a newsletter sent by the company to the complainant's email address on 15 September 2019.

In response, the company stated that it acknowledges the complaint because the company requested to have a persona 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 on a small number of unsubscribed cases.

In October 2019, the company set up a specific group consisting of people from different areas of business and competence, e.g. IT, data operation, data protection, and marketing. The aim was to allocate resources and focus on effective targets so that the database is managed where a few unsubscribed encounters are encountered.

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

- bug fixes related to customer service manuals, changes to customer service subscriptions,
- bug fixes associated with subscriptions on status of a member/account holder's account settings,
- adjustment of procedures, working methods, and further training for customer service staff.

The company further states that there are several systems no reduced to no sending of newsletters. In order to further reduce the risk of the consequences of bugs in the technology systems, the company implemented a manual route on May 2020 to ensure that the update takes place in a system. This enabled a database to be updated in real time on a subscription status notification cat and ng systems and avoided incorrect management of newsletters. This manual route was automated June 2020.

On December 8, 2020, the company implemented a technical solution that ensures that all systems no reduced receive updated notification on when a customer unsubscribed regardless of previous status.

The company has so far introduced the system to faggotting features when a subscriber account changed more than once. This effort is to prevent measures to be taken to investigate whether there are any problems with the unsubscribed party on.

Earlier when a customer clicked on the unsubscribe button, a signature was sent to one of the companies' systems which then communicated with the surrounding systems. Since December 2020, the signature sent directly to the system that sends out the
news letters. Accord ng to the company, th s reduces the r sk of unsubs c r pt ons not ng through.

The company s a so work ng to mp ement a mon tor ng system that w be ab e to f ag f there are any system c prob ms n connect on w th an unsubs c r pt on case.

The company a so ntends to conduct a rev ew of the subs c r bers of the company s customer cub n order to ensure that a subs c r pt on stat u ses are correct.

Statement of reasons for the decision

Applicable provisions, etc.

In order for persona data process ng to be cons dered awfu , at east one of the cond ons set out n Art c e 6(1) of the GDPR must be fu fed.

Art c e 21 of the GDPR prov des the rght to obj ect to process ng of persona data that are based on Art c e 6(1)(e) or 6(1)(f). Accord ng to Art c e 21(2) the data subject sha have the rght to obj ect to any t me to the process ng of persona data for d rect market ng purposes concern ng h m or her. Art c e 21(3) st pu ates that where the data subject obj ects to process ng for d rect market ng purposes, the persona data sha no onger be processed for such purposes.

Accord ng to Art c e 12(3) GDPR, a request under Art c e 21 of the GDPR s to be dea t w th w th out undue de ay and n any event no ater than one month a fter rece pt of the request. The per od of one month may be extended by a further two months f the request s part cu ar y comp ex or the number of requests rece ved s h gh.

If the dead ne of one month s extended, the contro er sha nform the data subject of the extens on. The extens on of the t me n t sha be not f ed w th n one month of rece pt of the request. The contro er sha a so state the reasons for the de ay.

Art c e 12(2) of the GDPR states that the contro er sha fac tate the excerc se of the data subject s rghts under Art c es 15–22.

Accord ng to rec ta 59 of the GDPR moda es sho u d be prov ded for fac tat ng the excerc se of the data subject s rghts under th s Regu at on, nc ud ng me han sms to request and, f app cab e, obta n, free of charge, n part cu ar, access to and rect f cat on or erasure of persona data and the excerc se of the rght to obj ect. The contro er sho u d a so prov de means for requests to be made e ecton ca y, espec a y where persona data are processed by e ecton c means.

Assessment of IMY

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

IMY has to cons der whether H&M n re at on to the s x comp a nts suff c ent y fac tated the comp a nts excerc se of the rght of obj ect on n accordance w th the GDPR. Consequent y, IMY does not nvest gate the company s new procedures re at ng to the per od after the comp a nts requests have a ready been dea t w th.

Accord ng to IMY, t fo ows from art c e 12.2 and rec ta 59 of the GDPR that, n the present case, the company had an ob gat on to have nterna procedures that enab e data subjects to excerc se the rghts n a s mp e and effect ve manner. That ob gat on
requests that the controller ensure that the procedures and systems used enable data subjects to exercise their rights.

The company has stated that at the time of the comp a nts, to unsubscribe be data subjects from different types of newsletters. As regards to comp a nts 1-3, the company found that the comp a nts were unsubscribed from the general newsletter but not from the news lettering the customer to. Regarding comp a nts 4-6, the company accepts consent format on. The company has stated that t's no longer possible for customer service to on any unsubscribe from general newsletters and such errors can therefore not occur anymore.

Furthermore, regarding comp a nts 2-6, the comp a nts stated that they have used the unsubscribe be ngd sent times, n some cases up to a dozen, wth the newsletter being do not subscribed. For the comp a nts, from three dfferent countries, have repeated the use of the unsubscribe by n an successful. The company has presented a number of genera and extensive use technique measures taken to reduce the risk of unsubscribe by not going through.

The comp a nts n comp a nts 1, 2, 3, 4 and 6, hav ng found that the unsubscribe by nkg is not working, have contacted the company n various ways. The comp a nts have overa contact the customer service in Italy, Po and the United Kingdom and the customer service of the Arket brand on various occasions over a period of approximate y one year with the customer service by ng ab e to correct y perce ve and manage the requests.

In view of the fact that the company has been made aware of generating concerns, among other things, the unsubscribe pt on function in June 2018, IMY considers that the company has wa ted too long (unt October 2019) to take measures to resolve them.

In an overall assessment of the facts set out above, IMY finds that, with regard to the saxes comp a nts, there were defences that the company's process to handle objections under Act c e 21(2) of the GDPR which resulted in comp a nts not being able to exercise their rights under the Regulation. The company has thus nfr nged Art c e 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 market ng pursuant to Art c e 21(2) of the GDPR, persona data sha no longer be processed for such purposes pursuant to Art c e 21(3). In the case of a request pursuant to Art c e 21(2), the controller is required to ensure that the account is closed or updated. For one month of receive pt of the request take action and provide information on the measures taken. A request for object on to direct market ng pursuant to Art c e 21(3) which is not met wth undue de ay therefore const tutes an nfr ngement of both Art c e 21(3) and Art c e 12(3).

Owing an object on, further process ng of the data subject's persona data is no longer permitted for direct market ng purposes. There s thereafter no ega bas s for the process ng n accordance with Art c e 6(1). Further process ng for market ng purposes, after the controller receive an object on and shou d have taken act on
accord ng to the object on pursuant to Art c e 21(3), therefore a so const tates an nfr ngement of Art c e 6(1) of the GDPR. In order to determ ne when the company no onger had a ega bas s for the process ng, t must be assessed when an object on at ast shou d have been dea t w th.

Snce the r ght to object to d rect market ng under Art c e 21(2) of the GDPR s uncond tona, there s no scope for nd v dua exam nat on of the adm ss b ty of such an object on. The hand ng of object ons to d rect market ng shou d therefore be a rout ne measure for the contro er and shou d be carr ed out expended t ou s y.

The GDPR emphas ses the mportance of proper y evau ng and m t gat ng any r sks to the rghts and freedoms of nd v dua s resu tng from the process ng of persona data. An examp e of a r sk to nd v dua s s that market ng may have the purpose of unc ng data subjects cho ses and purchas ng hab ts, and t s therefore mportant that H&M as a b g company, have funct ons procedures and processes np ace to hand e data subjects mquests for object on on prompt y.

H&M has an automated system that a ms to eas y capture a data subject s ntent on to object to d rect market ng and to unsubscr be from unwant ed news ett ers a s mp e and qu ck way. A the comp a nants ntent ons, to object to d rect market ng, have neverthe ess had to be mre tng. Furthermore, n comp a nts 1, 2, 3, 4 and 6, the comp a nants object ons had to be ras ed by var ous means of contact w th the company, e ther by us ng the company's unsubscr be nk or by contact ng the company nd fherent ways or by a comb nat on of them.

It s part cu ar y urgent for the company to act sw ft y when rece v ng nd cat ons that the comp a nants are unab e to exerce the rght of object on because t cou d mean that the comp a nants rece ve market ng commun cat ons aga nst the w despt evous object ons. Wh ch was the case n these s x comp a nts.

In the v ew of the forego ng, IMY cons ders that the tme frame w th n wh ch the company shou d have acted n these s x nd v dua cases shou d be very short. The durat on of th s per od must be assessed n the ght of the ccumstances of the case and may vary, for exam e, depend ng on whether the request of unsubscr pt on takes p ace automat ca y or manua y. In the ght of the ccumstances of th s case, IMY cons ders that two days was a reasonab e t me for the company to hand e the object on n the s x cases n quest on.

Starting point in the respective complaints

Complaint 1 (from Poland with national reference number: ______________________)
The company stated that the comp a nant's subscrpt on from ts genera news etter was cance ed on that day.

After the comp a nant objected to the process ng of ts persona data for d rect market ng purposes n any event on 5 Apr 2019, the company cont nued to send news etters to the comp a nant unt 2 August 2019.

In the present case, the send ng of d rect market ng cont nued another four months after the comp a nant's object on. IMY cons ders that H&M shou d have dea t w th the comp a nant's object on w th n at east two days. The company has therefore not dea t w th the comp a nant's object on w thout undue de ay and thus acted n breach of Art cs 12(3) and 21(3) of the GDPR.

Consequent y, the company had no ega bas s accord ng to Art c e 6(1) of the GDPR for process ng the comp a nant's persona data for d rect market ng purposes after that per od. Aga ns th s background, IMY f nds that from 7 Apr 2019 unt the news etter ma ngs ceased, H&M has processed the comp a nant's persona data n breach of Art c e 6(1) of the GDPR.

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

The comp a nant does not state exact y what date they f rst objected to d rect market ng to the company by us ng the unsubscr be nk. However, the comp a nant has attached e ma correspondence w th the company from 4 Ju y 2019, wh ch shows that the comp a nant had a ready attempted to use the unsubscr be nk a dozen t mes.

The company cannot conf rm the date of the comp a nant's object on because the customer serv ce s correspondence w th the comp a nant has been de eted.

The nvest gat on does not make t poss b e to estab sh the exact date on wh ch the comp a nant f rst objected to d rect market ng. However, the nvest gat on shows that, n any event, the comp a nant objected to d rect market ng on 4 Ju y 2019 because, n ts rep y, the company stated that the comp a nant's subscrpt on from ts genera news etter was cance ed on that date.

Since the comp a nant objected to the process ng of ts persona data for d rect market ng purposes n any case on 4 Ju y 2019, the company cont nued to send news etters to the comp a nant unt 3 October 2019.

In the present case, the send ng of d rect market ng cont nued another three months after the comp a nant's object on. IMY cons ders that H&M shou d have dea t w th the comp a nant's object on w th n at east two days. The company has therefore not dea t w th the comp a nant's object on w thout undue de ay and thus acted n breach of Art cs 12(3) and 21(3) of the GDPR.

Consequent y, the company has no ega bas s accord ng to Art c e 6(1) of the GDPR for process ng the comp a nant's persona data for d rect market ng purposes after that per od. In v ew of th s, IMY f nds that from 6 Ju y 2019, unt the news etter ma ngs ceased, H&M has processed the comp a nant's persona data n breach of Art c e 6(1) of the GDPR.

**Complaint 3 (from Italy with national reference number: )**
The company cannot confirm the date of the comp a nant's objection because the customer service correspondence with the company has been deleted.

After the comp a nant 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 comp a nant until 5 February 2020.

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

Consequently, the company had no legal basis to Art. 6(1) of the GDPR for processing the comp a nant'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 comp a nant's personal data in breach of Art. 6(1) of the GDPR.
Complaint 4 (from the United Kingdom with national registration number: )

The comp a nant does not state exact y what date they f rst objected to d rect market ng to the company by us ng the unsubscr be nk. However, the comp a nant has attached a copy of a not ce from the company that an unsubscr pt on attempt ed on 26 Ju y 2019 as we as e-ma correspondence w th the company from 31 Ju y 2019 n wh ch the company g ves further nstruct ons on what can be done when the unsubscr be nk does not work.

The company cannot con rm the date of the comp a nant s object on because the customer serv ce s correspondence w th the comp a nant has been de eted.

The nvest gat on does not make t poss b e to estab sh the exact date on wh ch the comp a nant f rst objected to d rect market ng. However, the nvest gat on shows that, n any event, the comp a nant objected to d rect market ng on 31 Ju y 2018, when the company gave the comp a nant further nstruct ons regard ng the cance at on.

After the comp a nant objected to the process ng of the r persona data for d rect market ng purposes n any event on 31 Ju y 2018, the company cont nued to send news etters to the comp a nant unt 16 Februa y 2020.

In the present case, the send ng of d rect market ng cont nued another 18 months after the comp a nant s object on. IMY cons ders that H&M shou d have hand ed the comp a nant s object on w th n at east two days. The company has therefore not dealt w th the comp a nant s object on w th out undue de ay and thus acted n breach of Art c es 12(3) and 21(3) of the GDPR.

Consequent y, the company had no ega bas s accord ng to Art c e 6(1) of the GDPR for process ng the comp a nant s persona data for d rect market ng purposes after that per od. Aga nst th s background, IMY f nds that from 2 August 2018 unt the send ng ceased, H&M processes the comp a nant s persona data n breach of Art c e 6(1) of the GDPR.

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

In ts comp a nt to the ICO, the comp a nant attached a copy of the market ng e-ma they rece ved from H&M dated 18 Ju y 2018. The comp a nant states that t was the ast news etter rece ved. The comp a nt a so states that, dur ng the four weeks before the comp a nt was odged, the comp a nant attempted to unsubscr be from ts market ng commun cat ons w th out success. It s not apparent from the comp a nt what date the comp a nant f rst objected to d rect market ng.

The company states that t has rece ved the comp a nant s object on but cannot con rm the date on wh ch the object on was made. The company notes that the comp a nt nd cates that t responded to the comp a nant on severa occas ons.

IMY cons ders that the nvest gat on has shown noth ng but that, at east by Ju y 2018, when the comp a nant odged a comp a nt w th the UK data protect on author ty, the comp a nant has objected to the company s d rect market ng. The assessment s made, n part cu ar, n the ght of the shortcom ngs concern ng the d fferent hand ng of the genera news etter and the news etter connected to the customer c ub at the t me
of the comp a nt and that the comp a nant stated that they had tr ed to unsubscr be for a per od of four weeks and that the company has stated that they had rece ved the comp a nant s object on. On 20 May 2019, the comp a nant was unsubscr bed from the company s news etter.

In the present case, the send ng of d rect market ng cont nued for another 9 months after the comp a nant s object on. IMY cons ders that H&M shou d have dea t w th the comp a nant s object on w th n at east two days. The company has therefore not dea t w th the comp a nant s object on w thout undue de ay and thus acted n breach of Art c es 12(3) and 21(3) of the GDPR.

Consequent y, the company has no ega bas s accord ng to Art c e 6(1) of the GDPR for process ng the app cant s persona data for d rect market ng purposes after that per od. Aga nst th s background, IMY f nds that from August 2018 unt the send ng ceased, H&M processed the comp a nant s persona data n breach of Art c e 6(1) of the GDPR.

Complaint 6 (from Poland with national registration number: **********)

The comp a nant does not state exact y what date they f rst objected to d rect market ng to the company by us ng the unsubscr be nk. However, the comp a nant has attached e-ma correspondence w th the company from 8 August 2019. It s c ear from the correspondence that the comp a nant rece ved news etters desp te the frequent use of the unsubscr be nk.

The company cannot conf rm the date of the comp a nant s object on when the customer serv ce s correspondence w th the comp a nant was de eted.

The nvest gat on does not make t poss b e to estab sh the exact date on wh ch the comp a nant f rst objected to d rect market ng. On the other hand, the nvest gat on shows that the comp a nant, n any event, objected to d rect market ng on 8 August 2019, when the comp a nant e-ma ed the company.

The company states that t a ck s nformat on on the comp a nt at issue. However, the comp a nant has attached a copy of the d rect market ng ma ng rece ved on 15 September 2019. The e-ma s add ressed to the e-ma add ress used by the comp a nant n correspondence both w th the company and w th the Po sh data protect on author ty. IMY has found no reason to quest on the documents subm tied by the comp a nant. The comp a nant objected to d rect market ng n any event on 8 August 2019 and IMY s assessment s that H&M has sent news etters to the comp a nant unt 15 September 2019. The company has not been ab e to show that t nformed the comp a nant of the de ay or that the de ay was just f ed.

In the present case, the send ng of d rect market ng cont nued for a month and one week after the comp a nant s object on. IMY cons ders that H&M shou d have dea t w th the comp a nant s object on n any event w th n two days. The company has therefore not dea t w th the comp a nant s object on w thout undue de ay and thus acted n breach of Art c es 12(3) and 21(3) of the GDPR.

Consequent y, the company had no ega bas s accord ng to Art c e 6(1) of the GDPR for process ng the comp a nant s persona data for d rect market ng purposes after that per od. Aga nst th s background, IMY f nds that from 10 August 2019 unt the send ng
ceased, H&M processed the comp a nant s persona data n breach of Art c e 6(1) of the GDPR.

**Choice of corrective measure**

*Applicable provisions*

If t ows from Art c e 58(2)( ) and Art c e 83(2) of the GDPR that IMY has the power to mpse adm n strat ve f nes n accordance w th Art c e 83. Depend ng on the c rumstances of the case, adm n strat ve f nes sha be mposed n add ton to or n p ace of the other measures referred to n Art c e 58(2), such as njunct ons and prob t ons. In the case of a m nor nfr ngement, IMY may, as stated n recta 148, nstead of mpos ng f on, ssue a repr mand pursuant to Art c e 58(2)(b). Account needs to be taken to the aggravat ng and m t gat ng c rumstances of the case, such as the nature, grav ty and durat on of the nfr ngement as we as past nfr ngements of re evance.

Each superv sory author ty sha ensure that the enforcement of adm n strat ve f nes n each nd v dua case s effect ve, proprot ona and deterr nt. Th s s stated n Art c e 83(1) of the GDPR. Art c e 83(2) states the facors to be taken nto account n order to determ ne whther an adm n strat ve f ne shou d be mposed, but a so what shou d affect the s ze of the adm n strat ve f ne.

Wh e assess ng the amount of the f ne, account must be taken, n ter a a, of Art c e 83(2)(a) (the nature, grav ty and durat on of the nfr ngement), (c) (measures taken by the contro er) and (k) (other aggravat ng or m t gat ng facors such as d rect or nd rect econom c ga n).

The European Data Protect on Board (EDPB) has adopted gu de ses on the ca cu at on of adm n strat ve f nes under the GDPR a med at creat ng a harm on sed methodogy and pr nc pes for the ca cu at on of f nes.3

Accord ng to Art c e 83(5) GDPR, a case of breaches of Art c es 6, 12 and 21 GDPR, adm n strat ve f nes may be mpsoed up to EUR 20 m on or, n the case of compan es, up to 4 % of the tota goba annua turnover of the prevous f nanc year, wh chever s h gher. When determ ng the max mum amount for an adm n strat ve f ne to be mposed on an undertak ng, an undertak ng shou d be understood to be an undertak ng n accordance w th Art c es 101 and 102 TFEU (see reca 150 of the GDPR). The Court of Just ce s case aw states that th s nc udes any ent ty engaged n econom c act v ees, regard ess of the un t s ega form and the way of ts fund ng, and even f the un t n a ega sense cons sts of severa natura or ega ent ees.4

*Administrative fine*

IMY has above assessed that the company, by cont nu ng w th d rect market ng commun cat ons after the comp a nants objected to the process ng of the r persona data for such purp oses, has nfr nged Art c es 6(1), 12(2), 12(3) and 21(3) of the GDPR.

In theght of the fact that the company, n s x separate cases, fa ed to proper y dea w th the comp a nants requests for object on to d rect market ng and that the company cont nu ed to process the comp a nants persona data for d rect market ng for up to 18

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3 EDPB Guidelines 04/2022 on the calculation of administrative fines under the GDPR (finally adopted on 24 May 2023)
4 See judgement i Akzo Nobel C-516/15 EU C 2017 314 paragraph 48
months, the nfr ngements cannot be cons dered m nor. IMY therefore f nds no reason to rep ace the adm n strat ve f ne w th a repr mand. An adm n strat ve f ne must therefore be mposed on the company.

The same or linked processing operations
IMY has stated above that the company has acted n breach of severa art c es of the Genera Data Protect on Regu at on n re at on to the s x comp a nts. However, the nfr ngements have nvo ed one and the same conduct n re at on to the respect ve comp a nts and thus const tute on y one nfr ngement per comp a nt. The nfr ngements re at ng to the s x comp a nts n th s case are a the resu t of the company s nab ty to proper y address the comp a nants object ons to d rect market ng. The company s act on n re at on to the s x object ons to wh ch the comp a nts re ate s therefore to be seen as s x nked persona data process ng operat ons. IMY therefore cons ders that the nfr ngements n quest on cons st of nked data process ng operat ons resu t ng from Art c e 83(3).

Determination of an administrative fine
IMY cons ders that the company s turnover to be used as a bas s for ca cu at ng the adm n strat ve f ne s that may be mposed on t s ts parent company H&M Hennes & Maur tz AB (556042-T220). The nformat on gathered shows that H&M Hennes & Maur tz AB s annua turnover for 2022 was approx mate y SEK 223 553 000 000. Snce IMY has found nfr ngements of Art c e 6(1) 12 2, 12(3) and 21, the max mum adm n strat ve f ne that can be determ ned n the case pursuant to Art c e 83(5) of the GDPR s 4 per cent of th s amount, .e. SEK 8 942 120 000.

In assess ng the ser ousness of the nfr ngements, IMY has cons dered the fo ow ng factors. The rght to object s a centra rght under the GDPR and there are gh demands on contro ers to put np ace systems, processes and procedures n order to be abe to cont nuous y sat sfy data subjects rght to object n an appro ate and t me y manner. IMY notes that the durat on of the nfr ngements has been ong, the def c enc es has been brought to atten on to the company by severa comp a nts over a per od from June 2018 to September 2019. The def c ency has affected data subjects n three d ferent countr es. The company shou d have acted on the a eged def c ency a ready when t was brought to ts atten on n the context of the f rst comp a nt.

IMY notes that, n the context of the comp a nts object ons, the company has taken measures, a be t nadequate, w th an a m of cance ng the send ng of the genera news etter. Furthermore, the nfr ngements d d not re ate to sens t ve persona data and the nfr ngements were found to have affected s x comp a nts. In add t on, two of the comp a nts re ate to a per od c ose n t me when the GDPR entered nto force. IMY a so notes that the company annua y hand es a very arge number of sub cbers and that, accord ng to the company s own nformat on, n on y a sma part of these errors occur. The nature of the nfr ngements had m ted negat ve e fects on the data subjects.

Ove ra, cons der ng the facts set out n th s dec s on, IMY cons ders that the nfr ngements n quest on are of a ow degree of ser ousness. The start ng po nt for ca cu at ng the f ne shou d therefore be set re at ve y ow n re at on to the max mum amount n quest on. In add t on to assess ng the grav ty of the nfr ngement, IMY sha assess whether there s any aggravate ng or m t gal ng c rcumstances that have a bear ng on the amount of the f ne.
IMY consders that there are no add t ona aggrvat ng c rcumstances, other than those consdered n the assessment of the sever ty above, wh ch affect the amount of the f ne. As a m t gat ng c rcumstance, IMY paces part cu ar emph s on that the company n October 2019, set up a spec a work ng group a m ng to put add t ona resources and more focus on effect ve y so v ng s tuat ons where a few unsubscr bes encountered obstac es. The work has brought the company to dent fy severa reasons that have been addressed such as bug f xes, adjustment of procedures, work ng methods and further tra n ng of customer serv ce staff. S nce there are severa systems nvo ved n the send ng of news etters the company mp emented a manua rout ne n May 2020 to proact ve y correct the subscr pt on status n commun cat ng systems and avo d ncrc nat ng of news etters. Th s manua rout ne was automated n Ju y 2020

In v ew of the nature and grav ty of the nfr ngements, aggrvat ng and m t gat ng c rcumstances and the fact that the dec s on concerns the company s conduct ns x nd v dua cases, IMY sets the adm n strat ve f ne for H&M Hennes & Maur tz GBC AB at SEK 350 000 (ca 31 000 €). IMY consders that th s amount s effect ve, proort onate and d ssuas ve n the present case.

Th s dec s on has been made by, Head of Un t, after presentat on by ega adv sor, D rector of Lega Affa rs, has a so part c pated n the f na proceed ngs.