

**Commission Resolution No 15/2025 of 31 January 2025
national for data protection in training
plenary on Complaint File No 3.375 lodged at
against the company '██████████'**

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 (' **GDPR**');

Having regard to the Law of¹ August 2018 on the organisation of the National Data Protection Commission and the General Data Protection Scheme ('the **Law of 1^{August} 2018**');

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

Having regard to the procedure relating to complaints before the National Data Protection Commission adopted on 16 October 2020 ('the **procedure relating to complaints before the CNPD**');

Having regard to:

I. Facts and procedure

1. On 22 June 2019, the National Data Protection Commission (hereinafter: the CNPD) received a complaint from ██████████, residing at ██████████ (hereinafter: **the complainant**).
2. The complaint was lodged against ██████████, established at ██████████ (' ██████████').
3. The complainant claims that:
 - he made a request to ██████████ to erase his personal data, after terminating his customer relationship and cancelling his subscription to the ██████████;
 - ██████████ confirmed to him on the same day that his personal data had been deleted from his database;
 - however, the complainant continued to receive marketing emails and e-mails more than a month after the confirmation of erasure.
4. In essence, the complainant asks the CNPD to order ██████████ to grant his request for erasure.

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5. The complaint is therefore based on Article 17 GDPR.
6. On the basis of that complaint and pursuant to Article 57(1) (f) of the GDPR, the CNPD asked ██████████ to:
 - specify which entity would be considered as controller in relation to ██████████'s customer database; and
 - in the event that this entity is ██████████, to take a position on the facts reported by the complainant.
7. The company ██████████, established in ██████████ (██████████), replied:
 - whereas it is to be considered as controller in relation to the personalisation and sending of prospection communications of ██████████ in Belgium and Luxembourg;
 - the complainant's request for erasure has been successfully processed; and
 - concerning the sending of emails after confirmation of the deletion of the complainant's data:
 - i. its various databases are automatically synchronised, allowing all changes made to the data contained in them to be taken into account;
 - ii. the sending of the survey email after the deletion confirmation is due to a problem of synchronisation between the database in which the erasure was carried out and the database used for sending marketing emails;
 - iii. it analysed the causes of that problem and took steps to remedy it.
 - concerning the sending of mail after confirmation of the erasure of the complainant's data:
 - i. it works with third parties, to whom it gives instructions, to send such letters;
 - ii. this would involve significant planning including a selection of the group of customers targeted by the sending of letters, the transmission of those customers' data to the third party responsible for sending the mail, and the actual sending;
 - iii. this planning time would explain that there is a mismatch between the ██████████ database and the third-party shipment database;
 - iv. in the present case, the selection of the group of customers targeted by the letter at issue took place before the complainant's request for erasure;



- v. it would revise its procedure for sending marketing mail, with a view to reducing the synchronisation time between its database and that of the third party to 10 days before the mail was delivered to the post office.

8. In an email of 23 August 2019, the CNPD informed the complainant of the follow-up given to his complaint by (1) informing him of the information referred to in paragraph 7 above, (2) informing him that it considered his intervention to have been completed in the light of those elements, unless he received new marketing communications from the end of July 2019 indicating that his data might not have been properly deleted, and (3) informing him that, in the latter case, the investigation of his complaint would continue in collaboration with the Belgian Data Protection Authority (DPA), on account of the fact that the controller is located in Belgium.

By two emails of 23 August 2019, the complainant informed the CNPD that he had received a new prospection email from ██████████ on the same day, and requested further processing of his

9. complaint, since his request for erasure had still not been granted.
10. On 5 September 2019, the CNPD submitted the complaint to the DPA under the European cooperation procedure under Chapter VII of the GDPR on IMI (procedure number Article 56-75987).
11. The DPA handled the complaint as lead authority by assigning it the national reference number DOS-2019-05424.
12. On 23 November 2020, the DPA contacted the CNPD by email with a view to informing it of the developments in the file following its handling, namely:
- The email address to which the prospection email of 23 August 2019 was sent was not linked to his name or other email address to the controller, so it was not possible for the controller to link the email address to which the marketing email of 23 August 2019 was sent to his request for erasure;
 - A request for opposition has been made from the email address to which the prospection email of 23 August 2019 was sent and that request has been granted, no further prospection email having been sent by ██████████ to that address since that date;

The DPA also communicated that it intended to submit a decision to take no further action on that basis, with the consequence that Article 60(8) of the GDPR would apply and that it would therefore be for the CNPD to adopt that decision.

13. On 30 July 2021, the CNPD informed the complainant of the developments referred to in paragraph 11 above, inviting him to submit any reactions by 30 August 2021 at the latest so that

the DPA could take them into account when concluding his complaint.

14. In the absence of the complainant's return on 30 August 2021, the CNPD informed the DPA by email on 6 September 2021 that no new elements were to be taken into account in the continuation of its decision-making process.
15. On 25 October 2023, the DPA submitted on IMI (procedure number Article 60-570893) a draft decision rejecting the complaint within the meaning of Article 60(8) GDPR, pursuant to Article 60(3) GDPR (see Annex).

11. The law

1. Applicable law

16. Article 77 of the GDPR provides that *"Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, J, if it considers that the processing of personal data relating to him or her infringes this Regulation."*
17. According to Article 57(1) (f) GDPR, each supervisory authority within its territory *"shall handle complaints lodged by a data subject or a body, organisation or association in accordance with Article 80, shall examine the subject matter of the complaint, to the extent appropriate, and shall inform the complainant of the progress and the outcome of the investigation within a reasonable period of time. .J"*
18. Article 56(1) GDPR provides that *"(...) the supervisory authority of the main establishment or single establishment of the controller or processor shall be competent to act as lead supervisory authority in relation to the cross-border processing carried out by that controller or processor in accordance with the procedure laid down in Article 60"*
19. According to Article 60(1) GDPR *"The lead supervisory authority shall cooperate with the other supervisory authorities concerned in accordance with this"*

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Article by striving to reach consensus. The lead supervisory authority and the supervisory authorities concerned shall exchange all relevant information;

20. Under Article 60(3) of the 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 for their opinion and shall take due account of their views';
21. According to Article 60(6) GDPR, "where none of the other CSAs has objected to the draft decision submitted by the LSA (...), the LSA and the CSAs shall be deemed to approve and are bound by that draft decision";
22. Article 60(8) GDPR provides that "where a complaint is refused or rejected, the supervisory authority with which the complaint has been lodged shall adopt the decision, notify it to the complainant and inform the controller thereof".

2. In the present case

23. The Plenary Training notes that the draft decision rejecting the complaint within the meaning of Article 60(8) of the GDPR submitted by the DPA has not been the subject of any objection by the supervisory authorities concerned, including the CNPD.
24. Therefore, in accordance with Article 60(8) GDPR, the Plenary Training adopts this decision, notifies it to the complainant and informs the controller.
25. Pursuant to paragraph 239 of EDPB Guidelines 02/2022 on the application of Article 60 GDPR, the NCO requests the DPA to inform the controller of this decision on its behalf.
26. The CNPD has investigated the complaint in accordance with Article 57(1) (f) GDPR, with due diligence, and hereby informs the complainant of the follow-up given to his complaint, in accordance with Articles 57 (1) (f) and 77 (2) GDPR.



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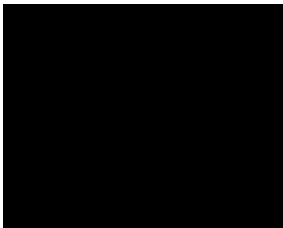
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SUPERVISOR

In the light of the above, the CNPD, sitting in plenary formation and voting unanimously, decided:

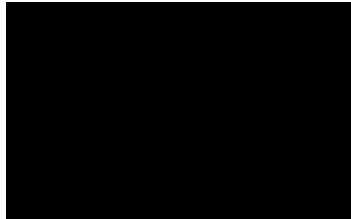
- adopt the attached draft decision rejecting the DPA, submitted on IMI under procedure number Article 60-570893; and consequently reject Complaint File 3.375, pursuant to Article 60(8) GDPR.

So decided in Belvaux on 31 January 2025.

The National Data Protection Commission



President



Commissioner



Commissioner

Reference to appeal possibilities

This administrative decision may be the subject of an appeal for alteration within three months of its notification. That 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.

Appendix: draft decision to reject the DPA submitted on IMI under procedure number Article 60-570893