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## 1) Vermerk

### **Decision pursuant to Article 60 Paragraph 7 GDPR**

**(IMI case no. 49178/IMI entry no. 50869)**

**Complaint by [REDACTED] against the enterprise**



**because of open data origin in connection with an advertising letter.**

On 04 October 2018 I submitted a draft decision concerning the above mentioned complaint for your opinion. Since within the four-week-period pursuant to Article 60 para. 4 GDPR there wasn't any objection, I hereby adopt the following decision pursuant to Article 60 para. 7 GDPR.

The enterprise [REDACTED] stated its position concerning the complaint in a letter on 24 August 2018.

According to this statement the [REDACTED] processed address details from the directory of the Balearic Tourism Authority for advertising purposes for customer acquisition.

As an allowing legal basis Article 6 para. 1 lit. f GDPR could be considered. According to this processing is lawful if it is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests

or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

In recital 47 (last sentence) it is pointed out that processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.

But this is not to be understood as privileged treatment. The balancing of interest remains an obligation. Therefore it is questionable whether the fundamental rights and freedoms of the data subject don't prevail. The interest of the data subject is to be assessed as low, if data have been made public officially and are available for everyone. Furthermore, in the frame of the assessment, nature, content and significance of the data involved are to be compared with the purpose of the data processing. These are, in the present case, address details and the combination of information: the address of the holiday home and the name of the owner.

According to the present case legitimate interests of the petitioner were not presented and are not recognizable.

On the whole Article 6 para. 1 lit. f GDPR can be considered as an allowing legal basis.

The advertising flyers were dispatched before the GDPR came into force and therefore at a point of time when the obligation to inform according to Article 13 and 14 GDPR did not exist. But according to the now applicable law Article 14 par. 2 lit. f GDPR the data subject would have to be informed, from which source the personal data originate and, if

necessary, whether they come from publicly available sources. The enterprise is to be informed about this for future advertising mails.

On behalf of the authority

sgd

