

Litigation Chamber

Decision on the merits 78/2021 of 14 July 2021

File number: DOS-2019-05089

Subject: Transfer of a customer's personal data, without their consent, by  
a bank to another banking agent

The Litigation Chamber of the Data Protection Authority, made up of Mr. Hielke Hijmans,  
Chairman, and Messrs. Dirk Van Der Kelen and Romain Robert;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 relating to the protection  
of natural persons with regard to the processing of personal data and to the free movement  
of this data, and repealing Directive 95/46/EC (General Data Protection Regulation),  
hereinafter "GDPR";

Considering the law of December 3, 2017 creating the Data Protection Authority, hereinafter LCA;

Having regard to the internal regulations as approved by the House of Representatives on December 20, 2018  
and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;  
made the following decision regarding:

The complainant:

Madame X, hereinafter "the complainant";

The defendant :

Y, hereinafter "the defendant".

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Decision on the merits 78/2021 - 2/6□

# I. Facts and procedure□

1. On October 4, 2019, the complainant filed a complaint with the Data Protection Authority□

against the defendant.□

The subject matter of the Complaint relates to the defendant's transfer of customer data without the consent of□

the plaintiff to another branch manager, following the defendant's decision to terminate□

definitely to the collaboration with the branch manager who managed the banking portfolio of the□

complainant.□

2. On October 7, 2019, the complaint was declared admissible by the Front Line Service on the basis of the□

articles 58 and 60 of the LCA and the complaint is forwarded to the Litigation Chamber under article 62,□

§ 1 of the LCA.□

3. On December 4, 2019, the Litigation Division decides, pursuant to Article 95, § 1, 1° and Article 98□

of the ACL, that the case can be dealt with on the merits.□

4. On December 5, 2019, the parties concerned are informed by registered letter of the provisions□

as set out in article 95, § 2 as well as in article 98 of the LCA. They are also informed,□

under Article 99 of the LCA, time limits for transmitting their conclusions.□

The deadline for receipt of the Respondent's submissions in response has been set for January 14, 2020,□

that for the conclusions in reply of the complainant on January 28, 2020 and that for the conclusions□

in reply of the defendant on February 11, 2020.□

5. On December 9, 2019, the complainant requested a copy of the file (art. 95, § 2, 3° of the LCA), which was sent to her□

transmitted on December 17, 2019. The complainant accepts all communications relating to the case by□

electronic way.□

6. On January 10, 2020, the Respondent accepts all communications relating to the case by way of□

electronic.□

7. On January 13, 2020, the Litigation Chamber receives the submissions in response from the defendant,□

which states that it works with a network of independent banking agents, which should be able to distinguish independent brokers. Independent banking agents work on behalf of and for the defendant's account and act as subcontractors, all working on the IT platform of Y, according to the same processes of Y and are subject to the same procedures, rules of conduct and checks. Therefore, the client is not the client of the independent banking agent, but of the defendant. This means that there is no transfer of data from one controller to another controller, because the data remains within Y and therefore with the same controller of the treatment. Customers are informed of this in the General Banking Regulations, as well as than in the respondent's privacy statement.

Decision on the merits 78/2021 - 3/6

The management of the complainant's data was transferred to another bank branch following the cessation of collaboration with the complainant's managing agency at the time. According to respondent, such a transfer was necessary to ensure continuity of service. Normally, in transfer of customer portfolio management, customers are informed for a few weeks at beforehand and have time to react. In this case, collaboration with the bank agent manager was terminated at short notice; the complainant therefore did not have the necessary time to react but she still has the option of changing banking agent after the transfer. The defendant adds that within Y, a working group ensures that the client portfolio transfer process and the customer-friendly communication.

8. Following these conclusions in response, the Litigation Division did not receive any conclusions in reply of the plaintiff, nor of the submissions in reply of the defendant.

## II. Motivation

### II.1.

Reciprocal relationship between controller and processor

9. The Litigation Division finds that the defendant must be qualified as the data controller at the meaning of article 4. 7) of the GDPR<sup>1</sup>. In this regard, the defendant refers in particular to the General Rules

of Y's banking operations, more particularly in point 1.7.2. : "The bank intervenes as

controller for the processing of the customer's personal data".

The privacy statement also explicitly mentions that Y is the

controller and that it processes personal data for the management of the database

of customer data, the global view of the customer, accounts and transactions, investments and

credits. Point 1.1.1 of the General Banking Regulations specifies that the defendant

notably carries out these activities through a network of independent banking agents who work

in the name and on behalf of the defendant. This means that branch managers who act as

independent banking agents for the defendant must be qualified as subcontractors within the meaning of

article 4. 8) of the GDPR.

1 Article 4 GDPR

[...]

7) "controller": the natural or legal person, public authority, agency or other body which, alone or

together with others, determine the purposes and means of the processing; when the purposes and means of this processing

are determined by Union law or the law of a Member State, the controller may be designated or the criteria

applicable to its designation may be provided for by Union law or by the law of a Member State;

2 Article 4 GDPR

[...]

8) "processor": the natural or legal person, public authority, service or other body which processes data for

personal character on behalf of the controller;

Decision on the merits 78/2021 - 4/6

10. In this case, the personal data of the complainant who was a client of a banking agent

of the defendant were transferred to another banking agent within the framework of the cessation of activities of the

first banking agent, in order to guarantee the continuity of the financial service.

II.2.

Lawfulness of processing

11. The Litigation Chamber emphasizes that the communication of the personal data of the

Complainant within the Respondent's organization took place between two sub-contractors, namely the former  
and the new bank agent, both acting for the defendant. There is therefore no question  
any transfer of the complainant's data to a third party<sup>3</sup>.

12. The new bank agent simply received the complainant's data in its capacity as processor.

It follows that the data remained within the organization of the defendant who is responsible  
treatment, the latter having remained unchanged.

13. The processing of data, more particularly the transfer to the new banking agent, takes place for  
the purposes as mentioned in point 4 of the aforementioned privacy statement of the  
defendant:

“- the management of the customer database and the global vision of the customer;

- account and transaction management;

- the management of investments and financial instruments subscribed by the client;

- to ensure the granting and management of the credit requested;

- to ensure the granting and management of insurance products;

- to establish a profile to recommend certain products.”

14. The legal basis on which the complainant's data processing is based also remained

unchanged. Based on Article 6.1 of the GDPR<sup>4</sup>, the Litigation Chamber finds that the declaration of

<sup>3</sup> Article 4 GDPR

[...]

10) "third party": a natural or legal person, a public authority, a service or a body other than the data subject, the  
controller, the processor and the persons who, placed under the direct authority of the controller or the  
processor, are authorized to process the personal data;

<sup>4</sup> Article 6.1 GDPR

Processing is only lawful if and insofar as at least one of the following conditions is met:

a) the data subject has consented to the processing of his or her personal data for one or more specific purposes;

- b) the processing is necessary for the performance of a contract to which the data subject is a party or for the performance of measures taken prior to the conclusion of a contract or for the performance of pre-contractual agreements taken at the latter's request;□
- c) the processing is necessary for compliance with a legal obligation to which the controller is subject;□
- d) the processing is necessary to protect the vital interests of the data subject or of another natural person;□

Decision on the merits 78/2021 - 5/6□

confidentiality<sup>5</sup> of the defendant indicates that the personal data of the customers are treated□

on the following legal grounds:□

"- in the context of the performance of a contract or the taking of pre-contractual measures;□

- to comply with legal or regulatory provisions to which we are subject;□

- for reasons relating to the legitimate interest of the bank. [...]"□

15. The legal basis on which the complainant provided her personal data□

staff to the former bank agent and that the latter could deal with remained the same, as described□

in the privacy statement. There is no factual element in the record to indicate that - unlike□

to what the complainant alleges – the consent of the complainant (article 6.1 a) of the GDPR) would have been□

required for the transfer of personal data to the new bank agent.□

16. In view of the foregoing, the Litigation Division proceeds to a dismissal for□

technical reason and as a result, no follow-up is given to this complaint, given the absence of violation of the□

GDPR.□

III. Publication of the decision□

17. Given the importance of transparency concerning the decision-making process of the Litigation Chamber,□

this decision is published on the website of the Data Protection Authority. Nevertheless,□

it is not necessary for this purpose that the identification data of the parties be directly□

communicated.□

e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority□  
invested the data controller;□

f) the processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, unless□

the interests or fundamental rights and freedoms of the data subject which require data protection to

personal nature, in particular when the person concerned is a child.

Point f) of the first paragraph does not apply to processing carried out by public authorities in the performance of their tasks.

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Decision on the merits 78/2021 - 6/6

FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority decides, after deliberation, in

pursuant to Article 100, § 1, 1° of the LCA, to close the present complaint without further action.

Pursuant to Article 108, § 1 of the LCA, this decision may be appealed to the

Court of Markets within thirty days of its notification, with the Authority of

data protection as defendant.

(Sr.) Hielke Hijmans

President of the Litigation Chamber