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Litigation Chamber

Decision on the merits ANO 02/2019

from April 2, 2019

File number: DOS-2018-06103

Subject: Complaint for sending a general email where all recipients are visible

The litigation chamber of the Data Protection Authority, made up of Mr.

D. Van Der Kelen, chairman, and Messrs. I. Vandermeersch and F. De Smet, members;

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 the

free movement of such data, and repealing Directive 95/46/EC (general regulation on the

Data protection) ;

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

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;

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1. Facts and procedure

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On October 25, 2018, the complainant filed a complaint with the Data Protection Authority

against the defendant.□

The subject of the complaint concerned the sending of a global email by the defendant to all of its customers□  
who had to sign a declaration regarding the 6% VAT certificate and in which all□  
the customers to whom the email was sent were visible to all recipients of the email by□  
question.□

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On November 9, 2018, the complaint was declared admissible on the basis of Articles 58 and 60 of the□  
law of December 3, 2017, the plaintiff is informed by virtue of article 61 of the law of□  
December 3, 2017 and the complaint is forwarded to the Litigation Chamber pursuant to Article□  
62, § 1 of the law of December 3, 2017.□

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On November 28, 2018, the Litigation Division decided, pursuant to Article 95, § 1, 1° and□  
article 98 of the law of December 3, 2017, that the case can be dealt with on the merits.□

On November 28, 2018, the parties involved are informed by registered mail of the□

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provisions as set out in article 95, § 2 as well as in article 98 of the law of□  
3 December 2017. They are also informed, pursuant to article 99 of the law□  
of December 3, 2017, deadlines for transmitting their conclusions. The deadline for the□  
receipt of the defendant's submissions in response was set for December 27, 2018, that□  
for the submissions in reply of the complainant on January 28, 2019 and that for the submissions□  
in reply of the defendant on February 28, 2019.□

On December 3, 2018, the defendant informed the Litigation Division that he wished to receive□

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all documents in the file by electronic means (article 95, § 2, 3° and article 98, 1° of the law□

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of December 3, 2017).□

On December 4, 2018, a copy of the file was sent to the defendant.□

On December 23, 2018, the Litigation Chamber receives the submissions in response from□  
of the defendant. He says there that he wanted to put himself in order administratively by sending□  
an e-mail to customers for whom a 6% VAT certificate was required, but that this□  
e-mail was unfortunately sent using the "copy" function instead of the function□  
"hidden copy". He also apologizes to the complainant for his inappropriate response.□

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when the complainant contacted him by e-mail on this subject to ask for explanations as to□  
sharing information about him with other clients of the defendant.□

On January 27, 2019, the Litigation Chamber received the complainant's submissions in reply□  
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in which he maintains that his request for an explanation of October 25, 2018 concerning the□  
sharing information about him with others has not been treated in accordance□  
to legislation. He further notes that the Respondent's method of aggregating□  
the complainant's email address and the email addresses of other customers in a single list□  
does not attest to a prudent practice necessary to separate the data of its customers and□  
protect their privacy. He asks the Litigation Chamber to take the measures□  
necessary to clearly notify the defendant that he has violated the legislation on the□  
data protection in several respects, to ensure that he knows the legislation and the□  
respects, so that it better protects its customers' data and their privacy, so that it□  
adapts its way of proceeding in order to be able to guarantee it, so that it takes seriously the□  
complaints from its customers regarding data protection and for it to comply with the□  
legal requirements when processing them.□

On February 20, 2019, the Litigation Division received the defendant's submissions in reply□  
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in which the latter indicates that he made an error when sending the e-mail making

the subject of the complaint, but that it did not cause damage to the plaintiff.

## 2. Legal basis

- Article 5.1.b) of the General Data Protection Regulation:

"Personal data must be: [...] b) collected for the purposes

determined, explicit and legitimate, and not to be further processed in a way

incompatible with these purposes; further processing for archival purposes in the interest

public, for scientific or historical research purposes or for statistical purposes is not

considered, in accordance with Article 89, paragraph 1, as incompatible with the purposes

initials (limitation of purposes);"

- Section 6.4. of the General Data Protection Regulation:

"When processing for a purpose other than that for which the data was collected

is not based on the consent of the data subject or on Union law or the

law of a Member State which constitutes a necessary and proportionate measure in a society

democratic to ensure the objectives referred to in Article 23(1), the person responsible for the

processing, in order to determine whether processing for another purpose is compatible with the purpose

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for which the personal data was originally collected, takes into account,

among others:

a) the possible existence of a link between the purposes for which the personal data

data have been collected and the purposes of the further processing envisaged;

b) the context in which the personal data was collected, in particular

with regard to the relationship between data subjects and the controller;

c) the nature of the personal data, in particular if the processing relates to

special categories of personal data, pursuant to Article 9, or if

personal data relating to criminal convictions and offenses are

processed, under Article 10;□

d) the possible consequences of the envisaged further processing for the persons□

concerned;□

(e) the existence of appropriate safeguards, which may include encryption or□

pseudonymization."□

- Section 24.1. and 2. of the General Data Protection Regulation:□

"1. Taking into account the nature, scope, context and purposes of the processing as well as□

that risks, the degree of likelihood and severity of which vary, for the rights and freedoms of□

natural persons, the controller implements technical and□

organizational arrangements to ensure and be able to demonstrate that the□

processing is carried out in accordance with this Regulation. These measures are reviewed□

and updated if necessary.□

2. Where proportionate in relation to the processing activities, the measures referred to in□

paragraph 1 include the implementation of appropriate policies with regard to□

data protection by the controller."□

- Section 25.1. and 2. of the General Data Protection Regulation:□

"1. Taking into account the state of knowledge, the costs of implementation and the nature,□

the scope, context and purposes of the processing as well as the risks, including the degree of□

probability and severity varies, that presents the treatment for the rights and freedoms of□

natural persons, the controller implements, both at the time of the□

determination of the means of processing only at the time of the processing itself, of the measures□

appropriate technical and organizational arrangements, such as pseudonymization, which are□

intended to implement the principles relating to data protection, for example□

the minimization of data, in an effective way and to match the processing of the guarantees□

necessary to meet the requirements of this Regulation and to protect the rights of□

the person concerned.□

2. The controller implements the technical and organizational measures

appropriate to ensure that, by default, only personal data that is

necessary with regard to each specific purpose of the processing are processed. This applies

the amount of personal data collected, the scope of their processing,

their shelf life and their accessibility. In particular, these measures ensure that,

by default, personal data is not made accessible to a number

of natural persons without the intervention of the natural person concerned."

3. Motivation

Given that the defendant does not contest the facts and that he himself indicates that the e-mail in

question which is the subject of the complaint was "unfortunately" sent in "copy" instead of being in

"hidden copy", he declares to have committed an offense during the processing of personal data

complainant's staff. Whether or not there was an error in sending the e-mail, the Chamber

Litigation considers that the violation of Article 5.1.b), Article 6.4., Article 24.1 and 2. and

section 25.1. and 2. of the General Data Protection Regulation is proven and that the sanction

mentioned below is sufficient.

FOR THESE REASONS,

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

issue a reprimand to the defendant, pursuant to Article 100, § 1, 5° of the law of

December 3, 2017.

Pursuant to article 108, § 1 of the law of December 3, 2017, this decision may be the subject of a

recourse within thirty days, as from the notification, to the Court of Markets.

President

(Sr.) Dirk Van Der Kelen