

Decision on the substance 02/2021-1/26□

Dispute room□

Decision on the merits 02/2021 of 12 January 2021□

File number : DOS-2020-01192□

Subject : Complaint for managing a fan page on Facebook without permission□

of the data subject whose name the page bears□

The Dispute Chamber of the Data Protection Authority, composed of Mr Hielke□

Hijmans, chairman and Messrs Dirk Van Der Kelen and Jelle Stassijns, 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 on the free movement of such data and repealing Directive□

95/46/EC (General Data Protection Regulation), hereinafter GDPR;□

In view of the law of 3 December 2017 establishing the Data Protection Authority, hereinafter□

WOG;□

In view of the□

internal order, as approved by the Chamber of□

Members of Parliament on 20 December 2018 and published in the Belgian Official Gazette on□

January 15, 2019;□

Having regard to the documents in the file;□

rules of□

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has made the following decision regarding:

- Mrs. x, represented by Mr. Philippe Billiet, hereinafter referred to as “the complainant”, against

-

Mr y1 , hereinafter “the first defendant”, and the company y2, hereinafter “the second

defendant”, jointly as “the defendants”, both represented by mr. Caroline

curtis.

1. Scope of the dispute

1. The file was submitted to the Disputes Chamber following a complaint against the

defendants, in accordance with Article 92, 1° WOG. The subject of the complaint relates to

on aspects relating to the protection of personal data in the context of (the management of)

a Facebook fan page. No investigation was requested by the Disputes Chamber from the

Inspection service as referred to in Article 94, 1° WOG. The Disputes Chamber will include elements in the file

that are not related to the subject matter of the initial complaint are not dealt with in the present

decision.

2. Facts and Procedure

Facts

2. The complaint concerns the processing of the complainant's personal data via a fan page on

Facebook that bears her name and first name. It's mainly about the fan page that can be found

is

[..].

hyperlink

through

the

3. Attached to the complaint is a document that clearly shows that the name of the page is the

represents the complainant's full name and first name, and is therefore not limited to the initials of

the□

webpage.□

hyperlink□

complainant,□

like□

by□

the□

the□

in□

4. According to the complainant, the rights to manage the fan page have been assigned to at least□
one of the joint controllers. The complainant argues that the processing□
is not lawful in accordance with Article 6 of the GDPR. The complainant wishes that these rights for the□
management of the fan page will be transferred to her, so that she can exercise control herself□
about the fan page that bears her name and first name.□

5. The complainant and the second defendant, in the context of the professional artistic activities□
of the complainant over a period of many years, agreements and agreements, in the context of□
from which the management of the fan page came about.□

6. On March 5, 2020, the complainant, represented by her counsel, shall lodge a complaint with the□
Data Protection Authority. The complaint alleges possible violations of Articles 6, 7, 12□
paragraphs 3, 20 and 21 GDPR. The complainant requests the Data Protection Authority to□
initiate an investigation, impose a sanction on the defendants and order the defendants□
transfer the rights to manage the fan page on Facebook to the complainant.□

7. On March 10, 2020, the complaint was declared admissible pursuant to Article 58 of the WOG and was□
transferred to the Disputes Chamber in accordance with Article 62, §1 WOG.□

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The procedure before the Disputes Chamber□

8. In accordance with Article 95, §1, the Disputes Chamber first proceeded to take a light decision', namely Decision 14/2020 of the Disputes Chamber of 14 April 2020, hereinafter Decision 14/2020.

9. The motivational part of Decision 14/2020, inter alia, states the following:

"The complainant opposes managing the fan page on Facebook with her name and first name by the joint controllers, including asking the obtain rights to manage the fan page.

In view of the complainant's objection to the processing of the personal data, in particular her name and first name, is clearly formulated in the complaint, the Disputes Chamber deems it sufficient to address the joint controllers first to warn them to stop and act on any breaches of the GDPR to the complainant's request.

In that sense, the Disputes Chamber notes for the sake of completeness that the complainant invokes its right to data portability, in accordance with Article 20 GDPR, and its right of objection pursuant to Article 21 GDPR. She does not want the fan page, and with the fan page, the personal data concerning her will be deleted without further ado."

10. The operative part of Decision 14/2020 reads:

"FOR THESE REASONS,

the Disputes Chamber of the Data Protection Authority decides to:

- pursuant to Article 58, paragraph 2, a) GDPR and Article 95, §1, 4° WOG the joint warn data controllers that they may not use personal data

process where it is not lawful in accordance with Article 6 of the GDPR; possible

violations of the GDPR are subject to sanctions in accordance with the provisions of the GDPR and WOG;

- pursuant to Article 58, paragraph 2, c) GDPR and Article 95, §1, 5° WOG, the joint order controllers to comply with the request of the

complainant to exercise its rights within the meaning of Article 20 and Article 21 GDPR. The

The Disputes Chamber instructs the joint controller to submit this request

comply with this decision within 7 days of notification;

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- the

joint

controllers

at

order

the

Notify the Data Protection Authority (Dispute Chamber) by email that

the above-mentioned order has been complied with, no later than 14 days after the notification of

this decision (via the email address [...]); and

- in case the joint controllers do not implement in a timely manner

the above, the substance of the case in accordance with Articles 98 et seq. WOG

to treat."

11. On April 21, 2020, counsel for the defendants filed an appeal

against Decision 14/2020 at the Marktenhof, in accordance with Article 108, §1 WOG.

12. Seen by the defendants – according to the appeal procedure initiated at the Market Court – active

opposition was raised to what was ordered in Decision 14/2020, and they also

have not notified the Disputes Chamber within the requested period or have

enacting order imposed by Decision 14/2020 was complied with, the Disputes Chamber leads

subsequently concluded that the defendants did not appear to intend to comply with this injunction.

Consequently, the Disputes Chamber decides, in accordance with the operative part of Decision 14/2020 and

pursuant to Article 95, §1, 1° and Article 98 WOG, that the file is ready for processing at

ground.

13. By letter dated 13 May 2020, the complainant and the defendants are informed of the
decision of the Disputes Chamber to proceed to a hearing on the merits of the
file. This letter also informs the parties of the claim periods.

Defendants' answer conclusion

14. On

lay

2020

June

24

the

defendants

their

first

conclusion

down.

15. The Disputes Chamber clarifies that the first defendant is the manager of the second
defendant, and that the correspondence address of that first defendant is the same as the
registered office of the second defendant.

16. The defendants point out that the second defendant, a company, has “for many years

music project [name of artistic project A] [has] under her care”. The defendants point

Note that the complainant had been the “performing artist/singer” of the artistic since 2008

project. The second defendant also asserts “the intellectual property rights in the musical works”

connected

to hold.

artistic

project

below□

himself□

at□

the□

at□

17. The second defendant, according to the reply of the defendants, in the context of□

the commercialization, sale and exploitation of the musical works, a Facebook fan page□

created under the title '[..]'. In the first part of the answer conclusion that the□

defendants, the screenshot shows that the title of the fan page itself is the□

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sufficient□

name□

and□

First Name□

by□

the□

complainant□

displays.□

18. The defendants' answer conclusion states that on the fan page "photos, artwork and videos"□

[are] placed, to which also rights on the part of [the second defendant] as an investor□

in that regard. Photos of shows by [artistic project A] were also put on this page□

[...]" According to the answer conclusion, the fan page only pursues "professional purposes"□

which "in no way concerns the private person of the artist".□

19. The defendants point to the various commercial disputes that the complainant has with the□

second defendant, as well as the personal disputes with the first defendant.□

20. The defendants also point out that the complainant always retained editorial rights to the□

fan page, meaning she could post messages on the fan page, but not

had administrative rights over the fan page, which allow, for example, editorial rights or

grant or restrict administrative rights to other persons or companies over the fan page

take away.

21. The defendants also point out that proceedings for

the Court of First Instance was instituted.

22. The defendants also point out that the fan page was transferred to the complainant in April, this

means that neither the first nor the second defendant are (longer) administrators of the fan page;

the management rights would have been transferred in full to the complainant.

23. Defendants “claim [...] as to the complaint, alleged infringement and demand for sanctions”

in the main order to reject the claim and complaint of the complainant and to establish that there is no

infringement was committed [and] order the non-prosecution of the two defendants; in

subordinate order to order the suspension of the judgment, or to propose a settlement

pose.”

24. As regards the complainant's claim to transfer the management rights, the

defendants that “the GBA is not competent in this regard” and the defendants request the

Litigation Chamber “to dismiss at least this claim as unfounded and most subordinate”

declare in that regard that this claim is devoid of purpose.”

25. The pleas put forward by the defendants:

at

to fetch

defendants

1. Means 1: “the assignment and authority of the GBA: detecting infringements: processing”

personal data and capacity of (joint) controllers”

The

controller

According to the defendants, only the second defendant is the controller, and

together with Facebook as joint controllers in the sense

by

considered.

According to the defendants, the first defendant is “in no way in its own name the

administrator of the fan page in question, has never had administrative rights and is never

on

name.”

joint

14/2020.

Which

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Decision

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article

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GDPR

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26

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in□

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The defendants point out that when actions were taken by the first□

defendant, this according to the organ theory can only be “attributed to the□

legal person itself and never directly to the body.”□

In addition, the defendants also argue that there is in no way a processing of□

personal data of the complainant within the meaning of the GDPR, by neither of the two□

defendants.□

The defendants state: “in fact there are no private or personal data on the□

concerning professional page and bears the name only [...] [for the□

legibility of the pseudonymised version of the decision: i.e. the handle with the□

initials of the complainant's surname and first name, in accordance with the assessment of the□

Disputes Chamber infra], which can never be qualified as□

'personal data'.”□

2. Medium□

2:□

“right to portability – art. 20 GDPR”□

the□

on□

hair□

The defendants state that “in any case, it must be decided that the□

concerning page on Facebook in no way relates to [the complainant] if□

private person and also does not contain any private information that would have been provided by□

the person concerned [complainant] as a private person. Her personal data is not used□

without□

permission."□

The defendants also point out that the complainant could also report as an editor himself□

place□

fan page.□

The defendants also point out that Article 20 of the GDPR provides that this right does not affect□

may interfere with the rights and freedoms of others, which, according to the defendants, is□

this is the case, resulting in “a manifest violation of intellectual rights in□

this content”,□

defendant.□

The conclusion underlines that "significant investments were made" by the second defendant□

done in order to create these musical works and in order to protect [the complainant]□

promote [...] these photos, videos and musical works are used on the appropriate□

page and all this [is] the property of [the second defendant].”□

The defendants argue that Article 20 GDPR cannot be applied to the transfer□

of control rights over a fan page on Facebook, now that these control rights have been□

second defendant were created, and the complainant in this regard therefore not himself□

personal data□

GDPR.□

provided□

second□

article□

name□

has□

for□

of□

by□

sentence□

20□

and□

the□

the□

in□

3. Medium□

3:□

“lawful processing of personal data – art. 6 GDPR”□

The defendants point out that there is in no way an unlawful processing of□

personal data took place via the contested fan page, given that processing by the□

second defendant was necessary for the performance of a contract,□

corresponding□

GDPR.□

The defendants state in this regard: “consequently, no permission is required from the□

article□

point□

member□

b)□

6,□

1,□

Decision on the merits 02/2021 - 7/26□

the□

sentence□

art.□

by□

[complainant] and there is no unlawful processing of personal data□

in□

GDPR.”□

In the reply claim (infra) it is added to this plea that the processing□

of personal data can at least be based on the legitimate interests of the□

second defendant, on the basis of Article 6(1)(f) GDPR. The defendants refer□

inter alia to the previous contractual links between the complainant and the second□

defendant, and the commercial consequences of the breach of contract□

to this.□

6□

4. Medium□

4: “violation of GDPR? No proof/motivation – obscuri libelli”□

The defendants state that there is “no objective evidence available from which”□

would follow, let alone be proven that there was a violation of art. 6-7-12(3)-□

20-21□

GDPR.”□

In this context, the defendants argue that the Decision 14/2020 is insufficiently substantive□

motivates, or provides evidence, why infringements of the aforementioned articles□

would have been committed. The defendants also point out that the aforementioned□

decision “had very far-reaching consequences, where the complainant has now turned the page”□

in-house, including all music, images, artwork, contracts, etc. of□

[the□

defendant].”□

In the reply claim (infra), the defendants further specify in this regard that there is a□

“lack of evidence”□

complaint unclear□

and that the□

second□

vague□

and□

is□

is.□

5. Means 5: “transfer of the account data and management rights – without object”□

Since the management rights were transferred to the complainant in April, "the claim"□

at least partly without object," according to the defendants. The transfer of□

management rights, according to the defendants, was “manifestly wrongly and [the second□

Defendant] is entitled to restitution of the management rights and account data.”□

6. Medium□

6:□

“subordinate:□

suspension□

or□

settlement”□

The defendants point to “the relationships” between the parties “and numerous mitigating factors”□

circumstances".□

This remedy□

reply conclusion□

resumed□

(infra).□

became□

not□

the□

in

7. Medium

7:

“regarding

the

publication”

The defendants request the publication of the decision “anonymize and
pseudonymise”.

The complainant's reply

26. The complainant makes 15

July 2020, through her counsel, her reply conclusion.

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27. The complainant emphasizes that her personal data are indeed processed by

at least one of the two defendants, and that those personal data are "systematically"
subject to change or modification by defendants.”

28. The complainant cites that profiles are also available on other online platforms, such as Youtube and LinkedIn

were created containing the name and first name and other personal data of the complainant

to wear. According to the complainant, these profiles are also managed by at least one of the

defendants, without the complainant's consent or without

contractual

existed.

need

29. Specifically, the complainant puts forward the following pleas:

1. Ground 1: “defendants wrongly believe that the GBA would act as a company court”

to pronounce”

must

2. Means 2: “the Facebook page '[...]' [handle fan page](abbreviation of 'x' [full name and
first name of the complainant] online), as well as the questionable profile pages on LINKEDIN and
YOUTUBE, [

complainant]” [

personal data [

contain [

by [

[the [

3. Medium 3: [

“Defendants are/were joint controllers” [

4. Ground 4: “the fact that [the complainant] was an 'editor' of the page does not relieve the defendants from
to live” [

regulations [

obligation [

GDPR [

to [

the [

after [

at [

their [

5. Ground 5: “[the complainant] does not violate the rights and freedoms of third parties and does not violate
rights” [

intellectual [

6. Ground 6: “on 27/02/2020 the defendants explicitly wrote that between them and [the complainant] [

there is no longer a contractual relationship, so that a fortiori there is no agreement regarding [

any processing of [the complainant]'s personal data by the defendants' [

7. Plea 7: "Breach of Art. 6 GDPR on the lawfulness of the processing of the

personal data of the data subject as the activities of [the joint

controllers] to any of the legality requirements of this article

satisfies"

8. Ground 8: "Breach of Art. 7 GDPR regarding the required consent with the processing

of the personal data of the data subject used for the management of her Facebook profile

[the fan page] was never given and that, should it ever have been implied, most certainly

has been revoked upon termination of the management agreement in November 2019 and in

the express correspondence of [the complainant]"

9. Ground 9: "Breach of Art. 12 (3) GDPR on the detailed rules for exercise

of the rights of the data subjects, as requests under are not complied with

art. 20 to transfer the management rights of the social media profile of the data subject

and the request to suspend any data processing relating to it"

10. Ground 10: "Breach of Art. 20 GDPR on the right to data portability

data of the data subject, as these are not used at the frequent request of the data subject

transferred"

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11. Plea 11: "Breach of Art. 21 GDPR with regard to the right of objection made by

the data subject following the refusal to prevent the processing of her personal data

to strike"

12. Ground 12: "the proceedings on the merits are not an appeal procedure against the ones already taken

interim decision of the GBA"

13. Means 13: "prevents the fact that the Facebook page has meanwhile been transferred to [the complainant]

not that it should be established that the defendants refused to voluntarily

to comply with obligations under the GDPR regulations and to be subject to a sanction.

In addition, it appears that their infringements also exist with regard to other profile pages of [the complainant]

14. Ground 14: “no reason for suspension”□

15. Ground 15: “a decision to publish should not miss its purpose”□

30. In her reply, the complainant therefore asks the Disputes Chamber to substantiate her complaint□

declare and impose a sanction on the defendants in light of the GDPR infringements, te□

confirm that the complainant may keep the contested fan page on Facebook, recommending to the□

defendants to control the management rights of the profile pages with the name and first name of the□

to transfer the complainant on Youtube and LinkedIn to the complainant, to publish the decision to be made□

without anonymization and to order the defendants to pay the costs of the□

complainant (3000 EUR).□

The response of the defendants□

31. On□

August□

make 2020□

5□

the□

defendants□

a□

reply conclusion□

about.□

32. The defendants' claims remain the same as those in their response claim, with the□

addition that the complainant's request in its reply statement with regard to the□

transfer management rights to other social media profiles, including Youtube and□

LinkedIn, should be rejected as “inadmissible, at least unfounded”.□

33. The defendants add the following pleas to their defence, in addition to the pleas□

which they put forward in their answer conclusion.□

1. First new plea in the reply claim: “violation of Article 7 – not relevant”□

The defendants point to the fact that Article 7 of the GDPR contains the “required conditions for the consent to the processing of personal data”, “however, this applies provision only in the case in which the processing of personal data is based in permission.”

The defendants point out that the processing “results from the contractual relationship between [the second defendant] and [the complainant] (and not the consent)” and that the application of article

“completely irrelevant”

present

datum

therefore

case

GDPR

the

on

7

is.

2. Second new plea: “Breach of Article 12 (3) GDPR – no application and no

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violation”

The defendants point out that this provision does not apply, given that this article "frames"

in the circumstance where data subjects want certain information or a certain request

to the person responsible.” According to the defendants, this is not the case in this case

the GBA has delivered a decision before giving justice, and it is therefore not a

"communication

is going.□

The defendants also point out that Article 12(3) of the GDPR does not imply that a□

controller must respond positively to any request such as that of a□

complainant.□

responsible□

data subject”□

between□

and□

3. Third new plea: “claim extension [by the complainant] regarding other social media (Youtube,□

LinkedIn,...)”□

The defendants oppose the extension of the subject matter of this file to□

Others□

platforms.□

user profiles□

Others□

online□

on□

4. Fourth□

new remedy:□

“concerning the consequences & sanctions & RPV”□

The defendants maintain that a sanction by means of an administrative fine□

should be proportionate, and hereby refer to the criteria for such fines set out in□

article□

83□

GDPR.□

34. The other new elements in the reply of the defendants under the previously□

pleas put forward do not relate to the subject matter of the file on which the

Dispute Chamber pronounces itself, or are not of such a nature as to transfer the Dispute Chamber to another
decision

present.

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Communication outside the conclusion periods

35. After the expiry of the last claim period, both parties, and at different

moments before the hearing, e-mails sent or exchanged, which relate to

had on the underlying commercial disputes of the parties, and where the registry of the

Dispute chamber that received messages (whether or not in carbon copy). The content of these elements

continue on aspects that are not relevant for the assessment of this dossier on the basis of

the (enforcement) powers of the Disputes Chamber, and are therefore not further

explained.

The judgment of the Market Court with regard to Decision 14/2020

36. On 28 October 2020, the Market Court ruled in its judgment 2020/7467 on the appeal of the

defendants against Decision 14/2020. This judgment nullifies Decision 14/2020, but does not

ruling on the facts on the merits, in the sense that the Marktenhof has not made use of

of its full jurisdiction because it was an action against merely “provisional and remedial”

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measures”.¹

37. The Court states in the operative part of its judgment:

38. The judgment thus does not prevent the proceedings on the merits before the Disputes Chamber in accordance with

Articles 98 to 107 WOG will be continued in full.□

The Hearing□

39. In accordance with Article 98, 2° WOG, counsel for the defendants sent an e-mail dated 19 May□

2020 that they wished to be heard.□

40. In accordance with Article 51 Rules of Internal Order of the Data Protection Authority□

As a result, a hearing was organized to which all parties were invited. The□

hearing□

2020.□

October□

Place□

finds□

on□

29□

41. In view of the Federal Government,² as well as the Government of the Brussels-Capital Region,³ on□

several times in the run-up to the hearing, issued measures that□

made it impossible for the Litigation Chamber to hold a hearing in its usual format□

take place, the hearing will take place online and by electronic means of communication. Both□

parties□

hearing.□

presence□

to confirm□

their□

on□

the□

42. At the hearing, the complainant is represented by two legal counsel; the defendants□

represented.□

counselor□

by means of□

a□

turn into□

43. A record of the hearing was drawn up for the purpose of clarifying and□

display additions made during the hearing, without de□

elements set out in the conclusion. Some of the elements that will be discussed below□

1 Judgment of the Brussels Court of Appeal (Section 19A, Marktenhof) of 28 October 2020, X t. GBA, 2020/7467 (roll no. 2020/

7.6.□

2 Ministerial Decree of 30 June 2020 on urgent measures to prevent the spread of the Coronavirus COVID-19□

limit, as amended by Ministerial Decree of October 8, 2020, B.S. October 8, 2020.□

3 Decree of the Minister-President of the Brussels-Capital Region of 7 October 2020 closing the bars□

and establishing emergency measures to limit the spread of the coronavirus COVID-19, B.S. October 18, 2020;□

the offices of the Data Protection Authority, where the Disputes Chamber is also located, are located in this regional□

region.□

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mention□

are□

relevant□

for□

the□

present□

decision.□

44. At the hearing, counsel for the complainant states that it appears from the documents in the file that□

the complainant, through her counsel, already sent a message to the defendants on March 2, 2020□

sent, alleging that the first defendant is “violating GDPR obligations”□

by impersonating [the complainant] via Facebook.” Further in the same message of March 2, 2020□

the counsel adds: “for the record, I also clarify that your clients, now that they know□

indicate that there is no longer an agreement under which my client to [artistic project A]□

shows, no longer have the right to use any□

personal data of my client (photos, name, voice recordings, etc.).”□

45. In that sense, counsel argues that Article 12(3) of the GDPR has indeed been violated, given the□

request.□

consequence□

gifts□

on time□

not□

at□

the□

defendants□

46. Both the complainant’s counsel and the counsel for the defendants argue that there is□

a cessation procedure is pending at the company court in Leuven, having its seat as in□

summary proceedings. The fan page referred to in the complaint in this file, among others□

claims,□

strike procedure.□

object□

by□

the□

from□

the□

47. As usual and as provided for in Article 54 of the Rules of Internal Order of the□

Data Protection Authority, the Disputes Chamber has invited both parties to□

to have comments added to the record of the hearing as an annex to that record□

verbally, without this implying a reopening of the debates. Both parties have□

responded to that invitation, and those responses were appended to the official report□

added to the file. None of those responses, however, contained elements that would prompt□

give to a decision other than that in the present decision, for whatever reason the content□

is not repeated in this factual account.□

The judgment of the company court of Leuven dd. [...] November 2020□

48. The complainant reports on 2 December 2020 that the company court had rendered a judgment in□

a case in which the contested fan page was also the subject of the proceedings, just□

as in the present proceedings. In that judgment reference is made to the pending proceedings at□

grounds at the Disputes Chamber.□

49. The judgment finds that the second defendant, through the commercial use of the□

“personality rights” – including, but not limited to, the contested Facebook□

fan page – the complainant is guilty of unfair market practices (pursuant to Article VI.□

104 Code of Economic Law), but does not rule on possible violations of the□

GDPR. The presiding judge of the court orders the cessation of the practices in the verdict□

penalty of a penalty, to be paid to the complainant.□

50. The parties were given an additional opportunity to conclude on the award and made□

accordingly submit additional conclusions to the Disputes Chamber.□

51. With the President of the Business Court not ruling on infringements of the□

GDPR, and other factual elements underlying the judgment, the□

Disputes Chamber proceed in full to take up its powers with regard to the□

legislation on personal data protection and taking a decision in□

present file.□

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The fine form of December 23, 2020□

52. On December 23, 2020, the Disputes Chamber sent a fine form to the defendant, stating that the Disputes Chamber intended to pay a fine of 10,000 EUR to be imposed on the defendant as a result of the infringements of several provisions of the GDPR in this file (the same infringements identified in the present decision) withheld from imposing an administrative monetary sanction under Article 83 GDPR).

53. In its response to the fine form on 7 January 2021, the defendant refers to a number of elements that are taken into account by the Disputes Chamber in its deliberations.

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3. Justification

3.1

Jurisdiction of the Disputes Chamber (Article 2 GDPR; Article 4 WOG)

55. In accordance with Article 2(1) of the GDPR, the Regulation applies “to all or partially automated processing, as well as to the processing of personal data that contained in a file or which are intended to be included therein.”

56. In accordance with Article 4(1) of the GDPR, personal data is:

“any information about an identified or identifiable natural person (“the data subject”); is considered identifiable a natural person who directly or can be identified indirectly, in particular by means of an identifier such as a name, an identification number, location data, an online identifier or of one or more elements characteristic of the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person;”

57. Various social media platforms use so-called 'handles',

these are identifiers linked to a specific user account or any other web page.

These handles are in principle immutable references to a particular location of the web platform, where the handle is often, and like this one, contained in the web link (the Uniform

Resource Locator, URL for short). The handle associated with the contested fan page is '[..]'.□

58. First of all, the Disputes Chamber states that the initials of a name of a natural person□
person, in this case the name and first name of the complainant, constitute personal data in the sense□
of the GDPR. Considering the photos and videos and other content of the web page, viewable on□
several screenshots in the file, is there a clear link with the complainant and is□
it is identifiable within the meaning of Art. 4, point 1) GDPR. In addition, the title of the fan page,□
as visible on a document in the complaint and a document accompanying the response conclusion that the□
defendants themselves has been submitted, in fact the full name and first name of the complainant.□
This is therefore identified, not in the least also via the search function within□
facebook.□

59. In addition, it is important to underline that it is immaterial in which context□
personal data has been obtained, in order to qualify that personal data as such in the□
sense of the GDPR. It is therefore irrelevant whether personal data (initially) in a professional or□
contractual context were collected so that the GDPR could be materially applied□
pursuant to Article 2 of the GDPR.□

60. The Disputes Chamber in no way denies that there is a possibility that contractual or even□
legal (under intellectual property rights) claims to the exploitation or□
commercialization of the fan page images, works or other content. This does□
however, does not detract from the fact that the page is linked to the full name and person of the□
complainant.□

61. Since the entire page is devoted to the person of the complainant, all□
data on this fan page associated with the complainant, without stating that all□
data on that fan page is therefore by definition personal data within the meaning of the GDPR.□
Given the close connection of the complainant's person to the fan page, it is of the utmost importance□
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It is in the interest of the complainant as a data subject to receive the necessary management, in order to – as they do themselves

expressly asks – to be able to manage its personal data itself and independently.□

62. The Data Protection Authority is therefore competent to assess the complaint and□

the file in accordance with Article 4 WOG and in accordance with the material scope□

of the GDPR as laid down in Article 2 GDPR.□

3.2 The controllers (Article 4, 7 GDPR)□

63. The definition of “controller” in the GDPR is the following:4□

“A natural or legal person, a public authority, a service or other□

body which, alone or jointly with others, determines the purposes and means of the processing□

of the personal data: when the objectives of and the means for this□

processing is established in Union or Member State law, may□

determine who the controller is or according to which criteria they are□

designated”□

64. In Decision 14/2020, the defendants were both identified as (joint)□

controllers, as they both identify themselves as possible controllers□

behaved towards the complainant. To indicate (preliminary to the proceedings on the merits)□

of both as data controllers was done in light of an effective,□

effective and full protection of the complainant, in line with the case law of the□

Court of Justice regarding the broad interpretation of the term controller.5□

65. The Court of Justice previously confirmed that for the assessment of the concept□

controller,□

the□

controller is important.6 In the same vein, the Court confirmed that a□

legal entity that, for reasons of its own, exerts influence on the processing of□

personal data, can be regarded as the controller.7□

person concerned□

opinion□

about□

by□

the□

the□

66. All this does not exclude the possibility of other controllers named in the case□

who bear their own responsibility, in this case Facebook in particular.□

67. It was previously confirmed by the Court of Justice that it is possible, in the context of a□

processing with joint controllers, not all operations performed by the□

respective controllers with the personal data are carried out, the□

responsibility of each controller.⁸ This is particularly the case□

when it is a specific controller who determines the purpose and means□

for a specific operation.□

4 Art. 4(7) GDPR.□

5 CJEU Judgment of 13 May 2014, Google Spain SL v. Agencia Espanola de proteccion de Datos (AEPD) et al., C-131/12; ECLI:EU:C:2014:317, para. 34 ; see also the discussion of the scope of the concept in C. DOCKSEY and H. HIJMANS, “The□

Court of Justice as a Key Player in Privacy and Data Protection”, European Data Protection Law Review, 2019, ep. 3, (300)304.

6 CJEU Judgment of 10 July 2018, Tietosuojavaltuutettu v. Jehovan todistajat – uskonnollinen yhdyskunta, C-25/17,□

ECLI:EU:C:2018:551.□

7 Ibid., para. 68.□

8 Cf. CJEU Judgment of 29 July 2019, Fashion ID GmbH & Co KG v. Verbraucherzentrale NRW eV, C-40/17, ECLI:EU:C:2019:□

par. 76.□

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68. It is apparent from the claims of the defendants that the first defendant merely acts as manager of the□

second defendant created the fan page on Facebook.⁹ In that sense, in particular on the basis□

of the statements of the defendants themselves in this regard, only the second defendant can□

be designated with certainty as a controller within the meaning of the GDPR for the□

management of the fan page. The second defendant, according to its own defenses, indeed created the fan page in order to commercialize its commercial relationship with the complainant exploit ('the purpose' of the processing). At the hearing, the second defendant states manage the fan page with your own Facebook user account ('the resources' for the processing).

69. That Facebook would also be a controller for the processing in this regard of personal data via the contested fan page, does not preclude a review of compliance with the provisions second defendant as controller, now that the complaint is (also) addressed to the second defendant. in the GDPR by the

70. Indeed, Article 26(3) of the GDPR states:

"Irrespective of the terms of the scheme referred to in paragraph 1, the data subject may exercise his rights under this Regulation with regard to and towards any controller exercise."

71. It

is therefore the

second defendant acting as controller

is responsible for the processing operations that are the subject of the complaint, and this on

pursuant to Article 4(7) GDPR, and the obligations arising therefrom in accordance with

in particular Article 24 j° Article 26 GDPR. To the extent that the complaint is directed against the first defendant, this shelved.

3.3. The lawfulness of the processing (Article 6(1) of the GDPR)

72. Article 6(1) of the GDPR lists the possible conditions to be met

fulfilled to initiate and maintain lawful processing. In this case, the following

requirements

relevant:□

“The processing is only lawful if and to the extent that at least one of the□

the following conditions are met:□

a) the data subject has consented to the processing of his/her□

personal data for one or more specific purposes;□

b) the processing is necessary for the performance of a contract whereby the□

data subject is a party, or at the request of the data subject before the conclusion of a□

agreement to take measures;□

[...]□

f) the processing is necessary for the protection of the legitimate interests of□

the controller or of a third party, except where the interests or□

fundamental rights and freedoms of the data subject for the protection of□

require personal data, outweigh those interests [...]”□

9 The defendants state in their reply conclusion, p.2: “In the context of this, [the second defendant] in 2014 was□
record label created a professional page on various social media, such as Facebook”, after which they refer to the□
disputed fan page.□

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73. As already indicated, there were various contractual links between the second□
the defendant and the complainant, including a management agreement (from 2008), a□
artist agreement (from July 26, 2008) and an exclusive publishing agreement (from 3□
Nov 2015). This is also substantiated by documents by the second defendant.□

74. The contractual ties came to an end on 3 November 2019. This is confirmed (“there□
are not contractual ties”) by counsel for the second defendant in its□
communication with the complainant’s counsel in February 2020. This communication was□
attached as a document to the complainant’s reply.□

75. Given the specificity of the artistic sector, in particular the entertainment sector, where□

amassing fans is in itself part of the usual commercial practice, it is□

not illogical that from a management agreement the management of profile and security□

fan pages via social media platforms. That was the case in this case.□

76. The complainant's personal data, which were collected via, among other things, the Facebook fan page□

processed, as evidenced by the lack of express and free consent (independent of□

the commercial agreements) of the complainant, therefore find their legal basis□

in Article 6(1)(b) GDPR. This basis ceased to exist as soon as the contractual links□

between the complainant and the second defendant ceased to exist.□

77. The complaint relates to personal data processing via the fan page after 3□

November 2019, i.e. the end of the contractually agreed cooperation.□

78. It can be underlined for the sake of completeness that it is up to the controller□

is to demonstrate the lawfulness of the processing, pursuant to Article 5, paragraph 2 in conjunction with□

Article 24 GDPR.□

79. The complainant has not consented in any way to the processing of her□

personal data within the meaning of Article 6(1)(a) GDPR after the aforementioned date. No□

any other condition for the lawfulness of the processing in Article 6 (1) of the GDPR is in□

possible in this context, unless point f) of that provision.□

80. For example, there is no legal obligation (Article 6(1)(c) GDPR) to manage the□

fan page, nor is the processing necessary to protect the vital interests of the complainant or other□

protect natural persons (Article 6(1)(d) GDPR). For the sake of completeness, you can also□

it can be determined that there is no public interest task or an obligation to perform□

of a function of public authority rests on the second defendant (Article 6(1)(e))□

GDPR).□

81. Consequently, the application of Article 6(1)(f) GDPR must be examined, for the□

processing of the complainant's personal data via the fan page, after November 3, 2019.□

82. In accordance with the case-law of the Court of Justice, the second defendant serves as□

therefore demonstrate to the controller that:□

1) the interests they pursue with the processing can be justified as legitimate□

recognized (the “target test”);□

2) the intended processing is necessary for the realization of those interests (the□

“necessity test”); and□

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3) balancing those interests against the interests, fundamental freedoms and□

the□

“weighing test”).10□

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83. First of all, the Disputes Chamber finds that the second defendant has an interest in□

to manage the complainant's fan page, as there is a commercial value to the second□

defendant is associated with the success and fame of the complainant as part of,□

among others, singer of the artistic project A. This is also the case for any copyrights

which the second defendant would keep, with the right reserved for that defendant

to use the name and first name of the complainant for the exploitation of certain works.

84. In itself, the use of the complainant's surname and first name is therefore "acceptable according to the"

legislation",¹¹ and could a priori support the use as processing of personal data

on the legitimate interests of the second defendant within the meaning of Article 6(1)(f)

GDPR.

85. In the present case, however, the processing goes beyond the mere use of the surname and first name of

the complainant for the exploitation of works protected by copyright or of interest to

the commercialization of an artistic project.

86. The fan page was created to appeal to fans of the complainant's person, not just the

fans of that music to which the second defendant may have commercial claims.

Moreover, following the position of the second defendant would mean that the

commercial and intellectual property rights protected interests of the

second defendant would prevail over the claims for the protection of

personal data of the first complainant.

87. In the light of Article 8 of the Charter of Fundamental Rights of the European Union

("Charter") and the provisions of the GDPR, that reasoning set forth by the second

defendant cannot be followed and the interests can therefore not be regarded as

be seen as 'justified'.

88. The processing of personal data in which the second defendant is, as it were, in person

of the complainant to present itself to the outside world on its behalf,

in no way find their legal basis in the legitimate interests of the second

defendant. After all, unlike a company, a natural person is more than his or

her professional activities. The management of personal data as part of the

Self-identity is a fundamental right, protected by Article 8 of the Charter.

89. For all these reasons, there is no legitimate interest for the second defendant to
continue to manage the complainant's fan page, after the termination of the contractual relations with
the complainant, as a result of which the management of the fan page results in the unlawful processing of
the complainant's personal data posted on that fan page and otherwise
incorporated.

10 Judgment of the CJEU of 4 May 2017, Rigas satiksme, C-13/16, EU:C:2017:336, paragraph 28.

11 Compare with the Data Protection Group, Opinion 06/2014 on the concept of “legitimate interest of the
data controller” in Article 7 of Directive 95/46/EC, WP 217, 9 April 2014, 30.

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90. Since the Disputes Chamber determines that the processing does not pass the target test, and the
controller has no other valid basis for lawfulness
designated, the processing is unlawful within the meaning of Article 6(1) of the GDPR. Given the
lack of legitimate interests in the first place is already sufficient to

To reach a conclusion, the Disputes Chamber considers the investigation of the necessity test and the
balancing test in this regard is not relevant.

3.4. The right to object (Article 21(1) of the GDPR) and the time limit for action
comply with the complainant's request (Article 12(3) of the GDPR)

91. Article 21(1) of the GDPR reads:

“1. The data subject has the right at all times, because of his specific situation
to object to the processing of him/her for related reasons
personal data on the basis of Article 6(1)(e) or (f) of Article 6(1) with
including profiling based on those provisions. The controller is discontinuing
the processing of the personal data unless he has compelling legitimate grounds
for the processing that outweigh the interests, rights and freedoms
of the data subject or related to the institution, exercise or substantiation
of a legal claim.

[...]"

92. According to the complainant, at various moments after the end of the contractual relations between the complainant and the second defendant by (the counsel for) the complainant orally to the asked the second defendant to no longer manage the fan page and to grant the administrative rights via transfer the automated Facebook processes to the complainant.

93. On 2 March 2020, the complainant, with clear reference to the Facebook fan page, addressed in writing to the second defendant to oppose the administration of the fan page by that second defendant. In particular, the complainant argues, through her counsel, that the first defendant "violates the GDPR obligations by impersonating Facebook as [name of complainant]."

94. The defendants themselves state that the first defendant is not involved in a personal capacity, already the activities – including personal data processing – that he through the fan page performs in accordance with the organ theory, de iure can only be granted to the second defendant are attributed.

95. Since the first defendant in this case is regarded as the manager of the second defendant, the complainant's request was therefore clearly addressed to the second defendant if controller. After all, in the e-mail message, the complainant writes to both defendants as represented by the same counsel. When it is unclear to the complainant is who is now concerned with the controller, is it therefore good practice of the the complainant as the data subject to make all possible (joint or otherwise) to contact data controllers.

96. The complainant also points out in the aforementioned e-mail message that there is no longer a agreement exists whereby the personal data processing would be considered lawful can be considered.¹²

¹² From this e-mail from the complainant to counsel for the defendants: "with regard to GDPR [-] clarified for the record I also that [the defendants], now that they state that there is no longer an agreement under which [the complainant]

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97. Now the second defendant as controller considers that its mandatory□

justified grounds outweigh the complainant's rights, as referred to in□

Article 21(1) in fine GDPR. That is not the case in this case. Considering the management of the fan page□

if processing personal data, the target test in accordance with Article 6(1)(f) GDPR□

does not pass (supra, section 3.3. Decision), a fortiori it cannot be accepted that there□

compelling legitimate grounds that would then be even more serious□

outweigh the interests, rights and freedoms of the complainant when exercising the right□

of objection.□

98. Unnecessarily, keeping the admin rights of the fan page cannot be□

regarded as related to the establishment, exercise or substantiation of a□

legal claim. The management of the fan page in itself is not a requirement for asserting□

own rights or to enforce own claims. The fan page and all the ones below□

processing of personal data was, as it were, provided by the second defendant as guarantor□

held in hand.□

99. All of this should of course not affect the complainant's right to object□

apply to the processing of its personal data.□

100. Although the second defendant assumed (although incorrectly, see above, section 3.3.□

of the Decision) that the personal data processing via the fan page has their legal basis□

found in its own legitimate interests, quod non, the second defendant had it□

request of the complainant to stop the personal data processing, without delay□

must comply pursuant to Article 21(1) of the GDPR. The Disputes Chamber points out an abundance□

Please note that those interests do not outweigh the rights, interests and freedoms of the□

complainant.□

101. Next, it can also be underlined that the complainant underlined in her complaint that she□

“in no way [wants] her profile page to disappear [...] but only wants her own□

manage personal data.” The complaint therefore states emphatically that the complainant opposes
against the removal of the concerned fan page on Facebook.

102. The deletion of personal data also constitutes processing within the meaning of the GDPR. Seen
the complaint expressly objects to the disappearance of the fan page and, by definition,
the associated deletion of the personal data on that fan page, it should be
request of the complainant also to be interpreted as exercising the right of
objection pursuant to Article 21(1) of the GDPR, where the second defendant would proceed to the
remove the complainant's fan page.

103. The second defendant argues that it was unable to comply with the requests of
the complainant, since in the meantime a file has been submitted to the
Data protection authority concerning the same facts and subject matter, a procedure
which led to the decision with order dated April 14, 2020.

104. However, the second defendant only became aware that a file with the
DPA was pending after the April 14, 2020 'light' decision on
was transferred to her. Not being aware of a pending file also constituted the
core of the defense in appeal before the Market Court of the defendants.

105. In any case, it is not the case that a file with the Data Protection Authority with the same
factual object such as a request from a data subject, precludes the obligations
for the controller when a data subject exercises his or her rights in the sense
from Articles 12 to 22 GDPR. The term in Article 12, paragraph 3, can therefore in no way be extended in this regard
regarded as having been suspended or suspended because of the proceedings before the
[performances by artistic project A] would no longer have the right to use any
personal data of [the complainant] (photos, name, voice recordings, etc.).”

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Data Protection Authority.

106. Article 12(3) of the GDPR states that the controller is “without undue delay, and in any event

within one month of receipt of the request" the data subject (in this case the complainant) information"□

must provide information on the follow-up to the request. The second defendant□

must itself demonstrate¹³ that it has provided that information, and does not do so in this case□

opposite the Disputes Chamber.□

107. The Disputes Chamber also points out that if – as the second defendant claims – no□

the complainant's request could be complied with, for whatever reason, the second□

at no time did the defendant provide that information within the limits set out in Article 12(4)□

AVG referred to the period of one month. Never mind that the second defendant provides that information□

provided without delay.□

108. For all the foregoing reasons, the second defendant infringes Article 21(1) of the GDPR□

and to Article 12(3) of the GDPR.□

3.5. It□

straight□

on□

data portability□

(article□

20 GDPR)□

109. Article 20 reads:□

“Right to data portability□

1. The data subject has the right to transfer personal data concerning him/her, which he/she transfers to a□

controller has provided, in a structured, commonly used and□

machine-readable form, and he has the right to transfer that data to another□

data controller, without being hindered by the□

controller to whom the personal data was provided, if:□

a) the processing is based on consent pursuant to Article 6(1)(a) or Article 9(2);□

point (a), or to an agreement under Article 6(1)(b); and□

b) the processing is carried out by automated means.□

2. When exercising his right to data portability under paragraph 1□

the person concerned has the right to have the personal data, if technically possible,□

be transferred directly from one controller to another□

forwarded.□

3. The exercise of the right referred to in paragraph 1 of this Article shall be without prejudice to Article 17. That□

right does not apply to processing necessary for the performance of a task of□

public interest or of a task in the exercise of official authority□

provided to the controller.□

4. The right referred to in paragraph 1 shall not affect the rights and freedoms of others. »□

110. Within a contractual relationship, the complainant has personal data, such as her name and□

image, on the□

second defendant has that□

personal data – including – used to create and manage a fan page on□

Facebook, pursuant to Article 6(1)(b) GDPR, given the underlying contractual terms□

ratio. The complainant therefore has the right, pursuant to Article 20 of the GDPR, to□

second defendant. The□

13 Article 5(2) and Article 24 GDPR.□

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concerning personal data, in this case in the form of the management rights to the□

fan page that bears her name and first name as the title.□

111. The European legislator has tried to control□

(in the English version: “control”) over their own data for data subjects, in the□

especially in an online digital environment where social media reach a large audience.14□

112. In accordance□

2□

member□

20□

article□

a□

controller, in this regard of the second defendant, that the personal data□

be transferred directly to another controller, in this case□

Facebook, so that the latter can make the (administration rights for the) fan page available□

by□

complainant.□

to be expected□

GDPR□

by□

can□

the□

113. It is true that there can be many commercial interests associated with managing a□

fan page□

on□

facebook,□

like□

in this case□

the□

case□

is□

or□

used to be.□

114. It is therefore correct that it is important to transfer the fan page to the complainant, if□

exercise of a complainant's right as a data subject, as if to put it in the 'scales' with
the rights and freedoms of the second defendant in accordance with Article 20(4) GDPR. Thereby
the Disputes Chamber takes into account that it is possible that commercial data, as well as
personal data (for example of the first defendant as manager of the second)
defendant),
complainant.
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115. The European legislator explicitly recognizes that the right within the meaning of Article 20(1) of the GDPR may also be
exercised when the personal data concerns more than one data subject.¹⁵

116. The fan page is closely related to the identity of the complainant; after all, the fan page carries
first and foremost the complainant's full name and first name as the title, the handle contains the initials
of that name and first name, the posts are posted on the fan page from the perspective
of the complainant. Therefore, it cannot reasonably be argued that the rights and freedoms
disproportionately compromised by others in the transfer of this page, certainly
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117. If it were the case that the transfer affects the rights and freedoms of the second

defendant, is this a result of a (previous) contractual relationship between the complainant and
the second defendant, and its effect. However, this in no way justifies the 'hijacking' of
the personal data of a data subject, and the legal protection in this regard, especially when the
the person concerned previously indicated that he wished to take over the management of the fan page himself. 16

118. The Disputes Chamber finds that the fundamental right to data protection cannot be
limited by (non-compliance with) contractual claims inter partes, unless the latter

14 Recital 68 GDPR: "To further strengthen control over their own data, when the data subject is
personal data are processed via automatic processes, also the possibility to have the data concerning him/her
personal data that he has provided to a controller, in a structured, common,
obtain a machine-readable and interoperable format and transmit it to another controller
send[...]"

15 Recital 68 GDPR: "[...] When it concerns more than one data subject in a particular set of personal data,
the right to receive the personal data should be without prejudice to the rights and freedoms of other data subjects[...]"

16 Compare in recital 68 GDPR: "[...]Furthermore, this right should not affect the data subject's right to
erasure of personal data and the limitations on that right set out in this Regulation, and may
in particular do not imply that the personal data concerning him/her that the data subject for the execution of a contract
has provided, to the extent and for as long as the personal data is necessary for the execution of that agreement,
erased[...]" (The Disputes Chamber underlines).

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processing.

119. The Disputes Chamber is not aware of a clear request from the complainant for its rights

exercise on data portability, prior to the complainant's complaint to the

Data Protection Authority of March 5, 2020. Although there are oral requests to this effect

counsel for the complainant, there is no evidence of a previous request.

120. On April 14, 2020, the second defendant was notified that

a file with the Data Protection Authority, and the second defendant received an injunction

of the Disputes Chamber (in accordance with Decision 14/2020 pursuant to Article 95, §1, 5° WOG) to

to comply with the complainant's request to exercise its right to data portability

at

to practice.

121. By the annulment of the Decree by the Marktenhof, the order of the

Dispute room dated. April 14, 2020 nullified. As a result, there was no longer a

direct obligation on the second defendant to comply with the request of

the complainant, as the second defendant was only indirectly aware of the request,

and also opposed the implementation of this right to data portability, as evidenced by

the appeal against Decision 14/2020 at the Market Court, and the defense in the proceedings at

ground

Dispute room.

the

Bee

122. There is therefore currently no direct request from the complainant with regard to the second

defendant, nor is there an order of the Disputes Chamber with regard to the second

defendant, which would oblige the second defendant to comply with

the

GDPR.□

article□

complainant□

by□

sentence□

20□

the□

in□

123. In addition, it appears from the file that the management rights to the fan page have meanwhile (since 22 April□

facebook.□

transferred□

became□

complainant□

by means of□

at□

the□

2020)□

124. Since the contested Facebook fan page has already been transferred to the complainant, there is de iure no□

infringement of Article 20(1) of the GDPR. However, it is apparent from the conduct of the second defendant that□

that it would not have complied properly with the complainant's request under□

by□

legal provision.□

aforementioned□

125. For example, the second defendant made it to the fan page after becoming aware of Decision 14/2020□

“offline” (meaning that the fan page continues to exist, but becomes invisible to users□

of Facebook), before the management rights were transferred by Facebook to the complainant.□

In the proceedings on the merits before the Disputes Chamber, the defendant also argues that, pursuant to

Article 20(4) GDPR, the request of the data subject did not have to be complied with.

126. For all the foregoing reasons, the Disputes Chamber considers it necessary to

to warn that it must take the necessary measures to ensure that it is legally correct

to give effect to the exercise of the rights of data subjects, and in particular the right

to transferability, when those data subjects submit a request to him to that effect.

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4. Infringements

on

the

GDPR

127. The Disputes Chamber considers infringements of the following provisions by the second defendant

proven:

a. Art. 6 (1) GDPR, having regard to the second defendant unlawfully

processing the complainant's personal data via the contested Facebook fan page;

b. Article 21, paragraph 1 j° Article 12, paragraph 3 GDPR, in view of the second defendant no effect

indicated that the complainant's right to object was exercised and not sufficient

took measures to ensure that communication with the complainant, as a result of the exercise of

its rights, in the proper form and in a timely manner.

128. The Disputes Chamber considers it appropriate to impose an administrative fine amounting to

of 10,000 Euros (Article 83, paragraph 2 GDPR; Article 100, §1, 13° WOG and Article 101 WOG).

129. Taking into account Article 83 AVG and the case law¹⁷ of the Marktenhof, the motivation

fine in concrete terms:

administrative

a

by

Litigation room imposing□

a. The□

the□

by□

seriousness□

infringement:□

The violated provisions are at the heart of the General Regulation□

Data protection, in particular the lawfulness of the processing and□

rights of data subjects. Infringe the aforementioned Articles 6 and 21 GDPR□

give rise to the highest administrative fines in accordance with Article 83(5)□

GDPR.□

It is not acceptable to the Disputes Chamber that commercial interests in principal□

of the second defendant would in any way prejudice the rights conferred by the□

the complainant draws on Articles 12 to 22 of the GDPR.□

When assessing the file by the Disputes Chamber, it is striking that a□

constructive and transparent communication, let alone cooperation, between the complainant□

and the second defendant does not seem possible. This has at least an indirect effect on□

the complainant's commercial interests, without her having any control over this.□

The fact that the complainant's personal data were, as it were, 'mixed' with□

works belonging to the second defendant on the fan page on Facebook, may□

be blamed on the complainant. Also, the fact that the second defendant□

fan page used for professional contact with customers, should not get in the way□

to the rights and freedoms of the complainant. In addition, the second defendant□

had sufficient time to take the necessary measures in order to□

remove or move, respectively, to customers or other professional partners□

contact and delete conversations with them.□

b. The duration of the infringement:□

17 Brussels Court of Appeal (Market Court section), X t. GBA, Judgment 2020/1471 of 19 February 2020.□

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The second defendant cannot indicate a valid basis¹⁸ for the legality□

of the processing of the complainant's personal data in accordance with Article 6,□

Paragraph 1 GDPR after the termination of the obligations between it and the complainant on November 3rd□

2019. This means that the unlawful processing of personal data during□

took place for more than 5 months, until Facebook transferred the fan page to the complainant□

end of april 2020.□

For the determination of the infringement of Article 21(1) of the GDPR, the Disputes Chamber previously□

already indicated that the second party did not act on time (cf. Article 12(3) of the GDPR)□

defendant to the complainant's request, which by definition makes the infringement too long□

lasted.□

c. The necessary deterrent effect to prevent further infringements:□

The second defendant misbalances its own commercial□

claims and rights regarding the protection of personal data of the complainant.□

This indicates a failure to recognize the importance of the legislation□

regarding□

personal data protection, whereby the Disputes Chamber has an administrative□

monetary sanction is deemed necessary.□

The Disputes Chamber points out that the other criteria of art. 83.2. AVG in this case are not of nature□

that they lead to an administrative fine other than that imposed by the Disputes Chamber in the context of□

of this decision.□

130. On December 23, 2020, the Disputes Chamber prepared a form for response against a□

transfer the intended fine to the second defendant, whereby they were notified□

that the Disputes Chamber intended to impose a fine of 10,000 . on the second defendant□

EUR to be imposed. The defendant was thereby given the opportunity to express its opinion on the special circumstances of the case, the amount of the intended fine and its own financial capacity.

131. Given the importance of transparency in the decision-making of the Disputes Chamber, this decision is published in accordance with Article 100, §1, 16° WOG on the website of the Data Protection Authority omitting the identifiers of the parties, as those identifiers are not necessary and relevant to the publication of the decision.

18 It is up to the controller to demonstrate compliance with the provisions of the GDPR, pursuant to Article 5(2) of the GDPR.

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FOR THESE REASONS,

the Disputes Chamber of the Data Protection Authority decides, after deliberation:

a. on the basis of Article 100, §1, 1° WOG to lodge the complaint against the first defendant dismiss it, given that the first defendant does not appear to be a controller are in accordance with Article 4(7) GDPR for the facts that are the subject of the present complaint;

b. pursuant to Article 58, paragraph 2, a) GDPR and Article 100, §1, 5° WOG the second warn the defendant that they have exercised the right to data portability (Article 20 (1) GDPR) of the complainant. The request to exercise that right exercise was raised in the complaint, and the Disputes Chamber is of the opinion that the second defendant would have to comply with the request should the second defendant still or again have the administrative rights of the fan page.

Through the intervention of another controller (Facebook), who transferred administrative rights to the complainant, this request is, however, without purpose become;

c. pursuant to Art. 58, paragraph 2, point i) j° Art. 83 GDPR and Art. 100, § 13°

and 101 WOG to impose an administrative fine of EUR 10,000 on the

second defendant for the infringement of Article 6(1) of the GDPR on account of the unlawful

processing personal data by holding management rights on a

Facebook fan page bearing the complainant's surname and first name, and for the

infringement of Article 21, paragraph 1j° Article 12, paragraph 3 GDPR due to incorrect and late

comply with the complainant's request to exercise its right to object

to practice.

Against this decision, pursuant to art. 108, §1 WOG, appeals must be lodged within a

period of thirty days, from the notification, to the Marktenhof, with the

Data Protection Authority as Defendant.

Hielke Hijmans

Chairman of the Disputes Chamber