1/39

Litigation Chamber

Decision on the merits 25/2020 of 14 May 2020

File number: DOS-2019-01156

Subject: Legal basis for the processing of personal data by a

social media platform

The Litigation Chamber of the Data Protection Authority, made up 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 the

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

data protection) (hereinafter the "GDPR");

Having regard to the law of 3 December 2017 establishing the Data Protection Authority, hereinafter the

ACL;

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:

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processing of personal data by the controller: Y

("the defendant") ;

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1. Facts and procedure

1. On November 28, 2018, the Management Board of the Data Protection Authority

(hereafter the DPA) has decided to refer a case to the DPA Inspection Service on the basis of

Article 63, 1° of the LCA. The origin of the aforementioned referral was the practice by which the

social network and the "W" website invite their members to add their "friends/contacts".

2. The APD Inspection Service informed the Respondent of this decision of the Board of Directors

of the APD by letter of March 12, 2019.

3. The Inspection Service sent the Respondent two letters dated March 12, 2019 and

16 May 2019, with questions relating to alleged violations of articles 5, 6, 7, 30, 37 and

38 GDPR. The Inspection Service asked more specifically about the categories of

personal data of non-users that has been collected as well as the duration of

storage of this data. The Inspection Service also requested an extract from the register

of the defendant's processing activities and asked about the Data Protection Officer

data (position in the organization chart, time devoted to the function, professional qualities,

involvement in answering questions from the Inspection Service).

4. The Respondent responded to questions from the Inspection Service by letter dated March 21, 2019,

April 3, 2019 and June 14, 2019. The defendant specified the processing of personal data

as part of the invitation functionality on the "W" website as follows: “The data

personal data that we collect here will depend on the platform used: whether a user

chooses to download the contacts from the telephone directory of his gsm, we will collect the

phone numbers and the names that the user assigns to those phone numbers. If a

user chooses to download contacts from their email account, the basic contact details that

will be downloaded are then determined by the user's own email provider,

as clearly stated in the download permission screen of this

supplier”1. [Editor's note: all the passages from the file are free translations made

by the Secretariat of the Data Protection Authority, in the absence of an official translation].

If a user chooses to download contacts from their phone book, the data from

these contacts are regularly synchronized so that the user can invite new ones

contacts who are not yet members of "W" to register.

5. The defendant explains that in addition to the consent button, the following informative paragraph

appears: “We will regularly import and save your contacts so that we can

notify when people you know check in on "W" and if your contacts don't

1 Respondent's letter of June 14, 2019.

are not yet members of "W", so that you can invite them to register. You decide

who you add. You can stop the import at any time and delete all

contacts. More information".

6. If the user clicks on "More information", he will see the additional information

following: “If you import your address book, we will regularly import on our

servers information about your contacts, such as names, phone numbers and

other information, as explained on the provider authorization screen.

We use this information to let you know about people you already know on

"W" and so that you can invite your contacts who are not yet members.

The aforementioned suggestions are made directly on the service and by e-mail.

We do not store your password or email anyone without your

consent. You can stop synchronizing your address book at any time.

time through your settings. In this case, all your previously imported contacts will be

removed. For more information on how we process your data

personal information, we refer you to our Privacy Policy”2.

7. The defendant then explained that the user's contacts were kept in the bank

defendant's data until the user decides to end the synchronization of the

contacts or if a user deletes certain contacts. When an account is closed

(either voluntarily or after 2 years of inactivity), contacts are deleted within three months,

according to the explanations of the defendant3.

8. In its letter of March 9, 2020, the defendant explains that the user can choose to withdraw

their consent and therefore no longer have their contacts synchronized, which implies the

deletion of existing contacts from the "W" database. If the user does not choose

this function, contact details (including those of third party non-users of the website) are

kept for at least three months.

9. The defendant transmitted an extract of its register of processing activities to the Service

of Inspection which reveals which categories of personal data of customers

(users of the website) are processed: “profile information, personal identification,

analytical data, user generated content, user account information,

contact information and third party information (for users who register via

2 Ibid.

3 Ibid.

4 See also Section 11 of the Respondent's Privacy Policy, Inspection Service Exhibit 5.

Facebook)". According to this register, the legal bases invoked for the treatment are "the execution

of a contract” and “the consent of the individual”5.

10. With regard to the legal basis for the collection of personal data from

non-users, the defendant explained as follows that the legal basis "consent" does not

should not - according to him - be used: “We believe that we are not obliged to collect

the consent of the contact. Indeed, we do not send promotional messages because it is

the user who sends personal communications to his contact via our platform.

This interpretation is in line with the view set out in Working Party Opinion 5/2009

Article 29 on online social networks6 and we have ensured that our process respects

quite the four criteria formulated in this opinion”7 8.

11. The defendant reacted in detail to the questions of the Inspection Service concerning

the activities and skills of its data protection officer9. The defendant returns

in particular to the professional experience of this person, more particularly to his

experience as EMEA Senior Privacy Counsel within a company active in the means

online payment service and as a lawyer in the IT department of a law firm.

This person also holds an IAPP CIPP/E and CIPM10 certification.

12. On June 18, 2019, the Inspection Service sent its report to the Litigation Chamber, in

pursuant to Article 92, 3° of the LCA.

13. The inspection report identifies potential violations of Article 5(2) GDPR,

6 GDPR, Articles 4(11) and 7 GDPR as well as Articles 37 and 38 GDPR.

14. With regard to alleged breaches of liability (Art. 5 para. 2 GDPR),

the lawfulness of the processing (Article 6 of the GDPR) and concerning the definition and the conditions of the

consent (Article 4 point 11 and Article 7 GDPR), the inspection report makes a distinction

between the consent relating to the processing of personal data of the user of the

website on the one hand, and the consent which is required with regard to the processing of

personal data of the contacts of this user on the other hand.

5 Ibid.

6 Group 29 Opinion 5/2009 on online social networks, 12 June 2009 (WP 163). All documents of Group 29 and of

the EDPB cited in this decision can be obtained via www.edpb.europa.eu.

7 Letter to the Inspection Service of April 3, 2019.

8 Respondent's letter of June 14, 2019.

9 Respondent's letter of June 14, 2019.

10 The IAPP is a globally recognized private organization that offers certifications in European privacy law.

data protection (CIPP/E) and data protection management (CIPP/M), see the following web page:

https://iapp.org/certify/cippe/.

15. As to the Respondent's position that it is not obligated to collect the

consent of the contacts (non-members of "W"), since these would be "communications

personal information" by the user, the Inspection Service points out that the exception (to the obligation

of consent of Article 7 of the GDPR) for personal or household activities may

certainly be invoked by social media users but not by the social network "W"

itself, in accordance with recital 18 of the GDPR, which reads as follows:

"(...) Personal or household activities [which do not fall within the scope of the

GDPR] could include [...] the use of social media and online activities that take place

as part of these activities. However, this regulation applies to those responsible for the

processing or to subcontractors who provide the means to process personal data

personnel for such personal or household activities." (inspection report p. 4).

16. Respondent's reference to Group 29 Opinion 5/2009 on online social networks is judged

not relevant by the Inspection Service because this opinion relates to the old Directive on the protection

data11 and "because the GDPR imposes more extensive obligations on those responsible for the

processing, the responsibility for which is included in Article 5, paragraph 2 of the GDPR and the requirement for

unequivocal manifestation of will listed in article 4.11) and article 7 of the GDPR"

(inspection report, p. 5).

17. With respect to the consent of social media users (members of "W"), the Service

d'Inspection finds that the process of adding contacts has options checked by

defect, making the user's consent for the use or not of the personal data

personal data of its contacts not valid in a context where recital 32 of the GDPR specifies

explicitly that there can be no consent in the case of "boxes checked by default".

The Inspection Service points out that the defendant is prepared to "put an end to his

practice on the basis of which it preselects contacts", which has been done in the meantime.

According to the respondent, the adaptation took place 2 working days after receipt of the report

inspection12.

18. The defendant has meanwhile removed the default checked options from the platform,

"voluntarily and without any detrimental acknowledgment", after receipt of the second

letter from the Inspection Service of May 16, 2019. The defendant nevertheless asserts in its

conclusions that these options checked by default do not relate to obtaining consent

of the user to import his contacts and that furthermore, no consent is required,

11 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of natural persons

with regard to the processing of personal data and on the free movement of such data (OJ L 281/31

(hereinafter Data Protection Directive).

12 Respondent's submissions, p. 13 and 42.

having regard to the principles of Group Opinion 5/2009 29 on online social networks (see conclusions

of the defendant, p. 13).

19. The Inspection Service also points out that the respondent's privacy policy

does not mention that consent can be withdrawn, as required by Article 7 of the

GDPR. In his submissions (pp. 19 and 20) and in his letter of June 14, 2019, the Respondent

replies that the possibility of withdrawing consent is indeed offered on the website.

The user is informed that he can stop the import at any time and delete all

contacts.

20. Prior to the initiation of the current proceedings, the Respondent was in contact with the DPA in the

a complaint about the way the "W" platform works. The complaint

concerned the fact that the information relating to the protection of personal data

could only be read after creating an own account and accepting the conditions

of use and privacy policy. The APD had informed "W" that this did not constitute

not a valid way to obtain consent for the "invite a friend" email, as long as it

this was the legal basis used by "W"13.

21. At the meeting of July 9, 2019, the Litigation Chamber decided, pursuant to Article 98 of the

LCA, that the case could be dealt with on the merits.

22. On July 10, 2019, the Respondent was informed by registered mail of this decision as well as

the inspection report and the inventory of the documents in the file which was sent to the Chamber

Litigation by the Inspection Service. Likewise, the defendant was informed of the provisions

of Article 98 of the LCA and, pursuant to Article 99 of the LCA, he was informed of the deadlines for

present their conclusions. The deadline for receipt of the submissions in response from the

respondent was set for September 4, 2019.

23. By letter and email dated July 15, 2019, the Respondent requested to be heard. By mail

of August 30, 2019, the Litigation Chamber informed the defendant of the date of the hearing.

24. On September 4, 2019, the Litigation Chamber received the defendant's submissions in response.

25. On October 1, 2019, the hearing takes place. The file was taken up with other members of the Chamber

Litigation. The data controller was heard and had the opportunity to put forward his

arguments, following questions put to him by members of the Chamber

13 Letter from the DPA to the Respondent dated July 3, 2018.

Litigation, with respect to the foreign scope of the "W" website, the legal basis of the

processing of personal data of users and non-users of the website

"W" and the role and working methods of the data protection officer.

26. During the hearing, the Respondent made the following statements which supplement his

conclusions:

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The defendant offers a platform to get to know new people

in the private sphere without limitation (friend or relation); it has 4.5 million users

active per month, spread across the globe, of which 1.5 million users are in

the European Union. 33 people work within "W" (see also the conclusions

of the defendant, p. 3) and 100 people work in various places around the world for the

helpdesk (not workers of Y but only contractual service providers,

as specified by the respondent by letter dated November 4, 2019 addressed to the Chamber

Litigation).

The defendant deplores that the constituent elements of the offense with which "W" is charged are not□

not indicated in the inspection report (see also Respondent's submissions, p. 6);□

the defendant submits that in this case the charges were laid without a detailed description□

prior to the alleged offence. The Respondent considers that the charges relating to the□

"responsibility" are particularly confusing.□

27. The Respondent then explains how the invitation process works on the site□

Internet "W"14:□

- As specified above, users of the website are informed of the processing that will have□

-□

takes place in the context of the "invite a friend" feature.□

Under the message "W is better with friends", the Internet user has the possibility of importing a notebook□

addresses of different service providers (Outlook, Google mail, Yahoo, Facebook,□

Telenet, Skynet). The user is not obliged to select a service provider and□

can leave out the "invite a friend" functionality in its entirety. If the user□

wish to use this functionality, you must choose one of the service providers. Then a□

screen of this service provider is displayed on which the Internet user can consent to the□

addresses of his contacts are read. As the defendant explained, it is "the screen□

supplier's authorization". If the Internet user consents, all the addresses appearing in the□

address book are then saved by "W". The functionality offered by such□

14 Respondent's submissions, p. 7 to 20, dots 20-45.□

service providers is to allow users to share information about□

limited contact with the "W" platform, for limited purposes.□

- During a next step, the Internet user has the possibility of choosing the recipients of e-mails□

invitation.□

- In a first version of the website, all addresses were checked by default,□

with the possibility of deselecting all recipients with a single click. Since

July 12, 201915, no more addresses are checked by default and the user has the choice between

two options: designate the recipients one by one or, with a single click, preselect all

contacts. In the previous version of the website, the user also had the possibility

deselect one by one the recipients checked by default.

By letter dated November 4, 2019, the defendant insists that users have

the possibility of withdrawing their consent at any time regarding the use of the

"invite a friend feature". All previously imported contacts are then

deleted, announces the website (see above, p. 3).

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28. The Respondent then asserts that the contact addresses are only used for the

invite functionality. According to the defendant, no profile is established on the basis of these

contact details.

29. Regarding the legal basis invoked, the Respondent asserts the following: if a user sends

an invitation to his friends, this is a personal communication, not a message from

prospecting which is subject to the anti-spam rules of the Privacy and Communications Directive

electronics; the defendant uses only one legal basis, i.e. the consent of the

users; "GDPR doesn't say you need consent from contacts. We have

the user's consent to import their data" asserted the defendant during

the hearing. To the question of the Litigation Division as to whether, according to the defendant, the

user's consent was also valid for non-users of the "W" website,

the defendant replies in the affirmative, "given that it is a question of one and the same purpose" in so far as

regarding the processing of personal data. The defendant therefore confirmed the

assertions included in his conclusions and which he summarized as follows:

“Regarding the legal basis relied upon, the Respondent asserts the following: Y deals with

details of the user's contacts for a single purpose: the provision of the

15 Respondent's submissions, p. 13, item 28.

"invite a friend" feature. In order to achieve this unique purpose, the user's contacts

are uploaded and invitation emails are then sent on behalf of the user

to those contacts that the user has selected. The legal basis on which Y relies for

the processing of personal data within the framework of the functionality "invite a

friend" is the user's consent. Y believes that it is not mandatory to request

distinctly the consent of the user's contacts, given that the treatment of

data is already legitimized by the user's consent under Article 6 of the GDPR

and that the invitation message that is sent does not constitute a prospecting message

subject to the Privacy and Electronic Communications Directive. This is by the way

explicitly confirmed by the Article 29 Working Group.

Litigation to find out whether the user's consent is also valid for

non-users of the "W" website, the defendant replies in the affirmative: in the context of

the "invite a friend" functionality and, more generally, of all services and all

functions that enable users to process contact details and other information

people they know (e.g. email providers, messaging systems,

operating systems, cloud services where people upload photos

on which their friends and family can appear, ...), the data is in a

first those of the user himself." (Letter from the respondent to the Chamber

Litigation of November 4, 2019, reaction to the draft report hearing, p. 3).

30. The defendant then demonstrates, using screenshots of the website, that the user can

view and edit the default message before it is sent as part of the invitation email

(p. 12 of the plea). The Respondent reiterates that, in his view, he took all measures to ensure that this

processing meets the requirements for "personal communications" as set out in

Group Opinion 5/2009 29 on online social networks. According to the respondent, the Service

d'Inspection erroneously asserts that this notice predates the GDPR and is no longer valid, as the requirements

of consent have been strengthened in the meantime (see also conclusions, p. 23).

The defendant also reacts to the question of whether or not it is a message of

canvassing within the meaning of Article 13 of the Privacy and Electronic Communications Directive.

By letter of November 4, 2019, the defendant wished to provide clarifications

additional information: “Y has never claimed that the GDPR does not apply to the activities of

processing carried out in the context of the W platform. Y, on the other hand, considers that the message

invitation that is sent to the user's selected contacts constitutes a communication

personal information for which it is not mandatory to obtain the consent of these contacts on the

basis of the Privacy and Electronic Communications Directive.”16

16 Letter from the defendant to the Litigation Chamber of November 4, 2019, p. 4.

31. The Litigation Division then asks whether the invitation message sent at the start of the

"W" platform whether or not to draw users' attention to the fact that their data may be

corrected or deleted. The defendant refers to his argument which contains a printed version of

the screen displayed to the recipient of such an invitation: under the message "X has sent you

a message", two blue buttons offer the following option: "Register and reply" or

"Only read the message". Below these buttons is the following explanation: “When you

click on 'Register and reply', you consent to an account being created for you on

W and you agree to our [hyperlink] Terms and Conditions. Also read our [hyperlink]

Privacy Policy and our [hyperlink] Cookie Policy.”. The defendant

explains that the recipient of the invitation e-mail receives information about their rights via the

Privacy Policy and Cookies Policy of "W", and that the recipient

also receives the following information in the e-mail itself: “Click here if you do not

do not wish to receive commercial e-mails about our products or services" (p. 17 of the plea).

32. With regard to the Data Protection Officer, the Respondent refers to the exhibits which

demonstrate that this person was indeed involved in the definition of the functionality

of invitation, in particular an e-mail of August 13, 2018 which has already been communicated to the Service

d'Inspection (p. 15 of the plea - defendant's exhibit 21). The Respondent asserts that its delegate

data protection may report to the highest body and that in practice it

does so, according to the defendant (letter from the defendant to the Litigation Chamber of the

November 4, 2019, p. 4). The defendant also claims that there is no evidence in the report

inspection that this person would not be independent (that he would, for example, receive

directions from management).

33. The Respondent submits a positive and recent evaluation report from which it appears that this person

should not fear for his job. According to the Respondent, this positive assessment proves that the

data protection officer is able to carry out his tasks in a manner

independent, and that V was the obvious choice for the Data Protection Officer.

This Data Protection Officer is based in Dublin but can communicate in English and

in French with the defendant's staff and there is also a local "privacy lead" at U.

The respondent claims that the Data Protection Officer meets in person with the

Y workers on a regular basis and that most of the meetings are done via "video

conferencing". The professional qualifications of this person appear from his C.V.

Data Protection Officer says he also works for another platform

of social media ("Z") and that there is no predefined distribution with regard to its use of the

time between the two platforms, and that he can rely on a team of 4 employees at

full-time, in addition to the local "privacy lead" at U.

34. Given the cross-border nature of the data processing on the defendant's website, the

Litigation Chamber has decided to submit the case to the procedure of article 56 of the GDPR, in order

to identify the lead supervisory authority and the supervisory authorities concerned. ODA has

proposed as a potential lead supervisory authority. The authorities of the following countries have

declared to be authorities concerned: the Netherlands, Germany (Lower Saxony, Baden-Würtenberg,
Brandenburg, Rhineland Palatinate, Mecklenburg Western Pomerania, Bavaria, Rhineland
North Westphalia, Berlin), Portugal, Sweden, Ireland, Latvia, Italy, Norway, Hungary, Austria,
Spain, France, Cyprus, Slovakia, Denmark, Slovenia.

35. On October 3, 2019, the Litigation Chamber sent a registered letter to the defendant
with, in annex, the defendant's annual accounts for the fiscal years 2016, 2017 and 2018,
asking if the defendant could confirm the figures therein, in particular the figure
business. The turnover figures are as follows:

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financial year 2016: more than XXX euros;

financial year 2017: more than XXX euros;

financial year 2018: almost XXX euros.

36. On October 17, 2019, counsel for the defendant confirmed, on behalf of his client, that the accounts
detailed above were correct. With this letter, the defendant wished to attract
the attention of the Litigation Chamber on an appended forecast for the 2019 fiscal year
(see below).

37. A report of the hearing was sent for information to the defendant by e-mail dated October 30, 2019,
by asking him to react within 2 working days if he has any comments. The defendant was
informed that the debates were not therefore reopened and that the remarks could not
concern only the rendering of oral debates.

38. The Respondent transmitted his remarks to the Litigation Chamber and insisted in particular on
that account be taken of "the fact that Y had always been willing to collaborate for a long time before the
official launch of the investigation and that he repeatedly asked the DPA for feedback which
however, was never given”17.

39. On 5 November 2019, this case was again discussed in session of the Chamber
Litigation. The Litigation Chamber has decided to initiate the cooperation procedure as
as referred to in Article 60.3 of the GDPR.
17 Letter from the defendant to the Litigation Chamber of November 4, 2019, p. 1.
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40. On January 8, 2020, an English translation of the draft decision was submitted to the authorities of
protection of the data concerned, pursuant to Article 60.3 of the GDPR. On January 15, 2020, the
defendant was informed by mail.
41. On February 4, 2020, the Netherlands introduced a relevant and reasoned objection. The Netherlands
requested that more reference be made to the case law of the Court of Justice in
regarding the analysis of the defendant's legitimate interest in sending invitations to third parties
non-members of its social media platform on the one hand, and challenged the relevance of the
references to a 2013 investigation report on the legitimate interest of a social media to send
invitation emails on the other hand.
42. On February 14, 2020, the Litigation Chamber decided to honor the objection filed, in
particular with regard to the position that the application of the legal basis "interest
legitimate" in this case requires a concrete assessment of all the factual data
relevant, respecting the case law of the Court of Justice: the Litigation Chamber has
decided to reopen the proceedings with regard to the analysis of the legitimate interest of the defendant.
43. The Litigation Chamber informed the defendant by registered letter of February 18, 2020 of
this relevant and reasoned objection as well as the content thereof and invited him to react as soon as possible
late March 9, 2020 regarding the possible invocation of legitimate interest as a legal basis
disputed data processing. The defendant filed its response by post of
March 9, 2020.
44. The Litigation Division then took cognizance of the defendant's arguments as to his
legitimate interest and judged, following the inspection report and taking into account the arguments of the

defendant, that it would impose a fine of 50,000 euros on the basis of violations of the GDPR

that she had seen.

45. In order to give the defendant the opportunity to defend himself regarding the amount of the proposed fine

by the Litigation Chamber, the latter decided to list the violations in question in

its standard form "reaction form against a proposed fine", a document which

was sent by e-mail on April 7, 2020 mentioning that the defendant was free to complete

this document with its reaction to the particular circumstances of the case, the amount

of the fine and the annual figures presented18. The defendant responded by e-mail from

18 This invitation to limited conclusions was sent by e-mail in the context where the Litigation Chamber was in

the impossibility of sending this invitation to limited conclusions by registered mail, in accordance with article 95 of the LCA, in

mentioning that the Litigation Division was prepared to grant, if necessary, longer deadlines for the submission of

conclusions for the defendant in the context of the spread of the Coronavirus. The defendant did receive this e-mail and

replied within 3 weeks.

April 28, 202019, with its arguments relating to the amount of the fine as well as new

information concerning the turnover for the fiscal year 2019 which amounts to more than

10,000,000 euros according to the defendant's latest forecasts.

46. In the meantime, in accordance with Article 60.5 of the GDPR, the Litigation Chamber had decided to

submit a revised draft decision to the authorities concerned on April 23, 2020. This procedure

international ended on May 8, 2020, without any reasoned objection.

47. The Litigation Division then adapted its decision to take into account the arguments of the

defendant with respect to the fine20.

2. Decision

2.1 Qualification of the controller and of the disputed processing

48. The defendant is the controller of the personal data of users

of the social media platform "W", as well as the processing of contact details of non-users

(names, telephone numbers or e-mail addresses) and other contact information21, which

are recorded on the "W" servers following synchronization of the address book (GSM or

e-mail) of users of the website.

49. Pursuant to Article 4(7) of the GDPR, the controller is indeed "the natural person

or legal entity, public authority, service or other body which, alone or jointly with

others, determines the purposes and means of the processing. [...]".

50. The Court of Justice of the European Union has explained on several occasions that the notion of

"controller" referred to "the natural or legal person, public authority, service

or any other organization which, respectively, alone or jointly with others,

determines the purposes and means of the processing of personal data", all

aiming to ensure, by a broad definition of the concept of "responsible", protection

effective and complete of the persons concerned. Furthermore, this notion "does not refer

necessarily to a single organization and may concern several actors participating in this

19 The Respondent's arguments in this regard are set out under the heading "Decision on Penalty".

20 See the heading "Decision with regard to the sanction".

21 See Respondent's submissions, p. 11: “This app wants permission to: See your Google contacts; Edit your Google contacts;

Delete your Google Contacts; you contacts may include the names, phone numbers, addresses and other info about the people

you know”.

processing, each of them being then subject to the applicable provisions in terms of

data protection"22.

51. In accordance with Opinion 1/2010 of the Group 29 on the notions of "controller" and

"subcontractor", the Litigation Chamber concretely assesses the role and quality of the manager

of treatment23.

52. In this case, the defendant is responsible for registering the contact details of the users

of the website, given that it has previously determined the means and purposes of this

processing (the sending of invitation e-mails)24. With regard to the means and conditions for

this processing, the retention period for contact details, for example, is determined by the

respondent in Article 11 of its privacy policy. This period is 3 months after the

closure of the user's account or the data must be immediately erased when

the user of the website deselects the "synchronization of contacts"25.

53. In the present case, the defendant is also the controller of the personal data

personal which consists of sending invitation e-mails in the name and on behalf of "W" to

contacts of current users.

54. However, the transmission to the recipients of the invitation e-mails and the processing of data

personal character in the message itself do not fall under the GDPR insofar as

the "domestic exception" exception applies, i.e. it is an activity strictly

personal or household within the meaning of Article 2 of the GDPR.

55. The defendant himself cannot invoke this exception "domestic exception", as the

specifies recital 18 of the GDPR: "This regulation does not apply to the processing of

personal data made by a natural person in the course of activities

strictly personal or domestic, and therefore unrelated to a professional activity or

commercial. Personal or household activities could include exchanging

correspondence and keeping an address book, or the use of social networks and

22 See in particular CJEU, 5 June 2018, C-210/16 - Wirtschaftsakademie Schleswig-Holstein, ECLI:EU:C:2018:388,

recitals 27-29.

23 See Group 29, Opinion 1/2010 on the notions of "controller" and "processor", 16 February 2010 (WP 169),

as specified by the DPA in a note "Update on the notions of controller / processor with regard to

of EU Regulation 2016/679 on the protection of personal data (GDPR) and some specific applications

liberal professions such as lawyers"; see also CPVP, Decision of 9 December 2008 concerning the control and

the procedure for recommending insiders with regard to the company SWIFT scrl, p. 5.

24 See Opinion 5/2009 of Group 29 on online social networks, 12 June 2009 (WP 163), p. 5: “SRS providers

[NdT: social networking services] are responsible for the processing of data in accordance with the directive on the protection

Datas. They provide the means to process user data as well as all “basic” services

related to user management (e.g. registering and deleting accounts)."

25 Privacy Policy of February 15, 2019 - Exhibit 5 of the Inspection Report.

online activities that take place in connection with these activities. However, this regulation

applies to controllers or processors who provide the means to

process personal data for such personal or household activities"

[proper underlining]. The defendant is therefore responsible for sending invitation e-mails even

whether the user of the website can invoke the domestic exception with regard to his own

processing of personal data.

56. Moreover, the defendant does not itself dispute that the GDPR applies to the disputed processing

and does not invoke the exception for personal and household purposes26.

2.2 Clarifications concerning the domestic exception and the notion of “personal communication”

57. The Respondent asserts that it considers the invitation emails to be “communications

personal".

In his pleadings and during the hearing, the defendant specified that this defense had not

nothing to do with the "domestic exception" exception and that he never claimed that the

GDPR would not apply. According to the Respondent, the notion of "personal communication" refers

solely to the fact that it is not a prospecting message within the meaning of article 13.2 of the

Privacy and electronic communications directive, according to the criteria defined by the Group 29

in Opinion 5/2009 on online social networks27.

58. Respondent therefore does not dispute that the GDPR applies and that it is responsible for the

treatment, with regard to the sending of invitation e-mails.

59. The Litigation Chamber further adds to this that certainly if the recipients of the e-mail

of invitation have been defined beforehand by the online social platform (e.g. checked by

defect), the website user concerned has no say in an aspect

of the purposes of the processing (designating the recipients). The fact that the defendant ticks

by default the recipients therefore constitutes in this case an additional element allowing

to consider him as a data controller.

26 Respondent's submissions, p. 22.

27 The Group 29 indeed judges in Opinion 5/2009 on online social networks that if the recipients of an e-mail invitation

have been previously defined by the online social platform (e.g. checked by default), the message cannot be qualified

of "personal communication". It is then a commercial message for the benefit of the social media network as referred to in

Article 13.2 of the Privacy and Electronic Communications Directive (Group 29, Opinion 5/2009 on social networks in

online, 12 June 2009 (WP 163), p. 11.

60. Finally, it is clear that the defendant is responsible for the processing of personal data

contacts of users of the "W" website, both with regard to the registration of these

data only with regard to the sending of an invitation e-mail.

2.3 Legal basis for processing contact details of users and non-users of the site

Internet “W”

61. As controller of the processing of personal data in the context of the

feature "invite a friend", the defendant must ensure that this treatment meets the

principles of data processing and is lawful in the sense that the processing is based on a

appropriate legal framework (Articles 5 and 6 of the GDPR).

62. The processing concerns personal data of users and non-users of the

"W" website and has two components: registration of contact details on the servers of the

defendant and the sending of invitation e-mails.

63. Respondent argues that the procedure developed on the "W" website ensures that it

obtain free, specific, informed and unambiguous consent from the user of the website,

in accordance with the requirements of articles 4.11), 6.1 and 7 of the GDPR, with regard to the

feature "invite a friend/invite un ami" (respondent's submissions, p. 19).

64. Respondent asserts in particular that no consent of the recipient of the message is

required, neither for the recording of its coordinates on the servers of the website, nor for

the sending of an invitation e-mail, and this because the user of the website has given his

consent for the import of his address book by the defendant.

“Above all, it should be emphasized that importing contact details is a

processing of personal data which falls within the scope of the purpose of the

"invite a friend" feature. As explained above, in the context of this purpose, Y processes

personal data that is included in a user's address book

who has given his consent to this effect. Y can therefore invoke a valid legal basis

for the import of the personal data of these contacts." (conclusions of the

defendant, p. 21).

65. The Respondent reiterated this position during the hearing and also clarified that he did not wish

not invoke any other legal basis in this respect.

66. The defendant also refers to other online services where users can

"download" their address book (Gmail, Hotmail, WhatsApp and Messenger) as well as

operating systems (like IOS, Android and Windows) where users download their

address book and their photos:

“If the Inspection Service attempts to demonstrate that each time a user of a service

downloads personal data relating to people he knows, the

company that operates this service must obtain the consent of these people, it would undermine

generally the operation of online communication services. Such a position

wouldn't only apply to "invite a friend" features like Y and others

online social networks offer them but also to (i) messaging services such as

such as Gmail, Hotmail, WhatsApp and Messenger, where users upload their notebook

addresses, to (ii) operating systems such as iOS, Android and Windows, where□

users upload their address book and photos and to (iii) other services□

such as reservation services and check-in services for aircraft where□

users can download personal data of people they□

know, etc." 28.□

3. Grounds for the processing of personal data□

users versus non-users□

3.1. Regarding the processing of personal data of non-users□

3.1.1 No valid consent□

67. The Litigation Division does not agree with the defendant in its position that the user of the□

social media website can itself give consent for the import by the□

website of personal data of third parties in its address book, with a view to□

sending an invitation email.□

68. Under the GDPR, only the data subject whose personal data is□

processed may give valid consent to the processing of such data,□

and this with the exception of cases of parental consent (article 8.1 of the GDPR) or another□

legal power of attorney29. In the event that data from a third party is used, this third party must give□

his consent in accordance with the conditions of Article 7 read in conjunction with Article 4.11)□

28 Respondent's submissions, p. 22, see also Respondent's letter of March 9, 2020, p. 5.□

29 For an application of these principles, see for example the letter from Group 29 of October 20, 2017 to "Sin.ME", footnote□

of□

:□

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwim5d6nlr_lAhUQyKQKHVW1BCAQFj□

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GDPR, as Group 2930 explains. There is no such consent here.□

Furthermore, this consent can de facto only be given by existing members of "W" if□

and provided that at the time of joining the platform, they have given their consent□

to the use of their personal data in accordance with the conditions of the GDPR.□

69. In this respect, the Litigation Chamber draws attention once again to an investigation by the authority□

Dutch data protection law regarding WhatsApp, dating from before the entry into force□

of the GDPR. In the context of the WhatsApp mobile application, this authority found that the user□

of social media could not give valid consent in the name and on behalf of a□

non-user of the social media platform: “WhatsApp users cannot□

give (unambiguous) consent on behalf of non-users in their address book in order to□

that the contact details concerning the latter are processed by WhatsApp, without having been□

mandated for this purpose by the non-users concerned. Only non-users concerned□

themselves (or their legal representatives) can give such consent. Given that□

WhatsApp does not obtain one-to-one consent from non-users in the address book□

of WhatsApp users for the processing of their personal data and that it□

deals anyway and that WhatsApp also does not have any other basis for this□

data processing, WhatsApp acts in violation of article 8 of the (Dutch)□

Protection of Personal Data31”.32□

of the Data Protection Authority, in the absence of an official translation]

3.1.2 Possibility of invoking a legitimate interest

70. In the present case, no legal basis other than "consent" is invoked by the

respondent. The defendant invokes the basis of "legitimate interest" only in the alternative,

in the context of the questions that the Litigation Chamber asked following the objection of the

Netherlands. The Litigation Chamber therefore examines whether the disputed processing of data to

personal character of non-users may have a legal basis under Article 6 of the GDPR

and whether the processing is therefore "lawful" or not within the meaning of Article 5.1 of the GDPR.

71. In the absence of any possibility of invoking consent with regard to the processing of

personal data of non-users, the Litigation Chamber examined in what

30 Group 29, “Guidelines on consent within the meaning of Regulation 2016/679”, 10 April 2019 (WP 259 Rev01).

31 Article 8 of the former Wet Bescherming Persoonsgegevens implemented Article 7 of the Data Protection Directive

and was, in substance, analogous to Article 6 of the GDPR.

32 College bescherming persoonsgegevens (hereafter CBP), Investigation into the processing of personal data in the

framework

2013,

https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/rapporten/rap_2013-whatsapp-cbp-definitieve-

bevindingen-nl.pdf, p. 32. CBP is the legal predecessor of the Autoriteit Persoonsgegevens.

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extent the social media platform "W" might process data of third-party non-users on
the basis of its legitimate interest (article 6.1, point f) of the GDPR), with a view to very limited purposes,
as set out below.
72. The Litigation Chamber understands that the "W" website has an interest in processing data
personal character of third-party non-users in order to stimulate a growth in the number of
platform members.
73. In this case, the data of third party non-users are not only processed for the purpose of
the identification of members of the "W" website. Contact data (including
non-third-party users) may however be kept for 3 months by the website after the
closure of a "W account" by the user33.
74. The “W” website also processes more data than necessary in order to send an e-mail
of invitation since these data are not defined in a limiting manner by the website
itself: not just contact details defined by the website itself (e.g. names,
telephone numbers and e-mail addresses) but on the contrary, potentially also other
categories of personal data such as those of third party service providers of the
information society, i.e. "import on our servers other information relating to
your contacts, as specified on the provider's authorization screen"34.
75. Article 6.1.f) of the GDPR provides that the legal basis can be used provided that "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 who require the protection of personal data, in particular
when the data subject is a child”.

76. The case law of the Court of Justice of the European Union requires that recourse to Article 6.1.f)

of the GDPR meets three cumulative conditions, "namely, first, the pursuit of an interest

legitimate by the data controller or by the third party or third parties to whom the data is

communicated, secondly, the need for the processing of personal data to

the achievement of the legitimate interest pursued and, thirdly, the condition that the rights and

fundamental freedoms of the person concerned by data protection do not prevail”35.

33 Letter from the defendant to the Inspection Service of June 14, 2019.

34 Respondent's submissions, p. 11 and letter from the defendant to the Inspection Service of June 14, 2019.

35 CJEU, 4 May 2017, C-13/16, "Rigas", recital 28 and CJEU, 11 December 2019, C-708/18, Asociația de Proprietari bloc M5A-

ScaraA “M5A-ScaraA”, recital 40.

77. The controller must in other words demonstrate that:

1)

2)

3)

the interests it pursues with the processing can be recognized as legitimate (the "test

purpose");

the intended processing is necessary to achieve those interests (the “necessity test”); and

the weighing of these interests against the interests, freedoms and fundamental rights of

data subjects weighs in favor of the controller or a third party (the "test of

weighting").

 Finality test

78. The Court of Justice specifies that the legitimate interest must also "be born and current on the date of

treatment and not be hypothetical on that date"36.

79. The Litigation Chamber also refers to the recent guidelines 3/2019 on processing

of personal data through video devices37

through video devices) in which the EDPB recalled that the controller

or third parties could pursue legitimate interests of various kinds, namely interests

of a legal, economic or immaterial nature. In this context, the EDPB also refers to the

judgment of the Court of Justice according to which "the interest of a third party in obtaining information

personnel concerning a person who has damaged their property in order to sue them

to obtain compensation constitutes a legitimate interest".

80. Based on the case law of the Court of Justice and the guidelines of the EDPB, the Chamber

Litigation considers that the notion of legitimate interest can have a broad scope, provided that a

interest invoked by a controller is sufficiently specific. In context

of the present case, the Litigation Chamber does not rule on the question of whether a

economic interest can be considered a legitimate interest within the meaning of Article 6.1.f) of the

GDPR.

81. In this case, the defendant draws attention to the fact that "the purpose of the W platform consists

essentially for users to connect with each other and have conversations and

interesting exchanges with other users" and on the fact that

36 CJEU, 11 December 2019, C-708/18, TK v Asociația de Proprietari block M5A-ScaraA, recital 44.

37 EDPB, “Guidelines 3/2019 on processing of personal data through video devices”, 29 January 2020, n° 18.

38 These guidelines refer in this respect to Opinion 06/2014 of the Group 29 on the notion of legitimate interest of 9 April 2014

(WP 217).

39 CJEU, 4 May 2017, C-13/16, "Rigas", recital 29.

o Y, as data controller, has an interest in providing users of the

platform W the possibility of finding contacts who are already users and/or

to invite other contacts who are not yet users to become members;

o the user of W, as a third party or controller who uses the

platform under the domestic exception (recital 18 of the GDPR), has an interest

to find or invite people he knows in order to more easily develop his□

network”40.□

82. The defendant also claims that the development of the "invite a friend" functionality was□

dictated by the fact that some users asked for an easy way to find or invite□

knowledge and that the "experience" of the user on the social platform "W" is more□

pleasant thanks to this "invite a friend" function. The Respondent also points out that this interest□

“is an effective and current interest that is neither vague nor speculative”.□

83. The Litigation Chamber considers that with the help of these facts and reasons, the defendant demonstrates the□

presence of an interest to be taken into account, that this interest is sufficiently specific,□

which emerges from the Respondent's detailed explanations.□

□ The necessity test□

84. The Court of Justice specifies that for the test of this condition, it is necessary to check "that the legitimate interest□

of the data processing pursued [...] cannot reasonably be achieved in such a way□

effective by other means that are less detrimental to the freedoms and fundamental rights of□

data subjects, in particular the rights to respect for private life and to the protection of□

personal data guaranteed by Articles 7 and 8 of the Charter”41.□

85. The Court of Justice has also specified that the condition relating to the necessity of the processing must□

be considered in conjunction with the data minimization principle enshrined in Article 5,□

paragraph 1, c) of the GDPR42.□

86. Respondent asserts that the "W" platform only processes basic contact details of□

contacts of its users43. However, it appears from the factual data that the Respondent maintains□

in principle these data 3 months, unless the user of the platform decides to stop the□

synchronization of contacts.□

40 Letter from the defendant to the Litigation Chamber of March 9, 2020, p. 4.□

41 CJEU, 11 December 2019, C-708/18, TK v Asociația de Proprietari block M5A-ScaraA, recital 47.□

42 Ibid., recital 48.□

43 Letter from the defendant to the Litigation Chamber of March 9, 2020, p. 6.

87. The Litigation Chamber considers that the collection of these contact details - also with regard to both users and non-users of the website - only passes the necessity test if this data is immediately erased after initial use.

88. With regard to non-users, the Litigation Chamber decides that it should be possible for the social media platform "W" to invoke the legitimate interest but only to process the personal data of existing members of "W", in order to help these users to identify their contacts who are already "W" users and who have therefore consented to use the messaging function of the "W" website as a means of communication.

89. In this context, the fact that these members have already given prior consent unequivocally to "W" so that their mobile phone number or e-mail is collected and that they be processed for this purpose is important. In addition, "W" must implement the technical measures and organizational measures in order to comply with the data protection requirement from the design and by default of article 25 of the GDPR.

90. The Litigation Chamber also refers in this respect to Opinion 5/2009 of Group 29 on the online social networks. This opinion affirms on this subject that social media networks have not no other basis for processing non-user data than legitimate interest and that it is not furthermore not possible to invoke this basis to extract the coordinates of non-members of downloaded address books for later use to create new media profiles social: "Many SNSs allow users to provide data about other people, including adding a name to an image, rating someone or list "people I met/I want to meet" at an event.

This marking may also identify non-members. However, SRS treatment of this type of data concerning non-members can only be done if one of the criteria referred to in Article 7 of the Data Protection Directive [the current Article 6.1.f) of the GDPR "interest

legitimate"] is populated. Additionally, creating pre-populated non-member profiles through aggregation
data provided independently by SRS users, including data
relationships deduced from online address books, has no legal basis."44.
91. This opinion is in principle always relevant, since the legal basis of the legitimate interest
has not been substantially modified by the entry into force of the GDPR. The fact that the defendant,
according to its claims, does not create "profiles" but only sends invitation emails to
44 Group 29, Opinion 5/2009 on online social networks, 12 June 2009 (WP 163), p. 8-9.

using the contact details of non-members does not prevent the sending of these e-mails from being
necessary for the purpose pursued by the defendant.
92. Group 29 refined this opinion and defined the general interest of social media networks in the
context of invitation e-mails, given the fundamental rights and freedoms of third party non-users. In
its Opinion 06/2014 on the concept of "legitimate interest", the Group 29 explained the limits of the interest
legitimate third-party contact details by means of an example45:
“Example 25: access to the mobile telephone numbers of users and non-users of a
application: "compare and forget"
The personal data of individuals is processed to verify whether they have already
undoubtedly given their consent in the past ("compare and forget" system implemented
place as collateral).
The developer of an application is required to obtain the unambiguous consent of the persons
concerned to process their personal data: this is the case, for example, if it
wants to access the entire email address book of app users, including
including mobile phone numbers of contacts who do not use the app. For this
do, he can first check whether the holders of the mobile phone numbers listed in the
address book of application users have undoubtedly already given their
consent [in accordance with Article 7(a)] for the processing of their data. For this

limited initial processing (namely, short-term read access to the entire address book of

the user of an application), the developer can invoke Article 7(f) as the basis

legal, subject to appropriate safeguards.

These safeguards should include technical and organizational measures to ensure

that this access only serves to help the user identify which of his contacts are

those who are already users and who have therefore undoubtedly already given their consent

for the Company to collect and process their telephone numbers for this purpose.

Mobile phone numbers of non-users may only be used and collected

for the strictly limited purpose of verifying whether they have already given their unambiguous consent

and should be deleted immediately afterwards."46

93. In summary, Group 29 believes that - under the conditions set out in the above example -

contact details of third party non-users may only be used to verify that they are

45 Opinion 06/2014 on the notion of legitimate interest pursued by the data controller within the meaning of Article 7 of

Directive 95/46/EC, April 9, 2014, p. 77.

46 See along the same lines, College bescherming persoonsgegevens, Survey on the processing of personal data

in

2013,

https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/rapporten/rap_2013-whatsapp-cbp-definitieve-

bevindingen-nl.pdf, p. 32.

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or not already members of the website and therefore if they have already given their consent for

the use of their contact details for communications via the website in question. Like

already specified, the Litigation Division also bases its decision on this consideration of the

Group 29 and believes that the registration of contact details of non-users of Y cannot be

necessary in the context of "compare and forget" only by respecting certain requirements and

strict guarantees.

94. The Litigation Division however points out that the time limit for storing the contact details of

non-members is longer than strictly necessary to identify contacts

existing. The “W” website also processes more data than necessary in order to send a

invitation e-mail as this data is not limited by the website

itself: not just contact details defined by the website itself (e.g. names,

telephone numbers and e-mail addresses) but on the contrary, potentially also other

categories of personal data such as those of third party service providers of the

information society, i.e. "import on our servers other information relating to

your contacts, as specified on the provider's authorization screen"47.

95. In light of the foregoing, the Litigation Chamber finds that the recording of

coordinates of non-users of Y may only be needed in the context of "compare and

forget" only by adhering to certain strict requirements and safeguards. These requirements and safeguards do not

are not fulfilled.

 The weighting test

96. The Court of Justice specifies that: "the assessment of this condition requires that a

weighing of the conflicting rights and interests in question according to the concrete circumstances

of the particular case concerned, in the context of which account must be taken of the importance of the

rights of the data subject resulting from Articles 7 and 8 of the Charter."48

97. The criterion relating to the seriousness of the infringement of the rights and freedoms of the data subject

constitutes an essential element of the weighting or balancing exercise on a case-by-case basis,

required by article 6.1.f) of the GDPR49. As such, according to the Court of Justice, it must in particular be held

account of "the nature of the personal data in question, in particular the nature

potentially sensitive of this data, as well as the nature and concrete methods of the

47 Respondent's submissions, p. 11 and letter from the defendant to the Inspection Service of June 14, 2019.

48 CJEU, 11 December 2019, C-708/18, Arrest M5A-ScaraA, recital 52.

49 Ibid., recital 56.

processing of the data in question, in particular the number of people who have access to these

data and how to access them.

98. As the Court of Justice points out, "are also relevant for the purposes of this weighting

“the data subject’s reasonable expectations that his or her personal data

will not be processed when, in the circumstances of the case, this person cannot

reasonably expect further processing thereof”51. In this regard, the Chamber

Litigation also refers to recital 47 of the GDPR which states that it is important to know whether

"a data subject can reasonably expect, at the time and in the context of the

collection of personal data, that these are subject to processing at a

given end.”

99. In the present case, with regard to the seriousness of the infringement, the defendant invokes the circumstances

specific details: "The nature of the personal data processed by Y in the

context of its "invite a friend" feature was not excessive. Y has never processed data

sensitive, only the strict minimum of personal data (i.e.

basic contact details) for a single purpose, namely sending the invitation e-mail to the request

and on behalf of the user of the W”52 platform. However, the Litigation Chamber again makes

note that the retention period for contact details of non-members is longer than what is

is strictly necessary to identify existing contacts. In addition, the data processed by

the defendant are not exhaustively defined. The defendant refers in particular to

"import other information about your contacts to our servers, as specified on the screen

authorization from the supplier"53.

100. With regard to the reasonable expectations of the data subject, the Respondent refers to

services of online e-mail service providers such as Google or to services of

operating system providers such as Android, IoS and Windows or to providers

social networks such as LinkedIn54. The Litigation Chamber discusses the relevance of

practices of these other suppliers in section 3.1.3 and considers that the arguments relating to

these practices fall outside the scope of these proceedings.

101. In view of the foregoing, the Litigation Chamber decides that in this case, the third condition

imposed by Article 6.1.f) of the GDPR and the case law of the Court of Justice has not been fulfilled.

50 Ibid., recital 57.

51 Ibid., recital 58.

52 Letter from the defendant to the Litigation Chamber of March 9, 2020, p. 6.

53 Respondent's submissions, p. 11 and letter from the defendant to the Inspection Service of June 14, 2019.

54 Letter from the defendant to the Litigation Chamber of March 9, 2020, p. 5.

 Conclusion

102. The Respondent could not legally plead "legitimate interest" as

legal basis for the (further) processing of the personal data of the

data subject for prospecting purposes. The defendant therefore violates Article 6.1.f) of the GDPR.

103. The Litigation Division then considers in this case that the legitimate interest only allows

process in this case non-user data for a "compare & forget" action, in order to

to select existing users from the coordinates and to send a possible e-mail

invitation to these existing users.

104. In this case, the Litigation Chamber considers more particularly that the processing must be
limited to data that is strictly necessary for the purpose "invitation to the website" and
insofar as it is technically not possible to make a distinction in the logbook
of addresses of a user between members and non-members without first processing these
data at a minimum. In accordance with Article 32 of the GDPR, the defendant should additionally put
implement appropriate technical and organizational measures to secure
treatment correctly. It is only under these conditions that this processing can be carried out
on the basis of the defendant's legitimate interest.

105. The Litigation Chamber takes into account the fact that the user of the "W" website is always
free to send invitations through other channels (social media website or provider
e-mail), which the third party is already using.

3.1.3 Defense regarding the processing of third party data by other service providers
services in the information society

106. Respondent compares its practices to the processing of third-party data by other service providers
services like "WhatsApp" and "Gmail", "Windows", "LinkedIn"55. The defendant asserts
in particular that the persons concerned can reasonably expect that their
contact details are processed by different kinds of online service providers because, depending on
the defendant, it is "normal" "for a person to register the contact details of other people
in an address book in order to facilitate communications”56.

55 Letter from the defendant to the Litigation Chamber of March 9, 2020, p. 5.

56 Ibid., p. 5.

107. The Litigation Division considers that the defense relating to the processing of third-party data by
service providers is not admissible.

108. First, the practices of other service providers are not at issue in the

present case.

109. Secondly, the requirement of a correct legal basis for the processing of personal data

non-users is valid for all service providers, including those to which

reference the defendant in his pleadings.

110. Third, these service providers cannot process personal data of

third parties in a way that would infringe their rights and freedoms, regardless of the basis

legality of the processing. As clearly explained by Group 29 in the context of the right

to portability, providers of information society services and providers of

telecommunications services may not infringe the rights and freedoms of

non-users of their services, if a user gives consent to the registration of

personal data of non-users on their servers57. In this context, the

Groupe 29 has also recalled that the user's consent is not enough

to process non-user data: another legal basis must be defined and the interest

legitimate basis of the service provider seems to be the most appropriate basis58.

111. The Litigation Chamber considers that these views of Group 29 support the position

previous statement regarding non-compliance - in this case - with the GDPR. In summary, the unlawfulness of the processing

of data from the "W" website results from the fact that this website processes the data of

non-members without a correct legal basis, insofar as this processing was not

limited to a "compare & forget" action as set out above.

57 Group 29, “Guidelines on the right to data portability”, WP 242, Rev.01, p. 13-14: "The person

data subject who initiates the transmission of data concerning him to another controller or gives his

consent to the new data controller for the purposes of processing his data, or concludes a contract with this

last. Where third party personal data is included in the dataset, another database

Legal must be defined for the processing. For example, a messaging service may allow the creation of a directory

contacts, friends, relatives, family members and more distant acquaintances of a data subject. […]

Therefore, in order to avoid harm to the third parties concerned, the processing of these personal data

by another controller is permitted only to the extent that the data is kept under the sole

control of the requesting user and are managed solely for purely personal or household purposes. A new"

data controller recipient (to whom the data can be transmitted at the request of the user) cannot

use third-party data transmitted to it for its own purposes, for example to offer products and

marketing services to such other relevant third parties. […].

58 Ibid.

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3.1.4 Personal data of non-users in order to send invitation emails

112. The Litigation Chamber considers that the registration of contact details of non-users of a

website for the purpose of sending an invitation e-mail is only permitted in the context of a

"compare & forget" action, as explained above. As a result, it is not possible to send

invitation e-mails via the "W" website only to existing members. Therefore, in the

Following this decision, the Litigation Chamber will only consider the existence

a legal basis for sending invitation emails to non-users.

113. As stated above, Respondent asserts that the invitation emails constitute

"personal communications" by the user of the website "W", so

that no separate legal basis is required for sending this message. The defendant asserts

however in his conclusions and confirmed it during the hearing that he does not intend to resort

with the exception of "domestic processing" of recital 18 of the GDPR59.

114. By "personal communications", Respondent means that these email invitations are not

not prospecting messages, it being understood that advertising messages by e-mail - except

exception - can only be sent after prior consent (see also

Article 13.2 of the Privacy and Electronic Communications Directive60 and its implementation

in Article VI.110 § 2 of the Code of Economic Law61).

115. In its Opinion 5/2009 on online social networks62, the Group 29 indicated in which

conditions of the invitation messages sent via a social media platform did not constitute

no online advertising messages in the head of the platform:

“Some SNSs allow their users to send

invitations to third parties. Prohibition on using e-mails for prospecting purposes

59 See above under 2.1 Qualification of the data controller and of the disputed processing.

60“Notwithstanding paragraph 1, where, in compliance with Directive 95/46/EC, a natural or legal person has, in the

sale of a product or service, obtained directly from its customers their electronic contact details for a

e-mail, the said natural or legal person may use these electronic details for the purposes of

direct prospecting for similar products or services that it provides provided that said customers see each other

clearly and expressly give the right to oppose, free of charge and in a simple manner, such exploitation of the

electronic contact details when they are collected and during each message, in case they have not refused outright

such exploitation."

61 Article VI.110. § 2 of the Code of Economic Law is worded as follows: "Without prejudice to Article XII.13, the

unsolicited communications for direct marketing purposes, carried out by techniques other than those mentioned in

paragraph 1 or determined pursuant to it, are authorized only in the absence of manifest opposition from the

recipient, natural or legal person or with regard to subscribers subject to compliance with the provisions laid down

in articles VI.111 to VI.115”.

62 WP 163, Opinion 5/2009 on online social networks.

direct does not apply to personal communications. To comply with the exception of

personal communications, an SNS must meet the following criteria:

– neither the sender nor the recipient are encouraged to communicate;

– the supplier does not select the recipients;

– the identity of the sender is clearly mentioned;

– the sender must know the entire content of the message that will be sent on his behalf.” 63

116. The Respondent makes detailed reference to these four conditions64 and thus thinks

be able to send these messages without prior consent.

117. The fact that the sending of prospecting e-mails is governed in part by the Privacy Directive and
electronic communications does not prejudice the jurisdiction of the Chamber
Litigation to control the application of the GDPR with regard to the requirement of consent
or the conditions for invoking the legitimate interest65.
118. In this context, the Litigation Chamber decides that the social media network "W" should not
principle not ask for consent for the sending of e-mails from users to others
users, if the 4 conditions of the Notice on online social networks are respected, at
provided that all other GDPR principles such as Article 25 (data protection from
default design and data protection) are respected.
119. In this case - as specified above - "W" could invoke its legitimate interest, including
including for the recording of data on its servers, provided that the data of
non-members are immediately deleted as soon as it turns out that the user has not selected
this recipients with a view to sending an invitation e-mail66.
120. The Litigation Chamber considers, however, that the strict rules of the GDPR relating to the
consent - which also apply in the context of the Privacy Directive and
electronic communications67 - leave no room for such an explanation and that the
63 Ibid., p. 11.
64 Respondent's Submissions, p. 23.
65 See EDPB, Opinion 5/2019 on the interplay between the ePrivacy Directive and the GDPR, in particular regarding the
competence, tasks and powers of data protection authorities: “Data protection authorities are competent to enforce the GDPR.
The mere fact that a subset of the processing falls within the scope of the ePrivacy directive, does not limit the competence of
data protection authorities under the GDPR.”
66 See the explanations on the limits of legitimate interest under heading 3.1.2.a of this decision.
67 Group 29, Guidelines on consent within the meaning of Regulation 2016/679, WP259 Rev01, 10 April 2019, p. 4:
"Concerning the existing "privacy and electronic communications" directive, the G29 notes that the references made to the
Directive 95/46/EC repealed are understood as made in the GDPR. This also applies to references made to

legal basis "legitimate interest" must be interpreted restrictively insofar as

third-party data is concerned.

121. With regard to consent, Article 4, point 11, read together with Article 7 of the

GDPR provides that data subject consent means the following:

- free;

- specific;

- illuminated and

manifestation of will by which the person concerned accepts, by a declaration or

by a clear affirmative act, that personal data relating to him are the subject of a

processing.

122. In this context, this consent must be obtained before processing, as is clear from the

beginning of Article 6.1 of the 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/her personal data for one or more specific purposes […]"68.

123. Therefore, the Litigation Chamber decides that the GDPR does not authorize the sending of e-mails to third parties

to obtain their consent. This reasoning applies to the requirement of the

consent under the GDPR (requiring a legal basis) and under the Life Directive

privacy and electronic communications (requirement of "opt-in" for the sending of messages of

prospecting)69. Furthermore, in its Opinion 5/2009 on online social networks, the Group 29 has

clarified that the sending to third party members of a social media website of an invitation e-mail

in order to access their data would violate the prohibition provided for in Article 13, paragraph 4 of the

Privacy and Electronic Communications Directive.

124. "Additionally, the creation of pre-populated non-member profiles through data aggregation

independently provided by SNS users, including

consent in the current directive 2002/58/EC, since the "privacy and electronic communications" regulation does not

will not (yet) enter into force on 25 May 2018. According to Article 95 of the GDPR, no additional obligations regarding the processing of data in the context of the provision of electronic communications services accessible to the public on the public communications networks will not be imposed insofar as the "privacy and electronic communications" directive imposes specific obligations with the same objective. The G29 notes that the consent requirements imposed by the GDPR are not considered as "additional obligations", but rather as preconditions essential to lawful processing. Therefore, the conditions for obtaining valid consent established by the GDPR are applicable in situations falling within the scope of the Privacy and Communications Directive electronic"."

68 Group 29 confirms that consent must be obtained prior to the start of treatment, Guidelines on the consent within the meaning of regulation 2016/679, April 10, 2019, p. 20.

69 Article 1, point 2 of the Privacy and Electronic Communications Directive reads as follows: "The provisions of this Directive specify and supplement Directive 95/46/EC for the purposes set out in paragraph 1. In addition, they provide for the protection of the legitimate interests of subscribers who are legal persons." . References to the Directive 95/46/EC of May 25, 2018 are references to the GDPR.

including relational data inferred from online address books, has no basis legal.

Even if the SRS were able to contact the non-user and inform them of the existence of personal data concerning him, any electronic solicitation would violate the prohibition in Article 13(4) of the Privacy and Electronic Communications Directive to send unsolicited electronic messages for direct marketing purposes." 70

125. With regard to the legitimate interest, the Litigation Chamber considers that this legal basis does not allow the sending of such e-mails, given the impossibility for the third party to exercise control over its data, in the sense that this data is first uploaded to the servers of the website for later use in the context of an invitation email.

3.2 Storage of personal data of existing users among contacts and

sending invitation emails to existing users (contacts)

126. Respondent relies on users' consent to register contact details of other

users on its servers and process this data in the context of invitation e-mails.

127. The Litigation Division notes, however, that the users' consent was not free

insofar as the first version of the website previously selected the recipients

invitation emails. This follows directly from recital 32 of the GDPR. Recently, in

the Planet49 judgment, the Court of Justice confirmed that consent had not been obtained from

valid way if default checked boxes were used:

"51. Article 2(h) of the latter directive defines the "consent of the person

concerned" as being "any expression of will, free, specific and informed by

which the data subject accepts that personal data relating to him or her

be processed".

52. Thus, as the Advocate General pointed out in point 60 of his Opinion, the requirement

of a "manifestation" of the will of the person concerned clearly evokes a

active rather than passive behavior. However, a consent given by means of a box

checked by default does not imply active behavior on the part of the user of a site

Internet."71

70 Group 29 Opinion 5/2009 on online social networks, 12 June 2009 (WP 163), p. 9.

71 CJEU, 1 October 2019, C-673/17, Planet49.

128. As long as the recipients of the e-mails were checked by default, the defendant could not

not invoke the legal basis "consent" with regard to the recording of

contact details of existing users and sending invitation emails to existing users.

129. The Litigation Division considers that the processing in question is not necessarily unlawful

within the meaning of Article 5.1 of the GDPR and that the social media network "W" should in principle not

request consent within the meaning of the GDPR for the sending of emails from users to others

users, insofar as such messages come under the legal basis for "W"

"necessary for the performance of a contract" or "legitimate interest" (article 6.1, point b or article 6.1,

point f of the GDPR).

130. In particular, the website could invoke its legitimate interest if the e-mails do not constitute

not prospecting messages within the meaning of article 13.2 of the Privacy Directive and

electronic communications, provided therefore that the defendant respects the conditions defined

by the Group 29 (such as not allowing the recipients to be chosen by the website

himself).

131. In this case, the Litigation Division points out that the recipients of the e-mails

invitation were initially checked by default.

132. Even if the defendant does not invoke these legal bases, the Litigation Division still

note that checking recipients by default would be problematic in the context of

legal basis "legitimate interest" or "execution of a contract". sending mass emails is not

effect not in accordance with the principle of data minimization (article 5.1, point c of the GDPR) nor with the

principles of article 25 of the GDPR (data protection by design and protection of

default data). The fact that in the previous version of the website, the user of the site

Internet had the possibility to deselect one by one the recipients checked by default did not

not important.

133. Finally, given that - following the complaints of the Inspection Service in this respect - the defendant deleted

spontaneously the options checked by default, the data controller "W" does indeed have the

right to send other users such e-mails on the basis of its legitimate interest on behalf

and on behalf of its users.

134. As an alternative to the legitimate interest, the Litigation Chamber considers that the media network

social "W" should in principle not have requested consent within the meaning of the GDPR for the sending

of e-mails from users to other users, insofar as such messages in the chief

of "W" could fall under the "necessary for the performance of a contract" basis (Article 6.1,

point b of the GDPR). The possibility of invoking such a basis naturally depends on the

definition of the service provided and the extent to which data subjects are informed

on this subject. The Litigation Chamber does not have enough factual data

to assess the lawfulness of the processing under the legal basis "performance of a contract" but

resolves that processing under the "legitimate interest" legal basis could in any case be

carried out, and was therefore not unlawful, after deleting the recipients checked by default from the

invitation emails. In addition, the Litigation Chamber further points out in this regard that the

respondent must of course be transparent about the basis of the processing it uses.

3.3 Complaints from the Inspection Service concerning the Data Protection Officer

135. The Litigation Chamber decides not to take into account the complaints of the Inspection Service

concerning the data protection officer, given that the apparent expertise of this

person appears from the C.V. which was submitted and that it appears from the documents and the hearing that this

latter was duly involved in the development of the "invite a friend" feature.

Furthermore, the Respondent sufficiently explained during the hearing the role and position of the

data protection officer.

3.4 The defense regarding the absence of concrete recommendations from the DPA or the Service

inspection

136. The Respondent criticizes the DPA that no concrete recommendation or remark would have been

formulated concerning the "invite function" in the context of a letter dated October 12, 201873 in

which the DPA draws the respondent's attention to the requirement to obtain valid consent in

under the GDPR with respect to the "invite a friend" feature (respondent's submissions,

p. 3). The defendant formulates the same criticism vis-à-vis the Inspection Service (conclusions,

p. 5). As the respondent rightly points out (submissions, p. 4), the Service

d'Inspection did not make any recommendations regarding the invitation feature, and it

chosen to request information.

137. The mission of the Inspection Service is to collect evidence of indications of practices
likely to give rise to an infringement of the fundamental principles of the protection of
personal data (Articles 63 et seq. of the LCA). The Inspection Service is not
not tasked with providing tailored advice on the offenses that have been investigated. So
72 See EDPB, Guidelines 2/2019 on the processing of personal data under Article 6(1),
point b) of the GDPR in connection with the provision of online services to data subjects.
73 In response to a letter dated July 3, 2018, outside the scope of products.

more general: under articles 5.2 and 24 of the GDPR, the data controller has a duty
of responsibility. This responsibility is a key element of the GDPR. A manager of
processing cannot escape this responsibility by claiming that it has not received
sufficient indications from the controller. Admittedly, under Article 57.1.d) of the GDPR, one of the
missions of the APD is to encourage the awareness of data controllers and
processors with regard to their obligations under the GDPR.
However, during the execution of this mission, the APD - which includes the Inspection Service -
has wide discretion whether or not to seek the attention of a manager
treatment for a possible infringement.

3.5 Sanction decision

138. In light of the inspection report and considering the arguments of the Respondent, the Chamber
Litigation has established the following violations of the GDPR:

1. The defendant has no legal basis for storing the personal data
personnel of non-users of the "W" website in its files and further processing
with a view to sending an invitation e-mail: a violation of Articles 5 and 6 of the GDPR is thus
established;

2. The Respondent has no legal basis for sending email invitations to
existing users of the website during the period in which the recipients

invitation e-mails were checked by default: violation of article 5.1 juncto

articles 6.1.a), 7 and 4.11) of the GDPR.

3.5.1 Competence of the Litigation Chamber in terms of sanctions

139. Under Article 100 of the LCA, the Litigation Chamber is competent to order the

compliance of the processing (article 100, 9° of the LCA) as well as to impose penalty payments

(article 100, 12° of the LCA). The Litigation Chamber is also competent to impose

administrative fines (articles 100, 13°, 101 and 102 of the LCA) and to publish the decision

on the website of the Data Protection Authority (Article 100, 16° LCA).

To determine the level of the fines, the Litigation Chamber must take into account the criteria

defined in Article 83 of the GDPR, depending on the circumstances. In this case, the Chamber

Litigation takes into account the following circumstances that it considers sufficient to impose the

penalties listed below:

-

the nature, gravity and duration of the violation: this is the absence of a legal basis, which,

according to the Litigation Chamber, constitutes a serious violation, in particular with regard to

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-

the right of non-members of the "W" website to retain control of their data and not

not run the risks of data processing (recital 75 of the GDPR);

the fact that the violation was committed deliberately: the defendant was aware of a

problem regarding the processing of personal data on the site

Internet since the first APD letter of October 12, 2018.

3.5.2 The mitigating circumstances invoked

140. The Respondent submits, in the alternative, that the penalties imposed should take into account the

following mitigating circumstances (conclusions, p. 42):

•

•□

•□

The defendant was "not negligent" and acted in good faith, given□

Group Opinion 5/2009 29 on online social networks. In this regard, the House□

Litigation asserts that the defendant cannot rely in this way on a 2009 opinion, either□

long before the realization of the GDPR, which, moreover - as previously described -,□

is not clear enough. Furthermore, the controller could have kept□

informed of discussions relating to the use by social media sites of data from□

non-members, as mentioned in Group Opinion 06/2014 29 on the notion of "interest□

legitimate";□

Any violations would not have involved any material damage: in this context, the□

Chambre Litigation draws attention to the fact that the right to data protection is□

a fundamental right and that for the violation of this right, the fact that the violations generate□

property damage does not matter. Violation in this case leads to the loss of□

control of data by many people, which is qualified in recital 75□

of the GDPR as a potential cause of non-material damage;□

The defendant stopped using options checked by default. The defendant was aware□

of the violation since April 3, 2019 (conclusions, p. 42) and awaited the receipt of a□

second letter from the Inspection Service (May 2019) to put an end to this practice□

(conclusions, p. 13). The Litigation Chamber considers that this violation was intentional□

or in any case due, to a large extent, to negligence, given that recital 32 of the□

GDPR makes it clear that consent is not validly collected if the□

options are checked by default75. The defendant must therefore have known that the□

consent of users of the website to the processing of their data with a view to□

the sending of invitation e-mails was not valid with regard to the selection of□

74 Brussels Court of Appeal, 9 October 2019, 2019/AR/1006.□

75 And later confirmed by the CJEU on October 1, 2019, C-673/17, Planet49, recitals 51-52.

recipients. Furthermore, the defendant must also have known that a user of the website would not could not give consent to the use of third party data.

141. In its response of April 28, 2020 to the Form, the Respondent developed arguments with regard to the sanction proposed by the Litigation Division.

142. The Respondent asserts that it was not negligent and that the alleged violations did not constitute no clear violations of the GDPR but rather "a problem of interpretation about which even supervisory authorities adopt different interpretations". The defendant inferred that, erroneously, the fact that the Dutch authority had lodged a relevant and reasoned objection76. The Dutch authority has not objected to this final decision and all the authorities concerned have validated the reasoning set out above concerning the amount of the fine.

143. The Litigation Division agrees with the defendant that a discussion was possible regarding the extent to which the defendant could or could not invoke an interest legitimate to contact third party non-users via email invitation.

144. The Litigation Chamber considers, however, that no discussion is and was not possible concerning the fact that the legal basis invoked by the defendant was not valid: the users of a website cannot provide consent for non-users third77. The defendant therefore wrongly relied on the legal basis "consent" (or waiver of consent) and in any case it is not permitted to subsequently invoke the legal basis "legitimate interest" to justify a specific processing operation that has already begun78.

145. To avoid any misunderstanding, the Litigation Division reminds the defendant that he did not invoke the basis of "legitimate interest" (and has not examined the conditions of application thereof) in its original privacy policy, nor later in the context of its argument before

76 As explained to the Respondent in the context of the reopening of the debates on legitimate interest, the Netherlands

requested in this case that greater reference be made to the case law of the Court of Justice with regard to the analysis
of the legitimate interest of the defendant to send invitations to third party non-members of its social media platform of a
hand, and questioned the relevance of references to a 2013 investigation report regarding the legitimate interest of a social med
to send invitation e-mails on the other hand.

77 See the reasoning under heading 3.3.1.

78 See Group 29, "Guidelines on consent within the meaning of Regulation 2016/679", established on 28 November 2017,
last revised and adopted April 10, 2018, p. 27: "It is important to note that if a data controller
chooses to rely on consent for part of the processing, they must be prepared to respect that choice and discontinue
processing if an individual withdraws consent. Indicate that the data will be processed on the basis of consent,
while the processing is based on another legal basis, would be fundamentally unfair to the data subjects.
In other words, the data controller cannot switch from consent to another legal basis. For example, it is not
not permitted to retrospectively use the legal basis of legitimate interests to justify processing where
problems were encountered regarding the validity of the consent. As soon as the data controllers have
the obligation to communicate the legal basis on which they are based at the time of data collection,
they must have defined their legal basis prior to said collection." [highlighting by the Litigation Chamber].

the Litigation Chamber, despite a clear question from the Litigation Chamber in this regard
during the hearing, and until the reopening of the proceedings by the Litigation Chamber on this point.
This constitutes a clear breach of its information obligations under Articles 12 and 13
of the GDPR and the requirement to have an appropriate legal basis under Articles 5 and
6 GDPR before data processing begins.

146. The fact that the Respondent, with respect to the invitations sent to existing members of
the social media platform "W", also could not invoke the legal basis
"consent" as long as the recipients of the invitation emails were initially checked by
default is also not discussed79.

147. For this reason, the Litigation Chamber decides that the defendant was negligent and deserves

a fine with regard to the sending of invitation e-mails to both members and

non-third party members of the "W" social media platform, and that a fine is warranted, even

whether there was a possible debate as to the limits and conditions of the defendant's legitimate interest in

regarding the sending of social media invitation emails to third party non-members,

debate that the Litigation Chamber settles in this case through this decision,

given the circumstances presented to him.

148. To determine the amount of the fine, the Litigation Division takes into account the

circumstances referred to in points 3.5.1 and 3.5.2 of this decision.

149. The Litigation Division also takes note of the fact that the defendant, according to the information

provided in its response of April 28, 2020, has ceased sending invitation emails since

February 7, 2020.

150. The Litigation Division did not, however, demand too extreme a measure and reopened the proceedings

regarding the legitimate interest in order to allow the defendant to properly carry out the assessment

of its legitimate interest.

151. In the initial draft decision, as submitted to the data protection authorities

concerned in the context of the cooperation procedure provided for in Article 60.5 of the GDPR, the

Litigation Chamber had ordered the processing to comply with Articles 5 and 6

of the GDPR within 3 months of the date of the decision, ensuring that the registration and

the processing of personal data for the purpose of sending invitation e-mails to

non-third party members of the website either be stopped or have a legal basis

79 See the reasoning under heading 3.2.

(e.g. consent, legitimate interest). However, this envisaged order no longer has any reason to exist.

given that the defendant - according to the declarations of his lawyer in his answer of the

April 28, 2020 - spontaneously stopped sending invitation emails since February 7, 2020.

152. The fact that the Respondent stopped sending email invitations is a sign of goodwill but

does not detract from the fact that the defendant was negligent in defining a basis
legal, not only before starting the data processing in question but also
in the context of its argument vis-à-vis the Litigation Chamber despite the
reopening of the debates by the Litigation Chamber. The fact that the defendant ceased
the use of options checked by default only has a positive impact on the database
legal "consent" for invitation emails that have been sent to existing users
but not with respect to third party non-users of the website.
153. Nevertheless, it emerges from the foregoing that the defendant wanted to grant
pay attention to the GDPR when developing treatments. This element is important to establish
the magnitude of the penalty.
154. The DPA considers that the defendant's annual turnover from 2017 (including as regards
concerning the 2019 financial year, the closing of which is still in progress) still amounts to more than
10,000,000 euros. The Litigation Chamber decides that to determine the amount of
the fine, an amount of 0.5% of the annual profit is reasonable and therefore sets the amount of
the fine to 50,000 euros.
155. Given the importance of transparency regarding the decision-making process of the Chamber
Litigation, this decision is published on the website of the Authority for the protection of
data. The publication of this decision also benefits legal developments and is a
consistent application of the GDPR in the European Union. However, it is not necessary for this
so that the defendant's identification data are directly communicated.
FOR THESE REASONS,
the Litigation Chamber of the Data Protection Authority decides, after deliberation,
to impose a fine of 50,000 euros for the processing of personal data of
non-members of the "W" website without an appropriate legal basis, as well as personal data
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staff of members, such processing taking place during the period in which the

recipients of such emails were checked by default.

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 of the notification, to the Court of Markets, with

the Data Protection Authority as defendant.

(Sr.) Hielke Hijmans

President of the Litigation Chamber