Litigation Chamber

Decision on the merits 186/2022 of December 19

2022

File number: 2020-05826 and 2020-05390

Subject: sending an e-mail to a mailing list without hiding the addresses of the

recipients

The Litigation Chamber of the Data Protection Authority, made up of Mr. Hielke

Hijmans, chairman, and Messrs. Christophe Boeraeve and Yves Poullet, 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

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

data protection), hereinafter "GDPR";

Having regard to the Law of 3 December 2017 establishing the Data Protection Authority (hereinafter

ACL);

Having regard to the internal regulations as approved by the House of Representatives on 20

December 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

Made the following decision regarding:

The Complainants:

X1, and X2, hereinafter "the plaintiffs";

Defendant: Financial Services and Markets Authority

Authority -FSMA-), whose registered office is located at rue du Congrès 12-14, 1000

Brussels, registered under company number 0544.279.965, represented by

Me B. Martel and Me A. Van de Meulebroucke, hereinafter: “the defendant”.

I. Facts and procedure

1.

On November 27, 2020, Mr. X2 filed a complaint with the Data Protection Authority.
data against the defendant, attaching as an annex the email that is the subject of the dispute
as well as a response from one of its recipients in PDF format. Three days later, on the 30
November 2020, he lodged the same complaint a second time, attaching an appendix
slightly different (the same disputed email but in a different format). The 1st
December 2020, Mr. X1 lodged a complaint against the defendant with the Authority of
data protection subject to the same email as that received by Mr. X2.
The subject of the two complaints concerns the sending of a payment reminder email by the
defendant to plaintiffs on November 23, 2020 as well as to several hundred others
recipients, with email addresses visible in CC (carbon copy), instead of in CCI
(blind carbon copy).

2.

On January 5, 2021, Mr. X1's complaint was declared admissible by the Front Line Service
on the basis of Articles 58 and 60 of the LCA and the complaint is transmitted to the Chamber
Litigation. On January 26, 2021, Mr. X2's complaint was declared admissible by the Service de
First Line on the basis of Articles 58 and 60 of the LCA and the complaint is forwarded to the
Litigation Chamber.

3.

On February 8, 2021, the Chamber decides that Mr. X1's complaint can be dealt with on the merits. Mr. X1
and the defendant are informed by registered mail of the provisions as set out
in article 95, § 2 as well as in article 98 of the LCA. They are also informed, by virtue of
Article 99 of the LCA, deadlines for transmitting their conclusions. On February 22, 2021 the
link and password to the copy of the administrative file is sent to the defendant, following
to this effect by the latter on February 15, 2021. On March 2, 2021, following receipt of

Mr. X2's complaint by the Litigation Division relating to the same facts against the defendant, the Litigation Chamber informs the two complainants that for reasons of economy and efficiency of the procedure, unless they object, the two complaints will be joined in a single file. On March 9, 2021 the defendant was informed of the joinder of a second complaint concerning the same facts against the defendant. AT lack of objection from the two complainants, on March 11, 2021 a new invitation to conclude is forwarded to the parties.

The deadline for receipt of the defendant's submissions in response has been set as of April 23, 2021, that for the plaintiffs' reply submissions as of May 14, 2021 and that for the conclusions in reply of the defendant on June 4, 2021.

4.

On April 8, 2021, the defendant agrees to receive all communications relating to the case electronically and expresses its intention to make use of the possibility of being heard, in accordance with article 98 of the LCA, and requests a copy of the file

administrative. A reminder is sent by the defendant to this effect on April 15, 2021, as well as on April 21, 2021. A request for an extension of the time to conclude from the defendant is also requested in this last letter. The defendant indicates in its email communicating its first conclusions of April 23, 2021 that it did not have access to the administrative file before sending its first conclusions, which it therefore submits with all reservations and without detrimental recognition. The Litigation Chamber follows on April 26, 2021 the request access.

5.

On May 17 and 21, the defendant requested confirmation from the Litigation Division of the fact that the plaintiffs did not file conclusions. In its letter of May 21, 2021, the defendant also requests a new copy of the administrative file. Bedroom

Contentious confirms on May 25, 2021 that the plaintiffs have not filed conclusions,

and responds regarding the administrative file that it was sent on April 26, 2021, in

returning the link. On May 31, 2021, the defendant again asks the Litigation Chamber

confirmation that no new document has been filed in the administrative file

since their conclusions of April 23, 2021, without feedback from the Chamber.

6.

On April 23, 2021, the Litigation Chamber receives the submissions in response from the

defendant.

7.

8.

The Litigation Chamber does not receive submissions in reply from the plaintiffs.

On June 4, 2021, the Litigation Chamber receives the submissions in reply from the

defendant, raising the same arguments and legal reasoning as the first

conclusions.

9.

On September 20, 2022, the parties are informed that the hearing will take place on September 19

October 2022. In the same letter, the parties are invited to express themselves in writing as to

in articles 5.1.b) juncto 6.4 and 6.1. of the GDPR, as well as 24 of the GDPR. The defendant did

use of this possibility, by sending its written observations to

bedroom

Litigation and the plaintiffs on October 11, 2022. The plaintiffs did not respond to

this invitation to share their written observations.

10. On October 19, 2022, the defendant was heard by the Litigation Chamber. THE

plaintiffs are not present at the hearing.

11. On December 5, 2022, the minutes of the hearing are submitted to the parties.

12. On December 12, 2022, the Litigation Division received remarks from the defendant

relating to the minutes.

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II. Motivation

13. The fact at the origin of the complaint in this case constitutes the sending of a reminder email

of payment,

on November 23, 2020, from

the defendant to several hundred

of financial intermediaries registered in its registers, in carbon copy (CC) instead of copy

Invisible Carbon (CCI), thus making all recipients visible. Email addresses

complainants, financial intermediaries registered with the FSMA, are among the addresses as well

made visible to all recipients.

14. The Litigation Division takes note in particular of the fact that the defendant indicates in

its conclusions, in the part concerning the facts, the following elements:

- the sending of the e-mail constitutes "a regrettable individual error committed by a

employee of the FSMA, which obviously should not have happened";1

- the e-mail concerned did not contain any information other than the e-mail addresses

of the recipients, which would often not even constitute data to be

personal character, as well as the payment reminder message (without even a

indication of an amount due). The defendant adds that the email did not contain

sensitive data.

15. The defendant divides its pleas into two parts. His first plea based on the

admissibility of the complaint, first invoking the violation of the rights of the

defense (A), and secondly, breach of the duty of care and of the principle of

formal and material motivation (B). The defendant's second plea concerns the

"merit of the complaint and the follow-up to be given to it"

16. The Litigation Chamber first examines the questions raised from

procedure (both in the defendant's first plea and through its submissions),

before then addressing the merits of the dispute.

II.1. As for the procedure

II.1.1. The defendant's first ground of infringement of the rights of the defense

17. In the first part of its first plea, the defendant alleges a violation of the

rights of defense by indicating that it “cannot infer either from the Complaint or from the letters of

the DPA (read: the letters inviting the parties to exchange conclusions of 8/2/2021 and

11/3/2021) which are the applicable legal provisions whose violation would be invoked

and what rights the Complainant believes it can assert against the Respondent. THE

Respondent is therefore unable to respond to the criticisms raised in the

framework of the complaint of December 1, 2020”. (the Litigation Chamber underlines)

1 p4, first conclusions.

18. The Litigation Division cannot agree with the defendant in its assertion that it was

unable to respond to the criticisms raised in the complaints. If the House

Litigation recognizes that the administrative file was sent to the defendant on

first working day following the deadline for filing the first conclusions, it

emphasizes that the defendant ignores other elements, which are nevertheless

take into consideration. Thus, the administrative file was sent to him more than a month before

the deadline for the filing of its second conclusions, which formulate exactly the

same means and legal arguments as the first conclusions, which constitutes a

indication that the defendant's ability to defend itself was not affected by the sending

late in the administrative file (just after the deadline for submitting the first

findings). Furthermore, the two letters inviting the exchange of conclusions (those of 8

February 2021, before the joinder of the complaints, and those of March 8, 2021, after the joinder)

repeat the fact at the origin of the two complaints in a clear way, a very simple fact

(the sending of the email to hundreds of recipients in CC instead of BCC). It therefore cannot be question of surprise on the part of the defendant as to the possible infringements.

This fact is also indicated in the two complaints. Furthermore, and in the alternative, the defendant recognizes this fact and admits that it is an "individual error regrettable committed by an employee of the FSMA, who obviously should not have produce " .

19. Moreover, the Respondent also points to the fact that the Complainants directly lodged their complaint with the APD2, without having contacted it beforehand, whereas the Litigation Chamber considers in its note on the complainant's position3 that it is "useful that the complainant first seeks to contact the controller before introducing a complaint ".

20. However, in the present case, the Litigation Chamber argues that insofar as the disputed email had already been sent, a previous contact with the defendant the filing of his complaint by the complainants would not have made it possible to guarantee respect for the right to the protection of its data.

21. Furthermore, a careful reading of the said memorandum on the Complainant's position indicates that this concerns the exercise of a right within the meaning of Chapter 3 of the GDPR (Articles 12 to 22), and not the non-compliance with one of the obligations incumbent on the data controller, which he must be able to demonstrate respect4. Although recommended in a number of cases, a

2 Point 1.3, page 5 of the defendant's submissions in response, of April 23, 2021

3 Note from the Litigation Chamber on the complainant's position in the proceedings within the Litigation Chamber, 2/15/2021

4 Note from the Litigation Chamber on the complainant's position in the proceedings within the Litigation Chamber, 15/2/2021, p2: “If the complaint concerns the exercise of rights, the DPA asks the potential complainant to first exercise its rights before filing a complaint. If their complaint relates to another matter (e.g. the complainant believes that their data

prior contact with the controller does not constitute an obligation in the

plaintiff and is not useful in all cases.

22. The Respondent also criticizes that it “is not at all clear to the Respondent what are

the alleged rights that the Complainant believes he can assert against the Respondent. The complaint

does not in fact allege that any legal provisions have been violated by the Respondent”.

However, the same reasoning as in paragraph (19) above applies, the plaintiffs do not

not base their complaint on a right within the meaning of Chapter 3 of the GDPR, but on the violation

by the defendant of one of its obligations as data controller. Is the

responsible to demonstrate, according to the principle of accountability, the respect by him of his

obligations. The complainants cannot therefore be criticized for not having mentioned in their

complaint the legal provision(s) concerning the right(s) they wish to exercise

be valid, within the meaning of Chapter 3 of the GDPR.

23.

Furthermore, there is no provision requiring a complainant to indicate in the complaint the basis

he or she raises. Article 60 of the LCA states that “A complaint is admissible

when it is written in one of the national languages; contains a statement of the facts and the

information necessary to identify the processing to which it relates, and falls under the

jurisdiction of the Data Protection Authority. ". It is therefore wrong that the

defendant argues that the plaintiffs should have indicated the legal provision that they

consider violated in their complaint. Any other approach would be contrary to the nature of the complaints

themselves, provided for both in Article 77 of the GDPR and in the LCA. In this spirit, the plan

ODA Management 2022 also indicates that “The right to lodge a complaint with the ODA is a

alternative to a recourse to the civil or administrative judge and must remain easy for the citizen. THE

For example, the legislator did not want the parties to always be assisted by a lawyer.”

24. Furthermore, the defendant points out that the email from the Service de Première Ligne (SPL) to the

Litigation Chamber declaring the complaint admissible and transferring it to it "does not contain

nor any details of the facts or the alleged offenses against which the

Defendant must defend himself". However, as indicated above (point 32), this "decision" of the SPL

can be formalized by a simple email from the SPL to the Litigation Chamber, and it is not

by no means required that this letter contain indications of the facts or the potential

offences.

25. The defendant then argues that the letter from the Litigation Chamber to the parties of 11

March 2021 (inviting the parties to conclude) did not allow him to understand "what are

the alleged offenses with which the defendant would be charged. The letter contains no

reference to any article of data protection legislation

are processed without his consent), it may also be useful for him to first seek to contact the person responsible for the

treatment before filing a complaint. »

personal information, or how this legislation was allegedly violated by the defendant. " She

also indicates that said letter does not indicate "What are the possible sanctions that the

defendant may incur". In this respect, as indicated above (point 18), the Chamber

Litigation believes that the absence of an indication of the provision(s) potentially

breached in the letter inviting a conclusion did not affect the defendant in its ability to

to defend oneself. Indeed, the two letters inviting the exchange of conclusions (of February 8, 2021,

before the joinder of the complaints, and of March 8, 2021, after the joinder) repeat the fact at

the origin of the two complaints in a clear way (the sending of the email to hundreds of recipients

in carbon copy instead of invisible carbon copy). There can therefore be no question of surprise

on the part of the defendant as to the possible infringements. The fact is also

referred in both complaints.

26. Moreover, the defendant recognizes this fact and admits that it is "an individual error

regrettable committed by an employee of the FSMA, who obviously should not have

produce"5. To the extent that the defendant acknowledges the error (although without qualifying it

breach of the GDPR), the Litigation Chamber wonders about the arguments
legal proceedings that counsel for the defendant could have used in order to challenge the
breach of the obligations incumbent on the controller under the GDPR, in
in particular those relating to the security of personal data.

27. With regard more specifically to the defendant's assertion that the letter of 11
March 2021 does not indicate “the possible sanctions that the Respondent may incur”, the
Litigation Chamber recalls that it is not required to communicate on the sanction
envisaged, except – and this at the final stage of the procedure, after the exchange of conclusions
and if necessary of the hearing - if it is an administrative fine, which is not the case
in this case (in any event since the defendant is a public authority). There
Litigation Chamber considers that it would also go against all logic for it to inform the
parts of the sanction envisaged at the start of the procedure (a fortiori when sending the
letter inviting to conclude), insofar as before deciding on a sanction, it must
analyze the conclusions of the parties and hear them if a hearing is requested. There
Court of Markets also clearly recalled that the Litigation Division did not
obligation to inform before hearing the parties the parties on the sanction
envisaged6 (except in the case of a fine, which is not the case here). Bedroom
Litigation also indicates that the possible sanctions were included in the letter
inviting the parties to exchange submissions (in footnote 5). Finally, if at
stage of the introduction of the file the defendant wanted to know what are the
possible sanctions, as it formulates in its conclusions, i.e. the various tools of

5 p4 first conclusions

6 Judgment of the Markets Court, 2021/AR/1044 of 1/12/2021, p25

sanctions available to the Litigation Chamber on the basis of the LCA, it was free to
consult the LCA (in particular in its article 100).

28. In the second part of its first plea, the defendant alleges a violation of the
duty of thoroughness and the principle of formal and material motivation.
29. She finds a breach of the duty of care because she could not have defended herself
usefully in its conclusions because the legal provision(s) which has/have been violated do not
are not included in the letter of March 11, 2021. The Litigation Chamber is of the opinion that the
defendant applies a cascading reasoning, based on its argument supra according to
which she was not sufficiently informed of the facts and potentially violated articles
to be able to defend themselves. The Litigation Chamber also recalls that the parties have
been invited to express themselves in writing on various articles of the GDPR (including article 24) before
the hearing7, and that the defendant made use of this possibility by sending its
written observations to the Litigation Chamber and to the plaintiffs on October 11, 2022.
Also, to the extent that the premise on which the defendant relies in its
reasoning was addressed above (see points 18, 22, 23), and that the Litigation Chamber
concludes, in the present case, in particular with regard to the very simple fact constituting
breach of the GDPR described in said letter and in the complaints, as well as the fact that the
defendant acknowledges the error made, that the defendant had the opportunity to be
sufficiently informed to be able to usefully defend themselves in their conclusions. There
Litigation Chamber concludes that there was no breach of the duty of care.
30. Also, the defendant continues its cascading reasoning by indicating that “in
the absence of conclusions made usefully by the Complainant and due to the fact that the
Defendant is unable to exercise his right of defense due to the absence
information as to the legal characterization of the facts with which he is charged, the Chamber
Litigation would be unable to make an adequately reasoned decision on the
material and formal plan since it would not have all the information
necessary to do so”. As in the point above, the Chamber
Litigation concludes that the premise on which the defendant bases itself is erroneous, and

refers to points 18, 22, 23. The Litigation Division also notes that, unlike

what the defendant implies, neither party is under an obligation to send

findings in the proceedings.

II.1.2. Other Procedural Issues Raised by the Respondent

7 The Litigation Chamber is of the opinion that this is in accordance with the requirements of the judgment of the Court of

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December 2022, p.27

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31. In a point "1.6 Procedural background", the defendant then raises that the

Litigation Chamber did not communicate to him the decision of the SPL to declare admissible the

complaint, nor that of the Litigation Chamber to carry out a substantive examination.

32. However, neither the LCA nor the GDPR provide that the decision of the SPL to declare the complaint admissible

and to transmit the complaint to the Litigation Chamber must be communicated to the

parts. This “decision” of the SPL can be formalized by a simple email from the SPL to the Chamber

Litigation. Similarly, the Litigation Chamber is not obliged to communicate to

parties its decision to deal with a case on the merits. The Market Court recalls indeed

on this subject that “Een administratieve vaststelling dat het dossier gereed is voor behandeling

grieft de betrokkene niet nu deze zich tegen de klacht kan verdedigen. Deze Feitelijke

grieven zijn overigens hoe dan ook rechtgezet door het beroep/verhaal voor het

Marktenhof” (free translation: An administrative decision indicating that the file is ready

to be treated does not adversely affect the individual concerned, insofar as he can defend himself

against the complaint. In any event, these factual grievances are corrected by appeal to the

Market Court).8

33. The defendant further emphasizes that insofar as, despite its requests, the

administrative file was communicated to it by the Litigation Chamber only on the first

working day after the expiry of the deadline for filing its first conclusions, it

a filed subject to all reservations and without preliminary ruling. As indicated above,

the Litigation Chamber, was only able to respond to the request for access to the new

administrative file (a first file had been sent to the defendant before the

second complaint against her for the same facts has been attached to the file already opened) the

first business day following maturity (i.e. April 26, 2020). Nevertheless, in view of the fact that

the defendant's submissions in reply raise exactly the same arguments

and legal reasoning than its first conclusions, it cannot be concluded at a

prejudice of this fact for the defendant.

II.2. Regarding breaches of the GDPR

34. The defendant has the e-mail addresses of the complainants in

their quality

mortgage and consumer credit intermediaries registered with the defendant.

The Litigation Chamber includes writings from the defendant that the latter

based on the performance of its mission of public interest as the basis for the lawfulness of the processing of

e-mail addresses of the complainants, as financial intermediaries registered with it.

The subject of the complaint does not concern the basis of lawfulness of the initial processing of his data,

and in the absence of any dispute, the Litigation Chamber will not examine this aspect

8 Court of Markets, 2021/AR/1044 of 1/12/2021– p. 24

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and assumes that in order to obtain these data, as the defendant indicates,

this is based on Article 6.1.e) of the GDPR.

35. As indicated above, the subject of the complaint relates to the sending in CCI of an e-mail by the

defendant to several hundred recipients. Also, the defendant acknowledges that

sending the disputed email constitutes a “regrettable individual error committed by a

employee of the FSMA, which obviously should not have happened"9. It indicates among

measures prior to

the sending of

the email

dispute that it has appointed a DPO,

first, that it has a policy

internal data protection,

available to employees, secondly, that its employees have a file

GDPR, thirdly, that the work regulations provide for penalties in the event of non-

compliance with the data protection policy, fourthly, that the employees of the

department concerned attended data protection training in May 2019, and,

fifthly, that the principle of the 4 eyes before sending mass emails already existed

even if it was reinforced after the unfortunate sending in question here).

36. Article 24.1 GDPR requires the controller to implement measures

appropriate technical and organizational arrangements, taking into account the nature, scope,

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

of varying severity, for the rights and freedoms of natural persons, to ensure and be

able to demonstrate that the processing is carried out in accordance with the GDPR. These

measures should also be reviewed and updated if necessary. This article reflects

the principle of "responsibility", set out in Article 5.2 of the GDPR, according to which "the person responsible

of the processing is responsible for compliance with paragraph 1 (liability) and is able

to bring

the proof ". Article 24.2 of the GDPR provides that,

when they are

proportionate to the processing activities, the measures referred to in Article 24.1 of the

GDPR below include the implementation of data protection policies

appropriate by the controller.

37. Recital 74 of the GDPR adds that “there is a need to establish the liability of the controller

processing for any processing of personal data that it carries out itself

itself or which is carried out on its behalf. In particular, it is important that the head of the

processing is required to implement appropriate and effective measures and either

even to demonstrate the compliance of processing activities with this Regulation, including

including the effectiveness of the measures. These measures should take into account the nature,

scope, context and purposes of the processing as well as the risk it presents

for the rights and freedoms of natural persons. »

9 p4 of the first conclusions of the defendant

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38.

It is also the responsibility of the controller, in accordance with Articles 24

(liability) and 25 GDPR (data protection by design and by default),

to integrate the necessary compliance with the rules of the GDPR into the design of its processing and

in its procedures in an effective way (for example, ensuring the effective implementation

of the 4 eyes principle before sending certain e-mails, particularly in view of the quality

administrative authority of the defendant as well as in view of the large volume of data

that it processes, and the nature of this data (in particular financial).

39. The occurrence of the incident consisting of the sending of the disputed email by an employee of the

defendant, indicates that the technical and organizational measures (including the

4-eye system already in place at the time of the events) prior to the sending of the email

disputed were not appropriate (in particular given the large volume of

data it processes and the sensitive nature of this financial data). The defendant,

as controller, has not implemented technical measures and

appropriate organizational arrangements to ensure and be able to demonstrate that said

processing is carried out in accordance with the GDPR. For this reason, it contravenes section 24.

and 25 GDPR.

III. Regarding corrective measures and sanctions

40. Under Article 100 LCA, the Litigation Chamber has the power to:

1° dismiss the complaint without follow-up;

2° order the dismissal;

3° order a suspension of the pronouncement;

4° propose a transaction;

(5) issue warnings or reprimands;

6° order to comply with requests from the data subject to exercise his or her rights;

7° order that the person concerned be informed of the security problem;

8° order the freezing, limitation or temporary or permanent prohibition of processing;

9° order the processing to be brought into conformity;

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10° order the rectification, restriction or erasure of the data and the notification thereof;

ci to data recipients;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

13° to impose administrative fines;

14° order the suspension of cross-border data flows to another State or a

international body;

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15° forward the file to the public prosecutor's office in Brussels, who informs it of the follow-up

data on file;

16° decide on a case-by-case basis to publish its decisions on the website of the Protection Authority

Datas.

41. The defendant indicates that the complaints should be closed without follow-up,

of a dismissal, or that the pronouncement should be suspended taking into account the circumstances

mitigating. In support, it makes a comparison with a decision of the Chamber
Litigation of March 26, 2021 resulting in a dismissal because the plaintiff
had not submitted any evidence or attempted to exercise his rights with the person in charge of
treatment before filing a complaint. More specifically, the defendant states that
the plaintiff "does not provide evidence of violation of the legislation on the protection of
personal data (see above, point 32) and did not contact the Respondent before
to lodge a complaint with the Litigation Chamber (see above, point 33). In
Accordingly, the Respondent submits that the Complaint in this case should be dismissed without
following. ". However, the plaintiffs in this case did submit proof of the sending of a carbon copy
visible from the defendant's payment reminder email, to hundreds of
recipients. The defendant also acknowledged the error committed. Also as
indicated above, the complaints are not based on a request for the exercise of a right by the
complainants within the meaning of Chapter 3 of the GDPR, (the right of access had not been exercised before
the introduction of the complaint in the decision of March 26, 2021) but of a violation of one of
its obligations by the defendant in its capacity as data controller. In case of
breach of an obligation, it is up to the defendant to be able to demonstrate compliance (see
on this reasoning, our developments above n° 19 to 21). This emerges clearly from the
decision that the defendant cites10, and the Litigation Chamber wonders about the
relevance of this argument in the present case.

42. Next, the defendant considers that the Litigation Division should also order the
dismiss or pronounce the suspension of the pronouncement, in reference to a case "highly
comparable" in which this was imposed by the Market Court on 27/1/2021. She does not
however, in no way develops his reasoning, and omits any precision in terms
of procedure indicating the relevance of the comparison. This argument cannot therefore
not be analyzed, nor therefore retained. Also, the Litigation Chamber recalls that
each file is subject to an individual assessment, in accordance with the principle of

formal and material motivation.

10 Decision 39/2021 of 26 March 2021, point 10: “The exercise by the person of his right of access is an important step

who could have provided answers or clarifications to the complainant, without a referral to the DPA being necessary. Of the

Therefore, the Litigation Chamber considers that it is not appropriate to examine the subject of the complaint further, given that

the

effective functioning of the provisions of the GDPR has not been fully utilized”.

43. The defendant also indicates that the “level of harm to persons

concerned is quite limited, if not non-existent. The Complainant in any case does not give the

proof that he suffered any damage. ". The Litigation Chamber cannot

follow the defendant in this argument. The invocation of the existence of a

moral damage to the plaintiffs (financial intermediaries concerned about their reputation),

insofar as all the recipients of the disputed e-mail are now aware of the

late payment, is clear from the complaints.

44. In assessing the appropriate sanction and/or corrective measure, the Chamber

Litigation takes into account that the defendant admitted the human error having caused the

disputed treatment. The Litigation Chamber also has regard to previous measures

and subsequent to the occurrence of the disputed fact put in place by the defendant, whose

development in 2022 by the FSMA of an automated IT tool for sending

payment reminders, allowing the sending of personal emails and thus avoiding emails

massive, as explained by counsel for the defendant during the hearing on October 19

2022. These measures attest to the goodwill of the defendant in the effort to

in accordance with GDPR requirements. The Litigation Chamber also takes into

take into account the mitigating circumstances surrounding the processing in question. In this regard, the

defendant notes among the mitigating circumstances firstly the fact that it is

of a single human and non-technical incident11, that the incident was caused by negligence and

not deliberately (human error despite

the processes put in place by

there

defendant), and secondly the measures taken by the defendant to mitigate the

damage suffered by the persons concerned (sending an apology e-mail requesting

delete the disputed email). Finally, it mentions the degree of cooperation with ODA with a view to

to remedy the incident and to mitigate its possible negative effects (it notified the incident to

APD within 72 hours), and the measures put in place to prevent further incidents.

45. The defendant also lists the precautionary measures both prior to the dispatch

of the email to avoid this kind of "incident", as the measures taken following the sending of the email.

The defendant points out that it sends mass emails to a large number of

recipients each year (more than 20,000 e-mails were sent in one year

only by the service concerned). It argues that the fact that these shipments were

carried out for years without incident is due in part to the protective measures

of the data it has put in place.

46. Among these general measures and prior to the sending of the disputed email, the defendant

notes the appointment of a DPO, its internal data protection policy, its

work regulations punishing with disciplinary measures any violation of the principles of

11 What counsel for the defendant confirm in their letters of December 12, 2022 containing their remarks

on the minutes of the hearing of October 19, 2022

Data protection. It specifies that the principle of four eyes (i.e. the

verification by two employees before sending an email that it follows the

sending instructions) already existed for mass mailings.

47. With regard to the measures taken after the disputed email was sent, the defendant

indicates that it has taken all possible measures to limit the consequences, and to

prevent this from happening again. Thus, all the relevant departments (including the Council of management) were involved in the investigation opened following the incident, and an apology email signed by a member of the Board of Directors asking to delete the email has been sent to all the recipients of the email (in CCI) the same day. Moreover, the next day (i.e. the 24 November 2020) the defendant notified a data leak to the DPA. She has also since then formalized “the principle of four eyes” by a specific form in which two employees must verify and indicate specifically by ticking a box dedicated to this effect if the recipients are all put in CCI, before the email can be sent.

48. In these circumstances, in view of the fact that the defendant processes large volumes personal data of a financial and therefore sensitive nature, as well as the principle responsibility (article 24 of the GDPR) and data protection from the design and by defect (article 25 of the GDPR) on its part, the Litigation Chamber decides to pronounce a reprimand against the defendant in accordance with Article 100 § 1, 5° of the ACL.

IV. Publication of the decision

49. Given the importance of transparency regarding the decision-making process of the Chamber Litigation, this decision is published on the website of the Protection Authority Datas.

50. The identification data of the complainants are pseudonymised, following their demand in this sense and insofar as their revelation, as individuals, has not impact on this decision. Conversely, the identity of the defendant, in its capacity administrative authority, also processing a large volume of personal data of a financial and therefore sensitive nature, is not pseudonymised. This is justified by the public interest of this decision in the context of the exemplary role of the defendant as a public service, on the one hand, and by the inevitable re-identification of the defendant in the case of pseudonymization, on the other hand.

51.

The Chamber also refers to Article 9 § 6 of the law of October 16, 2022 on the creation

of the Central Registry for decisions of the judiciary and relating to the publication of

judgments and modifying the assize procedure relating to the challenge of jurors12, on the basis

which the identification data of natural persons are to be pseudonymised.

Conversely, those of legal persons are not.

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FOR THESE REASONS,

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

- Pursuant to Article 100 § 1, 5° of the LCA, formulates a reprimand

In accordance with Article 108, § 1 of the LCA, an appeal against this decision may be lodged,

within thirty days of its notification, to the Court of Markets (court

d'appel de Bruxelles), with the Data Protection Authority as defendant.

Such an appeal may be introduced by means of an interlocutory request which must contain the

information listed in article 1034ter of the Judicial Code13. The interlocutory motion must be

12 Article 9 § 6 paragraph 5-6 of the Law of October 16, 2022 on the creation of the Central Register for the decisions of the order

court and relating to the publication of judgments and modifying the assize procedure relating to the challenge of jurors

“In article 782 of the Judicial Code, replaced by article 8, the following modifications are made:

(…)

5° paragraph 5, first paragraph, is supplemented by a 4° worded as follows:

"4° the pseudonymised judgments referred to in Articles 782bis and 1109 and Articles 163, 176, 190, 209, 337 and 346 of the of criminal investigation, and any judgment which the court which rendered it orders that it must be published in the form pseudonymised through the Central Registry.";

6° in paragraph 5, five paragraphs drafted as follows are inserted between paragraphs 2 and 3:

"Prior to the registration of a judgment in the Central Register with a view to its conservation as data referred to

in paragraph 1, 4°, the following data is pseudonymised within the meaning of Article 4, 5), of Regulation (EU) 2016/679 of European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing personal data and on the free movement of such data, and repealing Directive 95/46/EC, this

in accordance with the technical and practical standards in force at the time of the pseudonymization:

1° the identity data of the natural persons mentioned in the judgment, with the exception of the identity data of magistrates, members of the registry and lawyers;

2° any element of the judgment making it possible to identify directly or indirectly the natural persons mentioned

in the judgment, with the exception of judges, members of the registry and lawyers, within the limits of legibility and understanding of judgment;

3° by way of derogation from 1° and 2°, by decision of the head of the body of the jurisdiction after consulting the public prosecutor, when his

dissemination is likely to affect the safety of judges, members of the registry, lawyers or their

entourage, the identity data of these people mentioned in the judgment as well as, within the limits of its readability and its understanding, any element of the judgment allowing the direct or indirect identification of these persons;

4° by way of derogation from 1° and 2°, the identity data of the magistrates, the members of the registry and the lawyers mentioned

in the judgment concerning criminal cases relating to the offenses referred to in Articles 137 to 141ter, 324bis and 324ter of the Penal Code, as well as, within the limits of its readability and understanding, any element of the judgment allowing these persons to be directly or indirectly identified. »

13 The request contains on pain of nullity:

the indication of the day, month and year;

1°

2° the surname, first name, domicile of the applicant, as well as, where applicable, his qualities and his national register number or

Business Number;

3° the surname, first name, domicile and, where applicable, the capacity of the person to be summoned;

filed with the registry of the Market Court in accordance with article 1034quinquies of C. jud.14, or

via the e-Deposit information system of the Ministry of Justice (article 32ter of the C. jud.).

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(se). Hielke HIJMANS

President of the Litigation Chamber

(4) the object and summary statement of the means of the request;

(5) the indication of the judge who is seized of the application;

6° the signature of the applicant or his lawyer.

14 The request, accompanied by its appendix, is sent, in as many copies as there are parties involved, by letter

recommended to the court clerk or filed with the court office.