

Litigation Chamber□

Decision on the merits 42/2020 of□

July 30, 2020□

File number: DOS-2019-04309□

Subject: Complaint for publication of personal data in directories and□

via telephone information services after a data subject has□

requested that his personal data not be published, and for□

transmission of personal data to other providers of directories and□

telephone information services.□

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

Hijmans, chairman, and Messrs. Frank De Smet 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 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□

"LCA";□

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

December 20, 2018 and published in the Belgian Official Gazette on January 15, 2019;□

Considering the documents in the file;□

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made the following decision regarding:

the plaintiff, and,

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- **Proximus SA**, a company whose head office is located at Boulevard du Roi Albert 27, B-1030

Brussels, and whose company number is 0202.239.951, hereinafter "the defendant",

represented by Me Peter Craddock and Me Eline Van Bogget.

1. Scope of the procedure

1. This file concerns a complaint against the defendant. Therefore, requests

in the complaint which essentially concern the processing of other data controllers.

treatment will not be considered in this decision. These are therefore the requests of the

plaintiff to the Data Protection Authority to order the defendant:

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to delete personal data "on the Internet"; [Editor's note: all passages

quoted in the file have been freely translated by the Translation Service of the General Secretariat

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

to delete personal data in the paper version of the Witte Gids

(Editor's note: equivalent in Flanders of the White Pages);

to provide "full records" of all information about the complainant that is

stored with third-party controllers;

to obtain the list of IP addresses belonging to people who have visited the Internet pages

containing the personal data of the complainant to those responsible for the

third-party processing;

to erase or delete personal data "with the person responsible for

these websites, the paper versions of Witte Gids, ...";

to order the defendant to create a new telephone number for the

complainant with the complainant's publicly available telephone service provider

(Telenet).

2. Facts and procedure

Facts

2. The defendant is a supplier of electronic directories and information services

within the meaning of the law of June 13, 2005 relating to electronic communications

(hereafter: LCE). For this file, two electronic directories of the defendant are

relevant, namely www.1207.be and www.1307.be. The defendant also offers the

directory inquiry services with the same names, namely 1207 and 1307.

It is also important to mention that the defendant is also a supplier of a service

telephone line accessible to the public within the meaning of article 2, 49° of the LCE (hereafter: operator).

3. The complainant has a subscription with an operator

third parties, namely Telenet.

4. On January 13, 2019, the Complainant sent a request to the Respondent by means of a form

contact information on the defendant's 1207 electronic directory website. Requirement

is worded as follows:

"Please do not include this telephone number in the Witte Gids, on the 1207.be site, ...

Please contact me only by e-mail [...]"

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5. On January 28, 2019, an employee of the defendant responded to the complainant's request, as

as described in point 4, as follows:

"The number [X] is currently not included in the Gids edition. The information is not

no longer available from information (1207) or on the website (1207.be).

On our website www.1207.be you will find the latest update of all

published entries."

6. On August 14, 2019, the Complainant contacted the Respondent again after noticing that his telephone number

telephone had not only been published in the electronic directories www.1207.be and

www.1307.be of the defendant, but also in several other electronic directories of

third-party controllers.

Via the contact form of 1207, the defendant's electronic directory, the plaintiff

request "not to mention [his/her phone number] on your website(s)

<http://www.1207.be>."

7. An employee of the defendant responds the same day and writes the following:

"[...] As requested, we have deleted your entry so that your data (number

telephone number, name and address) will no longer be used for directories or

telephone information. In a few days, your data will no longer be available

on www.1207.be – www.1307.be or with information (1207-1307).

We are also contacting Google in order to delete the corresponding links to our

site. In accordance with the legal provisions, your data has also been transmitted to

other directories or directory inquiry services that have requested [the

defendant] the provision of subscriber data, namely www.wittegids.be,

www.infobel.com, www.de1212.be and www.opendi.be. Through updates

monthly, they will also be informed of your request to no longer use your data."

8. Also on August 14, 2019, the complainant filed a complaint with the Authority for the Protection of

data¹.

The complaint mentions in particular the following:

"despite my written and explicit request (see the supporting documents on the pdf e-mail and

online contact of 14-8-2019) not to take back my (brand new) telephone number□

[...] nor my data in Witte Gids, on 1207.be, ..., [I noticed] this day, following a□

phone call from a firm that does not have my phone number,□

that my telephone number was still listed at least on www.1207.be,□

www.1307.be, www.wittegids.be, www.infobel.be, www.de1212.be and most likely□

therefore also on the corresponding information services 1207, 1307 as well as in the□

paper versions of Witte Gids(en) and on www.opendi.be.”□

9. In order to substantiate the alleged elements, the complainant attaches to the complaint addressed to the Protection Authority

data from screenshots of the websites of the electronic directories of:□

- www.1207.be (issued by the defendant);□

- www.1307.be (issued by the defendant);□

1 See Article 58 of the LCA.□

- www.wittegids.be (issued by FCR Media);□

- www.infobel.com (issued by Kapitol)□

- www.de1212.be (issued by European Directory Assistance).□

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The screenshots show the following:□

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for each of the aforementioned electronic directories websites, except ‘Witte Gids’:□

the complainant's full first and last name;□

with regard to the ‘Witte Gids’ electronic directory: the surname and initial of the first name of the□

complainant;□

for each of the aforementioned electronic directories websites: the postal address□

completeness of the complainant;□

For each of the aforementioned electronic directories websites, except 'Witte Gids' and□

'Infobel': the telephone number of the complainant.□

As regards the mention of the complainant's telephone number in the directories□

documents from 'Witte Gids' and 'Infobel', in other words, no immediate proof is□

presented regarding the publication of this telephone number.□

10. In addition, the Complainant argues that it is likely that links already exist with Google and□

other search engines, which are kept by these data controllers.□

11. On August 27, 2019, the complaint was declared admissible by the Front Line Service of the Authority□

of data protection on the basis of Article 58 of the LCA and the complaint is forwarded to the□

Litigation Division under Article 62, § 1 of the LCA.□

12. On September 5, 2019, the complainant sends an e-mail to 1207_info_nl@proximus.com. The Service of□

copy the email.□

the Data Protection Authority□

receives□

First line of□

The email is worded as follows:□

"Dear [...],□

Almost a month later, my data still appears on www.infobel.com (see□

Annex). Can you do the emergency [?]"□

13. On September 5, 2019, an employee of the defendant replied by e-mail as follows:□

"Sir [...],□

Your data has also been transmitted to other directories or services of□

telephone inquiries who had requested the provision of subscriber data to□

[the defendant].□

They have also been informed of your request to no longer use your data.□

[The defendant] however has no view on the internal procedures of these other publishers.□

For faster processing of your request, it is best to contact them□

directly:□

□ For www.wittegids.be, you can send an e-mail to info@fcrmedia.be or the□

contact at 078/151525□

□ For www.infobel.com, you can send an e-mail to info@infobel.com or□

call 02/3792940□

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[...]"□

14. The e-mail sent following this by the complainant – also on September 5, 2019 – to□

info@infobel.com , is worded as follows:□

"Dear,□

On the proposal of [an associate of the defendant], which you will find below (and□

for which I thank him), I ask you by this e-mail to delete my mention□

(telephone number, name and address) on your website www.infobel.com, free of charge□

understood. [...]"□

Proceedings before the Litigation Chamber□

15. On September 12, 2019, the Litigation Division decided, pursuant to Article 95, § 1, 1° and□

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16. By registered letter of September 12, 2019, the plaintiff and the defendant are informed of□

this decision of the Litigation Chamber. In this letter, the parties are also informed□

deadlines for transmitting their conclusions, in accordance with Articles 98 and 99 of the LCA.□

Defendant's submissions□

17. The□

14□

October□

2019,□

the□

defendant□

deposit□

his□

raw□

conclusions.□

In the description of the facts, the defendant explains certain things in more detail, in particular□

the technical functioning of the reception and transmission of personal data□

staff for directories and directory inquiry services:□

"In the databases of [respondent's directories] and [directories of other□

controllers], a distinction is made between Subscribers who must□

appear in a directory and Subscribers who do not wish to appear in a directory.□

In practice, this distinction results (for all Operators) in a unique code□

in a Subscriber's record: 'NNNNN' for the first category (contact details□

may appear) and 'XXXXX' for the second category (the coordinates remain□

secrets).”□

18. The Respondent indicates that following the Complainant's first request against it, the□

January 13, 2019, it took the following action:□

“[...] The defendant therefore adapted the recording concerned by assigning it the code□

"secret" ("XXXXX"), in accordance with its obligations [...] and at the Complainant's request, and has□

confirmed to the Complainant the correct processing of his request by e-mail on January 28, 2019□

[...]□

On January 31, 2019 the [defendant] received from Telenet as Operator,□

as part of a routine communication of the Contact Details of its Subscribers, new□

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Complainant's contact details. This information from the Operator indicated that the Contact Information□

of the Complainant should not be considered secret (“NNNNN”).□

This information from the Operator has been automatically processed within the□

[defendant's directories]. Therefore, in the case of the Complainant, the Contact Details□

of the Complainant have (automatically) become publicly available again (with the code□

"NNNNN" replacing the previous code "XXXXX").”□

19. Respondent further points out that on August 14, 2019, it confirmed to Complainant within two□

hours that his personal data would no longer be available via his directories or□

its telephone information services, following the request made to this effect by the□

complaining the same day.□

20. With regard to the Complainant's claims, the Respondent advances four conclusions.□

21. As a first submission, the Respondent refers to the jurisdiction of the Chamber□

Litigation concerning□

invokes that□

in accordance with the legal provisions governing its jurisdiction, the Litigation Division does not□

cannot issue an injunction for compensation. It therefore considers that the request in question□

of the complainant must be rejected as inadmissible.□

the claim for compensation. The defendant□

22. Second, the Respondent wishes to address the admissibility of claims relating to□

third parties, as well as the communication of a list of the IP addresses of the people who have consulted the□

personal data of the complainant. The defendant considers the following claims□

of the complainant as inadmissible: the complainant's request formulated in his complaint to delete□

personal data "on the Internet", "in their paper version(s) of Witte Gids"□

and to provide "full records" of the personal data processed through□

directories and telephone information services of third parties, as well as the□

asks to provide the complainant with a new telephone number via his current provider of□

telephone services.□

The defendant declares that it cannot "in any way" be held responsible for the processing□

carried out "obviously by third parties".□

23. With respect to the Complainant's request to provide a list of IP addresses, the Respondent□

argues that this request is "grossly disproportionate and reckless". The defendant□

believes that providing such a list would constitute an obvious violation of the privacy of individuals□

concerned.□

24. Third, the defendant wishes to address the alleged breaches of the GDPR and compliance□

applicable regulations. For this conclusion, the defendant refers to the provisions□

of the ECL. The defendant considers that the processing of the personal data of the□

complainant, even after his requests, is lawful under the GDPR. The defendant emphasizes the□

legal obligations for operators, pursuant to Article 45, § 2 juncto Article 46, § 2 of the□

LCE, to make the "necessary data" available to directory providers and□

telephone information services.□

25. The defendant also refers to the legal obligation for operators set out in Article 45,□

§ 3 juncto article 46, § 3 of the LCE to draw a distinction between personal data□

personnel for which the subscribers concerned of the operator have asked not to appear□

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directories or telephone information services on the one hand, and the personal data□

staff for which no request to this effect has been made on the other hand. In this case,□

the complainant's request not to appear in directories or information services□

telephone calls is not addressed to its own operator.□

26. The defendant argues that if he did not wish (no longer) to appear in a directory or a service□

information, the complainant should have contacted his own operator at□

to which he subscribes. This would have changed the technical code to "XXXXX" instead of "NNNNN" in□

all systems, with the effect that the post would not have appeared anywhere.□

27. At the same time, the defendant develops an argument based on the provisions□

of the GDPR relating to the right of rectification provided for in Article 16 of the GDPR. The defendant□

indeed argues that the plaintiff's request to change the code "NNNNN" to "XXXXX"□

constitutes a request for rectification.□

28. The defendant asserts, however, that Article 16 of the GDPR does not apply to the operator of the□

plaintiff in this case, given that "this provision of the GDPR does not [take precedence] over the□

regulation under the ECA", because the provisions of the ECA have their origin in the□

Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 on the□

processing of personal data and the protection of privacy in the sector of□

electronic communications (hereinafter: e-Privacy Directive)2. The defendant considers that□

following the plaintiff's request, Article 16 of the GDPR does apply to itself, given that□

the provisions of articles 45 and 46 of the LCE do not concern it in its capacity as supplier□

directories and directory inquiry services.□

29. The defendant asserts the following:□

“As a result, [the defendant] cannot be blamed for having integrated□
automatically the information of [operator] in the database 1207, even□
if it was in contradiction with a previous request by the Complainant.”□

30. Finally, the defendant discusses the importance of the confidentiality of the parties in the event of publication□
of the decision by the Litigation Chamber. The defendant asks the Litigation Chamber□
that in the event of publication of the decision, it is anonymized. The defendant invokes□
this the pseudonymization decision in the majority of previous House decisions□

Litigation and□

the defendant.□

the absence of "gross negligence" in□

the leader of□

31. The Complainant does not submit any submissions in reply.□

32. On November 13, 2019, the defendant confirms the content of its first conclusions.□

33. During its meeting of March 3, 2020, the Litigation Chamber decides that it is useful to hear the□
defendant and to convene it for this purpose pursuant to Article 52 of the Rules of Procedure□

within the Data Protection Authority. In the minutes of this meeting, the□

Litigation Chamber specifies that it wishes explanations on the transmission of data to□

2 EU Official Journal No. L 201 of July 31, 2002, 37-47.□

3 See the conclusions of the defendant: "It could not be a request in accordance with articles 45 and 46 of the LCE□
(not to be listed in the directory / directory inquiry service) as such inquiries should be directed to□
the operator."□

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personal nature to directories and third-party directory inquiry services and□

on the lawfulness of this transmission with regard to Article 6 of the GDPR. In addition, the Chamber□

Litigation wants explanations on the legal qualification of the plaintiff's request□

by the defendant requesting the exercise of the "right of rectification" in accordance with Article 16 of the GDPR.

34. The parties were therefore called to a hearing on March 23, 2020. Only the defendant confirmed his presence.

The hearing

35. Given that at various times during the period preceding the hearing, the Federal State promulgated measures to limit the spread of the COVID-19 coronavirus, in particular by the ministerial decree of March 13, 2020 on emergency measures to limit the spread of coronavirus COVID-19 (M.B. of March 13, 2020), preventing the Litigation Chamber from organizing a hearing in the usual way, it was proposed to the defendant to organize the hearing by the through electronic means of communication. The defendant consented to this. The hearing has therefore been postponed to April 1, 2020.

36. During the hearing, the Respondent explains its conclusions in more detail. She refers to provisions of the LCE referred to above, which provide that operators must provide the personal data of their subscribers in a non-discriminatory manner to all providers of directories and directory inquiry services.

37. The defendant also invokes a judgment⁴ of the European Court of Justice explaining that the subscriber's consent to his operator for the transmission of personal data with a view to publication in the directories and services of telephone information cannot be differentiated according to the identity of the publisher or the directory and directory inquiry service provider as recipient such data.

38. The defendant further points out that the Belgian Institute for Postal Services and Telecommunications (hereafter: BIPT) had indicated in several documents accessible to the public that the defendant would continue to play a central role in the collection and transmission of subscriber data, after the universal telephony service is no longer organized by the

defendant⁵. Indeed, according to the defendant, all the providers of directories and

telephone inquiries cannot obtain character data as easily

personnel with the operators and the transmission of personal data corresponds

BIPT's expectations. The defendant considers that this would be in accordance with the aforementioned judgment of the

Court.

Reaction form against a proposed fine

39. On July 1, 2020, the Litigation Division sent the defendant a feedback form

against a proposed fine, informing the defendant that the Litigation Chamber

intended to impose a fine of EUR 20,000. The elements that the defendant has

then advanced in the feedback form were taken into account by the Litigation Chamber

4 CJEU, judgment of 5 May 2011, Deutsche Telekom AG v Bundesrepublik Deutschland, C-543/09, ECLI:EU:C:2011:279.

5 In the position of its legal predecessor, Belgacom.

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in its deliberation. In its reaction, the defendant also confirmed that the figures

known to the Dispute Chamber were still current.

3. Motivation

3.1

Competence of the Litigation Chamber (article 100 of the LCA)

40. The powers of the Litigation Chamber are exhaustively listed in Article

100 of the ACL. The defendant objects that the Litigation Chamber does not have jurisdiction in this matter.

regarding the plaintiff's claim for compensation.

Given that the granting of compensation does not fall within the jurisdiction of the Litigation Chamber

as enumerated in article 100 of the LCA, the Litigation Chamber cannot proceed

at the complainant's request in this regard.

3.2 Controllers (Art. 4(7) GDPR)

41. The definition of "controller" in the GDPR is as follows⁶:

"a natural or legal person, public authority, agency or other body"

who, alone or jointly with others, determines the purposes and means of the processing

personal data; when the purposes and means of this processing are

determined by Union law or the law of a Member State, the controller

may be designated or the specific criteria applicable to its designation may be provided

by Union law or by the law of a Member State".

42. The definition of "controller" in the GDPR is almost the same as that

included in article 2, d) of the European Union Data Protection Directive

of a personal nature, currently repealed.⁷

The case law of the Court of Justice of the European Union (hereafter: the Court of Justice) and the

opinion of the "Article 29" Working Party (hereafter: Working Party 29) concerning this term may

therefore be used in a similar manner and be applied *mutatis mutandis*.⁸

43. The defendant asserts on the one hand that the plaintiff should have sent the request for non-

publication of personal data in directories and information services

telephone information to its own operator. According to the defendant, a request for

non-publication of the personal data addressed to him should be qualified

legally request to exercise a right of rectification. Furthermore, the defendant declares

that it can "not be responsible in any way and does not intervene as responsible

processing" for processing carried out with third parties.

44. On the other hand, the defendant stated during the hearing that according to it, both the operators and

publishers or suppliers of directories and directory inquiry services are

separate controllers.

⁶ Article 4(7) GDPR.

⁷ 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 EU L. 281/31.

⁸ See the argument of the Court in CJEU, Judgment of July 29, 2019, Fashion ID GmbH & Co KG c. Verbraucherzentrale NRW

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45. In order to avoid any confusion, it should be explained why the Litigation Division considers□

the defendant as data controller for several processing operations noted in the□

case. Important treatments in this specific explanation concern: 9□

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the extraction and consultation of the complainant's personal data from□

its operator and then the recording of this personal data;□

the provision of this personal data by the publication of its□

own directories and via its own directory inquiry services;□

the communication of this personal data by transmission to□

providers of directories and directory inquiry services of others.□

The question then is whether the defendant "determines the purposes and means" of the processing□

mentioned above, as a necessary element to meet the requirements of the concept of□

"controller" as defined in the GDPR.□

3.2.1. The concept of "determine"□

46. Whether the interpretation of "determine" complies with EU law is only possible after□

analysis of the facts or circumstances of the case10.□

47. With regard to the publication of directories and the provision of directory inquiry services,□

it can be seen that it was the defendant who initiated the processing. The defendant asks□

the personal data of the persons concerned from the operators and, from its□

own initiative, publishes (electronic) directories and makes available the services of□

telephone information. The defendant is approved by BIPT to offer directories□

and directory inquiry services, pursuant respectively to Article 45, § 1 and□

of article 46, § 1 of the LCE11.□

It was the defendant who decided to offer such directories and information services□

using for this purpose the complainant's personal data originally processed by□

the operator.□

48. Also with regard to the transmission of personal data to third parties, this is□

the defendant who communicates the personal data by□

transmission, "in accordance with the legal provisions", according to the defendant.□

49. In other words, the defendant takes the initiative of the aforementioned processing operations and continues this□

initiative, which indicates that it is she who "determines".□

9 Definition of "processing" in Article 4(2) GDPR.□

10 Article 29 Working Party, Opinion 1/2010 on the concepts of "controller" and "processor", 16 February 2010,□

WP 169 (hereafter: Opinion 1/2010 Group 29), 11.□

11 The companies approved for this purpose by BIPT can be consulted via: <https://www.ibpt.be/operateurs/annonces->□

information-services .□

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3.2.2. The notions of "ends and means"□

50. The notions "ends" and "means" must be examined together in a□

inseparable12. In this regard, the degree of□

influence on the determination of the "why" (purposes) and the "how" (means) of the processing.□

51. Although the supply of directories and directory inquiry services takes place□

generally in a fairly similar way, it is not a decisive element in determining whether the□

provider of these directories and directory inquiry services has not interpreted the□

"why" and "how" differently than other similar service providers and does not□

would therefore not be a separate controller.□

52. The defendant's decision to organize the supply of directories and information services□

cited, to design the website according to a specific technique, to display the data on□

personal character in these directories and information services in a specific way,□

to take a certain responsibility in the exercise of the rights of the persons concerned when□

of an opposition to the processing, indicates that the defendant intervenes as responsible□

processing for the processing of personal data to which the complainant objects.□

This analysis is supported by the vision of the Court of Justice to ensure, by a broad definition□

of the notion of "responsible", "effective and complete protection" of data subjects¹³.□

53. Furthermore, it is significant to consider that the complainant as a data subject has□

addressed to the defendant, and not to its own operator, to exercise the rights as described□

in the GDPR. The Court of Justice has previously confirmed that in order to analyze the concept of□

controller, the conception that the data subject has of the controller□

treatment is important. Similarly, the Court confirmed that a person□

legal entity which influences, for its own purposes, the processing of personal data□

staff can be considered to be responsible for the processing¹⁵.□

54. For all the above reasons, the Litigation Chamber considers that both "the purposes" and□

"the means" are only covered by the defendant's (strategic) vision.□

3.2.3. Consideration in the file during□

55. The defendant asserts the following in its submissions:□

"There are other directories such as Witte Gids (wittegids.be), infobel.be, de1212.be,□

opendi.be, etc. These directories [...] are published by third parties and [the defendant] is not one of them.□

responsible."□

The Litigation Division infers from this that the defendant declares that it is not responsible for the□

processing carried out by these third parties.□

¹² Opinion 1/2010 Group 29, 13.□

¹³ CJEU, Judgment of May 13, 2014, Google Spain SL c. Agencia Española de protección de Datos (AEPD) and others, C-131

EU:C:2014:317, par. 34; see also the analysis of the scope of the notion in C. DOCKSEY and H. HIJMANS, "The Court of Justice

as a Key Player in Privacy and Data Protection", European Data Protection Law Review, 2019, Vol. 3, (300)304.□

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

ECLI:EU:C:2018:551, par. 21. □

15 Ibid., para. 68. □

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The Litigation Chamber agrees with the defendant in this reasoning in the sense that it is not □

not responsible for processing that relates solely to the offer of directories or services of □

telephone information from these third parties. □

56. Providers of directories and public directory inquiry services, including □

the defendant, are themselves data controllers for: □

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the extraction and consultation of the complainant's personal data from □

its operator and then the recording of this personal data; □

the provision of such personal data for publication in the □

own directories and via own directory inquiry services; □

where applicable, the communication of this personal data by transmission □

to third party directory and directory inquiry service providers. □

57. During the transmission of personal data by the defendant to third parties □

who themselves determine the purposes of the processing, both the defendant and these third parties □

are data controllers for the transmission. In accordance with Article 4, point 2) of the □

GDPR, the transmission then splits between communication by transmission by the defendant □

on the one hand and the receipt of personal data by third-party directory providers □

or directory inquiry services on the other hand. □

58. In fact, several controllers may interact in the context of a processing operation. □

without necessarily determining together the ends and the means 16. Those responsible for the □

processing have their own defined purpose with regard to this transmission. In

In this case, it is not a question of joint controllers, but of a situation

with separate data controllers.

59. The role and responsibilities of the data controller are particularly important for

data subjects when exercising their rights, as set out in the GDPR¹⁸.

In this case, there are several data controllers who process the same data at different times.

personal nature of the persons concerned, such as the complainant, in the context of the offer

directories and directory inquiry services. This can be illustrated by means of the

following table:

1. Telenet as operator

2. The defendant as

directory provider and

intelligence services

telephone

Telenet acts as responsible for the

processing. Personal data

treated in this context are the name, the

first name, postal address and telephone number

Complainant's phone.

as long as

The defendant

controller. The data to

personal character treated in this context

intervenes in

¹⁶ According to the analogous reasoning regarding joint controllers in Regulation (EU) 2018/1725:

European Data Protection Supervisor, Guidelines on the concepts of controller, processor and joint controllership under

Regulation (EU) 2018/1725, 7 November 2019, 24.□

17 Regarding the distinction of processing and joint controllers, see CJEU, Judgment of 5 June 2018,□

Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein c. Wirtschaftsakademie Schleswig-Holstein GmbH, C-210/18,□

ECLI:EU:C:388.□

18 See also: Opinion 1/2010 Group 29, 2.□

3. Kapitel, FCR Media and European□

Directory Assistance as□

directory providers and□

intelligence services□

telephone□

13□

are the surname, first name, postal address and□

Complainant's telephone number.□

All legal persons mentioned□

in the left column act as□

as separate controllers. The□

personal data processed in this□

context are surname, first name, address□

postal address and telephone number of the complainant.□

3.3. Consent and lawfulness of processing (article 12 of the e-Privacy Directive□

and Article 133 of the LCE; Article 6 juncto Article 7 GDPR)□

3.3.1. The impact of the e-Privacy Directive and national implementing provisions as lex□

specialis on the General Data Protection Regulation as lex generalis□

60. The defendant argues that the public availability of personal data□

was again possible, because in accordance with Articles 45 and 46 of the LCE, the complainant should have□

contact your own operator. According to the defendant, these provisions find their□

origin in the e-Privacy Directive and this therefore constitutes, according to it, a *lex specialis* on the *lex generalis* of the GDPR. The plaintiff's request to the defendant to no longer publish its data or make them available in directories or directory inquiry services should, according to the defendant, be considered as a request in accordance with Article 16 of the GDPR.

61. The defendant refers in this context to an opinion of the European Committee for the Protection of data on the interaction between the e-Privacy Directive and the GDPR, an opinion relating in particular to the powers, tasks and competences of data protection authorities. The defendant considers that a passage of this opinion is relevant in this context and agrees in its conclusions the following free translation of this passage:¹⁹

"Where there are specific provisions governing a processing activity or a group of specific processing activities, the specific provisions should be applied (*lex specialis*), in all other cases (i.e. where there are no special provisions governing a given processing activity or group of processing activities), the general rule is applied (*lex generalis*)."²⁰

62. In this context, the Litigation Chamber wishes to draw attention to Article 95 of the GDPR, wording as following :

"This Regulation does not impose any additional obligations on natural persons or morality as to the processing[s] in the context of the provision of electronic communications accessible to the public on public networks of communications in the Union with regard to the aspects for which they are subject

¹⁹ According to Opinion 5/2019 on the interplay between the ePrivacy Directive and the GDPR, in particular regarding the competences and powers of data protection authorities, 12 March 2019, Opinion of the European Data Protection Board, para. 45, available through this

: https://edpb.europa.eu/our-work-tools/our-documents/stanovisko-vyboru-cl-64/opinion-52019-interplay-between-eprivacy_en.

link□

20 Ibid., para. 45.□

14□

to specific obligations with the same objective set out in Directive 2002/58/EC."□

63. In the parliamentary works of the LCE, it is stated that the provisions relating to the□

consent to include subscriber data in directories and services□

telephone inquiries implement article 12 of the e-Privacy Directive.²¹□

64. In this context, the Litigation Division draws attention to Article 12, § 2 of the Directive□

e-Privacy. This article is worded as follows:□

to have]□

figure□

[must□

subscribers□

of□

"the□

decide whether the personal data concerning them, and which of these data,□

must□

in□

the extent to which this data is relevant to the function of the directory in question□

as established by the directory provider. [Member States] shall also□

so that subscribers can verify, correct or delete this data."□

possibility□

phone book□

public,□

in□

a□

the

65. In the Belgian legal order, the obligation of consent set out in Article 12 of the e-Directive

Privacy is transposed in the current article 133, § 1 of the LCE. Consent regarding the

publication of the subscriber's personal data is specified in two questions

formulated by the national legislator. Regarding the deletion of personal data

personnel at the request of the subscriber, article 133, § 2, second paragraph of the LCE specifies that this

is carried out "according to the procedures and under the conditions laid down by the King". So far, none

condition of this type has been fixed by the King.

66. Be that as it may, the Litigation Chamber emphasizes that the requirements relating to the consent

imposed by the GDPR are not considered "additional obligations", but

rather as essential prerequisites for lawful processing. Group 29, as

as the legal predecessor of the European Data Protection Board, confirmed this and

further states:

"Thus the conditions for obtaining valid consent established by the GDPR are

applicable in situations falling within the scope of the Privacy Directive

and electronic communications". 22

67. This means that the lawfulness of processing based on consent, as provided for in the

provisions of the e-Privacy Directive, must always be assessed in the light of Article 6,

paragraph 1 juncto article 7 of the GDPR, therefore also when this consent takes place

in accordance with article 133, § 1 of the LCE.

68. The requirement of the consent of the person concerned as well as the possibility for the person

concerned to have their personal data deleted are indeed governed in a manner

general in the e-Privacy Directive. Considering that as a national implementation of this Directive,

however, the LCE does not regulate the concrete methods of withdrawal of consent, it is appropriate for

to do so, examine the provisions of the GDPR. There are no "specific obligations"

21 Doc. Speak. Chamber, DOC 51-1425/001, 83: "Article 142 establishes, in accordance with Article 12 of the Privacy Directive,

amended regime, applicable to directory providers [...]. As soon as the subscriber is informed of all relevant aspects of the registration, only the data which the subscriber has made known that they could appear in the directory or the service of information in question, may actually appear in the directory or the information service."

22 Group 29, Guidelines on consent within the meaning of Regulation 2016/679, WP 259 Rev01, 10 April 2018, 4.15

for processing operations relating to the deletion of personal data from directories after withdrawal of consent. In accordance with Article 95 of the GDPR, such "additional obligations" are, however, required to make the *lex specialis* take precedence over the GDPR provisions. This means that - insofar as there is no specific regulation, as is the case for the granting of consent in article 133 of the LCE - the provisions of the GDPR are fully applicable to the processing in this file.

3.3.2. The disputed processing on the basis of consent and the withdrawal of this consent

69. According to the analysis of the Litigation Chamber, the request made by the plaintiff on January 13

2019 via the online form of the defendant's electronic directory, with the request for

"not to include [a telephone number] in the Witte Gids, on 1207.be, ..." is sufficient

clear so that it is understood that the complainant does not want his telephone number

be published in any directory or directory inquiry service. In

in other words, the complainant withdraws the consent he had given to his operator

in accordance with Article 133, § 1 of the LCE and Article 6, paragraph 1 j° Article 7 of the GDPR,

and expresses this wish to the defendant, who is in this context responsible for the

treatment which must respond to the complainant's requests. This would also be the case if the complainant

had only expressed consent to the operator and if the defendant had

lawfully carried out the processing of the complainant's personal data on the basis of

this consent with the operator.

70. In the Proposed Fine Reaction Form, the Respondent states:

"As explained in detail in the conclusions [of the defendant] and during the hearing

before the Litigation Chamber, the processing in question only resumed after□

the communication of a code "to be published" by the complainant's operator. In other words, [the□
defendant] republished the complainant's number only because new□
information had come from the operator (not from [the defendant]) indicating that the□
number should be made publicly available".□

71. The "new information" to which the defendant refers relates to the new number□
telephone number of the plaintiff, which he had clearly communicated to the defendant during his□
first request of January 13, 2019. It was therefore clear to the defendant from the 13□
January 2019 that the request for publication ban related to the new telephone number. The□
defendant had sufficient information at its disposal to conclude that the plaintiff□
had withdrawn its consent to the publication of this new telephone number (as□
"new information"), given that the defendant relied precisely on this consent to□
publication of this new information.□

72. Contrary to what the Respondent maintains, the Complainant's request to the Respondent□
was not an exercise of the right of rectification provided for in Article 16 of the GDPR, but rather the withdrawal□
consent pursuant to Article 6(1) j° Article 7(3) GDPR.□

Regardless of the legally inaccurate view, maintaining the reasoning of the□
defendant means, from a practical point of view, that whenever its operator□
transmits an update of the subscriber data to the defendant, the plaintiff must send a□
new request for rectification to the defendant. This does not meet the expectations of□
complainant in the context of the management and control of his personal data. In□
16□

In addition, the Litigation Chamber has already drawn attention above to the importance of the perception□
of the complainant regarding the controllers.□

73. The publication or making available of personal data in directories or□
via directory inquiry services is not lawful in accordance with Article 6,□

paragraph 1 j° article 7 of the GDPR when the consent with regard to the data controller□

treatment had already been withdrawn. Article 7, paragraph 3 of the GDPR specifies that any□

data subject may withdraw consent at any time, which was done in this case□

via the email sent by the plaintiff to the defendant on January 13, 2019. This does not compromise□

the lawfulness of the processing based on the consent made before the withdrawal of this consent. 23□

74. Moreover, the defendant itself seems to confirm the characterization of the claim of the□

plaintiff as withdrawal of consent when she declares August 14, 2019 via email□

of an employee:□

"[...] As requested, we have deleted your entry so that your data (number□

telephone number, name and address) will no longer be used for directories or□

telephone information [...].□

This message expresses no reservations as to the complainant's request for deletion of any□

directory or directory inquiry service previously expressed on the same day and□

contradicts the conclusions of the defendant, in which it states that the□

new public availability of personal data of January 31, 2019 does not□

cannot be blamed for it, "even if it was in contradiction with a previous request from the□

complainant". For this reason, a request for the exercise of the right in accordance with Article 16 of the GDPR□

therefore cannot be relied upon.□

75. With regard to the period following the withdrawal of consent, the defendant states in□

his conclusions:□

"On January 31, 2019 [the defendant] received from [Y] as Operator, within the framework of a□

routine communication of the Contact Details of its Subscribers, new Contact Details of the□

Complainant. This information from the Operator indicated that the Contact Details of the Complainant did not□

should not be considered secret ("NNNNN").□

The defendant states that since the information of the plaintiff's operator was□

processed automatically, the personal data of the complainant were again□

made publicly available.□

76. The complainant's personal data was again published and made available□

in directories and directory inquiry services by the defendant, after□

the withdrawal of consent by the plaintiff towards the defendant in accordance with Article 7,□

paragraph 3 of the GDPR. Given that the initial processing took place on the basis of consent□

in accordance with article 133 of the LCE and article 6, paragraph 1 j° article 7 of the GDPR, the□

withdrawal of this consent means ipso facto that further processing - contrary to the withdrawal of□

23 Article 17(3) GDPR.□

17□

consent - is unlawful and therefore constitutes a violation of Article 6, paragraph 1 j° Article 7□

of the GDPR.□

3.4. Withdrawal of consent and liability of the defendant for treatments□

later on the basis of the initial consent with other controllers of the□

processing (respectively Article 7, Article 24 and Article 5, paragraph 2 of the GDPR)□

77. The e-Privacy Directive and the provisions transposing it into national law do not provide for□

no way that the withdrawal of consent can only take place with respect to the operator to which□

consent has been given. In this sense, the defendant must therefore respect its obligations□

legal as controller, in accordance with the provisions of the GDPR.□

78. In an e-mail of January 28, 2019, the defendant asserts to the complainant:□

"[...] The number [...] is not currently included in the Gids edition. The information is not□

also not available from information (1207) or on the website (1207.be).)□

[...]"□

The finding that the defendant also mentions the "Gids", meaning by that the Witte□

Gids of FCR Media, demonstrates that the defendant had also taken initiatives to prevent□

the publication of personal data in this electronic directory.□

79. The requirement of consent for the lawfulness of processing is anchored in the law and is therefore□

inseparable from these treatments. This implies that the plaintiff's wish towards the defendant
to no longer appear in directories or telephone information services entails
an obligation for the defendant, after the request made by the plaintiff pursuant
of Article 7(3) GDPR to withdraw consent.

80. This obligation implies that the defendant must take organizational and
appropriate techniques so that the complainant's withdrawal of consent is also notified to
the complainant's operator, on the one hand, so that this operator can take the necessary measures
for the withdrawal of consent to have effect for all publications in the
directories and the availability via telephone information services, and to
third-party controllers on the other hand who, as providers of directories and
telephone information services, have received the personal data from
of the defendant. This is a fortiori the case when the defendant itself confirms to the plaintiff
that his personal data will no longer be published by these third-party providers, being
given that the defendant thus explicitly undertakes to respect this responsibility.

81. Where there are several separate controllers, where each carries out processing
for its part on the basis of the same consent, namely a consent given by the
data subject to one or more of these controllers, it is sufficient to withdraw this
consent for the data subject to contact one of the controllers
carrying out processing on the basis of the consent given by the data subject. In this
meaning, one can read in Article 24 (considered in this case together with Articles 6 and 7) of the
GDPR, a one-stop-shop principle, according to which the data subject should only contact
a single controller, following which the controller in question is obliged
to ensure that the request of the data subject within the meaning of the GDPR takes effect.

18

82. Liability under Article 5(2) and Article 24 GDPR involves,
within the meaning of the Litigation Chamber, that the controller takes the measures

necessary technical and organizational measures, in order to ensure that the person concerned does not
must
separate.
responsible
processing
address
each
not
from
at

83. The aforementioned obligation falls under the proper execution of the liability of the defendant,
in accordance with Art. 5(2) and Art. 24 GDPR. It does not remove the
liability of third-party directories and directory inquiry services with respect to
relates to the processing carried out under their responsibility, but simply gives an
proper and adequate interpretation of the defendant's liability for the
processing,
complainant.
wait for it
like
can
the

84. This is part of the broad interpretation of the concept of responsibility for the processing
(Article 4, point 7) of the GDPR) by the Court of Justice. Thus, it is not necessary that each
joint controller is involved in each subsequent processing of data to
personal character to be considered a controller for the processing
initial. A fortiori, the defendant, as data controller, is indeed responsible for the

processing that it carries out separately, for which an incomplete answer or an absence

response to a request from a data subject has resulted in processing

unlawful processing of the personal data of this data subject by persons responsible for the

third-party processing.

85. All this implies that the Respondent is in violation of Article 24 and Article 5,

paragraph 2 of the GDPR when it does not take the technical and organizational measures

appropriate to inform third-party controllers of the withdrawal of consent by the

complainant pursuant to Article 6 juncto Article 7 of the GDPR, with the effect that the processing

by these third-party controllers become unlawful.

3.5. Transparency of information and communications and methods of exercise

the rights of the data subject (article 12 juncto article 13 of the GDPR)

86. Article 12, paragraph 1 of the GDPR provides the following:

“The data controller shall take appropriate measures to provide any information

referred to in Articles 13 and 14 of the GDPR to the data subject in a concise manner,

transparent, understandable and easily accessible, in clear and simple terms [...]"

87. Article

13,

paragraph

1

from

GDPR

has

this

Who

follows

:

"Where personal data relating to a data subject is

collected from this person, the data controller provides him, at the time when

data in question are obtained, all of the following information: [...]

c) the purposes of the processing for which the personal data are intended as well as

than

[...]"

(underlining of the Litigation Chamber)

processing

legal

based

from

the

88. When, in its conclusions for the Litigation Chamber, the defendant states that as

subscriber to a telephone service accessible to the public, the complainant must contact the operator

if he does not wish (or no longer) to appear in a directory, the defendant not only fails to

its obligations as data controller, but it also shows that the

19

previous information that she provided vis-à-vis the complainant should be considered as

erroneous - or at least as non-transparent.

89. The legal basis of the processing concerns the consent given to the operator of the

plaintiff, pursuant to Article 133, § 1 of the LCE. As mentioned above, the withdrawal of

this consent is not concretely regulated by the national legislator and it is appropriate for this

respect to turn to the provisions of the GDPR.

90. The Litigation Chamber considers that the defendant does not provide transparent information

with regard to the complainant on the legal basis of the processing only when it indicates

clear that consent for processing has been withdrawn at the complainant's request

and that consequently, the personal data appearing in the directories and
telephone information services of third-party controllers will also be
removed.

91. It is apparent from the file that collaborators of the defendant indicate that not
only the defendant would not publish or take over the personal data
personnel in its directory and directory inquiry service, but that it
would also pass on to other directory and information service providers
telephones the request not to publish the personal data in their
directory(s) and/or directory inquiry service(s).

92. On August 14, 2019, for example, an employee of the defendant wrote:

"Through monthly updates, they [directories and information services
third-party telephone numbers] will also be informed of your request to no longer use your
data."

93. This information does not correspond to the legal vision of the defendant which it sets out
in its findings.

94. The defendant gave the plaintiff the impression that it could prevent any publication, including
included in directories and third-party directory inquiry services. So although
in its submissions to the Litigation Chamber, the defendant objects that it is not
not responsible for other directory and information service providers
telephone calls, she provides other information about the complainant and declares that she
will indeed take steps to (have) delete the personal data
from third-party controllers. In addition, in its email of January 28, 2019, the
respondent does not ask the complainant any additional questions.

95. This shows that the information relating to the basis of lawfulness for the publication of the data to
personal character on the one hand and the indication to directories and to services of
third-party telephone information that personal data could not be

published on the other hand, were not transparent within the meaning of Article 12(1) GDPR.□

96. At no time was the complainant informed that he should turn to his own operator in order to□
that his needs can best be met, as the defendant presupposes in□
its findings. The defendant further states in its own pleadings that it qualifies the□
request of the complainant not to publish his personal data in his own□
directories and its own information services of the right of rectification (article 16 of the GDPR).□
20□

97. If the right of rectification were indeed applicable in the present context, which is not□
not the case, the defendant should have informed the complainant that the technical organization at the□
within the industry would result in personal data being□
even published if the defendant received from the operator a new signal ('NNNNN') for the□
publication of personal data in directories and information services□
telephone information. This indicates that the exercise of the complainant's rights has not been□
sufficiently facilitated within the meaning of Article 12(2) of the GDPR, although the Chamber□
Litigation has already pointed out that in this case, the right of rectification does not apply, since it□
this is the withdrawal of consent (see above, section 3.3.).□

3.6. Right to erasure (Article 17 GDPR)□

98. In the complaint lodged with the Data Protection Authority, the complainant requests that□
his personal data are "deleted", not only in directories and□
defendant's telephone information services, but also "on Facebook, on□
Google and all other possible search engines.□

99. For the sake of completeness, it should be mentioned that this extended request was not□
formulated as it was previously by the plaintiff vis-à-vis the defendant. Only the□
publication and transfer of personal data have been objected to,□
no request for complete deletion of personal data from the□
defendant was formulated.□

100.□

Article 133 of the LCE, which implements in Belgian national law Article 12 of the e-Directive□

Privacy, provides in general terms in its second paragraph that any subscriber has the□

right "to have corrected or deleted free of charge from the directory or the□

telephone information, personal data concerning him".□

from□

Mon□

101.□

Since this provision only governs the deletion of personal data in cases where□

In general terms, it is worth considering Article 17(1) of the GDPR, which provides what□

follows:□

"The data subject has the right to obtain from the controller the erasure, in□

as soon as possible, of personal data concerning him and the person responsible for the□

processing has the obligation to erase this personal data as soon as possible,□

when□

:□

[...]□

b) the data subject withdraws the consent on which the processing is based,□

pursuant to Article 6(1)(a) [...] and there is no other basis□

legal□

processing"□

As the Litigation Chamber had already noted previously, the plaintiff withdrew his□

consent and therefore Article 17(1) of the GDPR applies following the request□

of the complainant.□

103.□

Article 17, paragraph 2 of the GDPR provides that when he has made public the data to□

personal nature and that he is obliged to erase them in accordance with the request of the person

concerned, the controller must take reasonable measures, including

applies

next

patterns

102.

to

21

technical to "inform the data controllers who process this personal data

personal that the data subject has requested erasure by those controllers

any link to such personal data, or any copy or reproduction thereof

this."

104.

The publication of personal data on the Internet pages of the defendant

may result in the creation of hyperlinks for search engines with references to or

even the complete copy of the personal data published on the Internet pages of the

defendant. In this context, the defendant has the responsibility to have the links removed,

so that the plaintiff's request is duly satisfied²⁴.

105.

In its communication of August 14, 2019, the Respondent states to the Complainant itself

that it will take steps to remove the links through Google. It is incumbent on the defendant

to ensure the follow-up of these measures so that the request of the complainant can be duly

met. If the defendant fails to contact another data controller or

if the other controller does not respond satisfactorily to the request, it must

communicate in this respect in a transparent manner with the person concerned, so that the latter

can then contact this other data controller in order to inform him of his

request.□

3.7. Lawfulness of the transmission of personal data to□

third-party directory and information service providers□

telephone□

GDPR)□

The Litigation Chamber wishes to express itself on the legality of the transmission of data to□

personal character of the plaintiff by the defendant to directories and□

third-party telephone information, since the defendant is not the plaintiff's operator.□

On August 14, 2019, an employee of the defendant wrote:□

(item□

106.□

from□

6□

"[...] In accordance with the legal provisions, your data has also been transmitted to□

other directories or directory inquiry services that have requested [the□

defendant] the provision of subscriber data, namely www.wittegids.be,□

www.infobel.com, www.de1212.be and www.opendi.be. Through updates□

monthly, they will also be informed of your request to no longer use your data□

[...]"□

Article 6, paragraph 1 of the GDPR gives an overview of the possible grounds for processing□

the basis of which□

treatments may have□

way place□

lawful.□

To collect the personal data of data subjects, such as the□

complainant, in a directory or directory inquiry service, consent is□

requested by the operator, as set out in Article 133, § 1 of the LCE. The transmission

subsequent personal data is based on this consent to the operator.

109.

In accordance with Article 45, § 2 and Article 46, § 2 of the LCE, it is the responsibility of the operator to

provide "subscriber data" respectively to directories and information services

107.

on

108.

24 See here also the issue of joint controllers.

telephone. In the present case, only Telenet, as the complainant's operator, was therefore

obliged, in accordance with Article 45, § 2 and Article 46, § 2 of the LCE, to transmit the data

of a personal nature to the defendant and to other providers of directories or services of

telephone information.

22

110.

Transmission of personal data by the operator to suppliers

directories and directory inquiry services is therefore specifically governed in the

LCE as an execution of the e-Privacy Directive (lex specialis). The transmission of data to

personal character by suppliers of such directories and information services to

providers of directories and similar information services is not governed by the ECA,

and for the lawfulness of this processing, it is therefore necessary to examine the GDPR, as lex generalis.

More specifically, it is necessary to examine whether these transmissions are lawful under Article 6,

paragraph 1 of the GDPR.

111.

In the present case, the defendant proceeded to the transmission of personal data

Complainant staff to third-party directory and information service providers

telephone calls when it is not the operator of the data subject whose data to
personal character are transmitted. During the hearing, the defendant draws attention to the
task that BIPT would have entrusted to him in this matter, namely the task of commercial manager
central subscriber data. According to the defendant, this could be considered as a
binding interpretation of the LCE by BIPT or recognition of the task of the
defendant consisting in transmitting the subscriber data in the context of the public interest.

112.

The Litigation Chamber notes in particular that a BIPT document, submitted by the
defendant during the hearing, mentions that there is no need for a "[central] database
of subscriber data" since "Belgacom already provides these services on a commercial basis".
In another BIPT document, it is stated that "if the [operators] also have the
subscriber data of third-party companies, these are also transmitted [...]" as long as there is
initial consent of the person concerned to enter their personal data
in a directory or a telephone information service, and as long as this use remains
limited to offering directories and similar services.²⁵

113.

The Litigation Chamber notes, however, that there is no basis in the legislation
allowing the defendant, as a simple provider of directories and services to
telephone information, to transfer personal data to other
providers of directories and directory inquiry services. The designation of the
defendant as the central manager of subscriber data finds no basis
legitimate in the provisions of the LCE. These provisions are in fact based on the information
provided by operators.

114.

The fact that the e-Privacy Directive and its national implementing provisions presuppose that
the operators obtain explicit consent from the data subjects for a

publication of their "subscriber data" in directories and information services□

telephone calls indicates that subsequent transfers, after consent to the operator, will not□

may a fortiori not take place without the explicit consent of the data subject or a□

legal basis. complementary.□

25 BIPT, Update of the BIPT opinion of 18 February 2009 on the determination and conditions for making available□

basic identification data by telephone service providers to directory publishers and service providers□

intelligence services, September 11, 2017, 8.□

23□

115.□

This can also be read in articles 45, § 4 and 46, § 4 of the LCE, respectively for□

directories and directory inquiry services. Providers of such services□

"may only use the data communicated [by the operators] for the purpose of providing□

of a [directory] [telephone directory inquiry service]. In other words, providers□

directories and directory inquiry services cannot use the data□

personal data for another purpose, namely the transmission of this personal data□

personal to third-party providers of directories and similar services.□

116.□

Transmission of personal data for publication in directories□

and directory inquiry services is in fact reserved for operators, in□

application respectively of Article 45, § 2 and Article 46, § 2 of the LCE:□

"People who provide public telephone services to subscribers put the□

necessary subscriber data available to persons who have made a declaration□

in accordance with § 1, under technical, financial and commercial conditions□

fair, reasonable and non-discriminatory."□

117. In the present case, the defendant does not intervene as an operator, but simply as a□

as a supplier of directories and directory inquiry services. She can not□

transmit personal data to directories and information services□

third-party telephones in the same way as operators, since this transmission is a□

mission conferred solely on operators by the national legislator.□

118.□

It is true that the consent for transmission by the operator referred to in Article 12, paragraph□

2 of the e-Privacy Directive relates to the purpose of the publication of personal data□

and not on the identity of a particular directory provider²⁶. In this sense, the person concerned□

cannot diversify the consent it gives to its operator. The simple observation□

whether personal data may or may not be transmitted by the operator is not□

moreover not relevant in the present context, given that in this aspect, the Litigation Chamber□

examines the transmission of personal data of data subjects who are not□

not subscribed to the defendant.□

119.□

In view of the foregoing, the Litigation Division finds that the defendant does not□

does not process personal data lawfully when, in its capacity as supplier□

directories and directory inquiry services, it transfers, without being at the same□

time the operator of the persons concerned, personal data to other□

directory and directory inquiry service providers, which are□

third-party controllers. This constitutes a violation of Article 6(1) GDPR.□

²⁶ Deutsche Telekom, point 61.□

4. GDPR Violations and Complainant Claims□

120.□

The Litigation Chamber considers that the violations of the following provisions by the□

defendant are proven:□

24□

at.□

b.□

vs.□

d.□

Article 6 of the GDPR j° Article 7 of the GDPR, given that the defendant continued to□

publish and make available the complainant's personal data□

respectively in directories and information services□

telephone calls, after the withdrawal of the complainant's consent, with the effect□

that the further processing by the defendant had become unlawful;□

Article 6 of the GDPR, since the defendant unlawfully transfers data□

of a personal nature to other providers of directories and□

telephone information, without being able to indicate a legal basis□

valid for the lawfulness of this transfer as data processing to□

personal character;□

Article 12 j° Article 13 of the GDPR since no transparent information□

is provided by the defendant with regard to the plaintiff and given that the defendant does not□

does not sufficiently facilitate the exercise of the rights of the data subject;□

Article 24 and Article 5, paragraph 2 of the GDPR, since the defendant does not fulfill□

not its obligations and does not assume its responsibilities as responsible for the□

processing by taking appropriate technical and organizational measures so that□

the processing is carried out in accordance with the provisions of the GDPR, which implies that□

the complainant's operator is informed of the withdrawal of consent and that the providers□

third-party directories and directory inquiry services to which the□

defendant has transmitted the personal data to be informed of the withdrawal of the□

consent.□

121.□

The Litigation Chamber considers that it is appropriate to order the compliance of the processing□

with the provisions of the GDPR in accordance with Article 58(2)(d) GDPR and

article 100, § 1, 9° of the LCA, as well as to impose, in addition to this corrective measure, a fine

administrative (article 83, paragraph 2 of the GDPR, article 100, § 1, 13° of the LCA and article 101

of the ACL).

122.

motivates

Given Article 83 of the GDPR and the case law of the Market Court, the Litigation Chamber

concrete.:

so

administration

taxation

sanction

of one

at. The seriousness of the offence:

123.

the reasoning set out above demonstrates the seriousness of the offence. As a major player

of the telecommunications sector, the defendant has a role of example and must organize its

technical and organizational measures in such a way that the provisions of the GDPR and the

national implementing provisions can be properly complied with. Not only

the complainant's objection was not adequately followed up, but the communication and

the defendant's information to the complainant lacked transparency and were even

erroneous.

124.

The concrete negative consequence ('risk') for the complainant is the availability of his

personal data in a way that he does not wish and which may give rise to

further processing (for example in the context of direct marketing actions) that the complainant

25□

this□

him□

a□

Who□

no□

prejudice□

causes□

desirable,□

judge□

important.□

The fact that in its defence, the defendant defers its liability as responsible for the□

processing on the complainant's operator, without any relevant legal basis, is even more□

regrettable□

here.□

125.□

With regard to the unlawful transmission of personal data to other□

providers of directories and directory inquiry services, the Chamber□

Contentitieuze obviously also takes into account the fact that in its opinions and public communications□

(public), BIPT did not qualify the transmission as contrary to the legislation on the protection□

personal data. In this sense, the defendant's legitimate expectation in the□

opinions, communications and documents of a public institution is also taken into account.□

account in the deliberation and establishment of the sanction. The Litigation Chamber emphasizes□

Admittedly, compliance with the provisions of the GDPR is a responsibility of the person responsible for the□

defendant.□

processing,□

the occurrence□

in□

the□

b. The duration of the infringement:□

126.□

at□

the□

day□

following□

given□

again□

As appears from the conclusions of the defendant, it is following a (technical) action of the□

31 January 2019 that the personal data has been made available within the□

electronic directories and via the information services of the defendant. It happened□

continued until the plaintiff's new opposition request on August 14, 2019, on which the□

defendant□

same.□

127.□

The defendant states, however, that the complainant must contact his operator if he does not□

does not (or no longer) wish to appear in a directory. In the event of a new signal from the operator at the□

defendant, in contradiction to the plaintiff's previous objections, this□

means that a publication can again take place, since in its conclusions, the defendant□

continues to consider the complainant's request as an exercise of the right of rectification. If the□

Litigation Chamber does not sanction violations, so the violation may be repeated□

at any time in the future when such update is communicated to the defendant.□

128.□

As regards the transmission of personal data by the defendant to third-party providers of directories and directory inquiry services, the Chamber Litigation takes note of the relevant elements that the defendant invokes in its response to a proposed fine. The defendant indicates therein in particular that the system has been developed over the years at the sectoral level and in consultation with the actors within public authorities. The defendant emphasizes in particular the difficulty of modifying the technical process underlying the transmission.

129.

The Litigation Chamber recognizes the societal interest of directories and search services, telephone information, but any processing in this context must take place in accordance with the legislation in force. The Litigation Chamber therefore considers that it is appropriate to grant a period during which the defendant, and by association all the actors concerned of the sector, may take the necessary measures to ensure that the transmission as processing of personal data can take place in accordance with the provisions of the GDPR, so that any processing in this context can take place lawfully. Saw the complexity of the measures to be taken and the involvement of several players, including BIPT, the Chamber Litigation considers it reasonable to grant a grace period of one year. vs. The deterrent effect necessary to prevent further offences:

26

130.

Given the importance of the amount of personal data processed by the defendant and the low priority that the defendant could give to the follow-up and the measures resulting from the finding of a violation, the Litigation Chamber deems it necessary to order and formulate a sufficiently high administrative fine as well as other sanctions and measures.

131.

Since the technical and organizational measures to be taken require the necessary investments, the Litigation Chamber judges that it is possible that in the event of a sanction too light, the defendant accepts the risk of being subjected in the future to decisions establishing offenses with a limited penalty. This would mean that not only in the present case, but also in other cases relating to compliance with the provisions of the GDPR, violations could continue to occur. This is why a certain severity of the sanction is considered, especially given the size of the company.

132.

For the Litigation Chamber, an administrative fine of EUR 20,000 is an amount sufficiently dissuasive to prevent other violations, given its relative importance compared to the company's turnover.

133.

The Litigation Chamber draws attention to the fact that the other criteria of article 83.2 of the GDPR are not, in this case, likely to lead to an administrative fine other than that defined by the Litigation Chamber in the context of this decision.

5. The pseudonymization of this decision

134.

The Litigation Division finds that the defendant was negligent, but did not not found in this case of gross negligence concerning the transmission of personal data personnel to third-party directory and directory inquiry service providers. It is also hardly possible to speak of gross negligence in the context of further processing personal data and lack of information of the complainant, given that the nature of the processing is not particularly sensitive and that the number of people concerned is limited. Consequently, negligence on the part of the defendant does not constitute not in itself a reason to publish the defendant's identification data.

135.

Nevertheless, it is in the public interest to publish this decision, since the violations
concrete facts that concern only the complainant are part of and result from a
larger set of structural violations that have come to light in the present
case. Indeed, in the absence of a legal basis for the transmission of personal data
personal, and where such processing appears to be of a structural nature, it is in the public interest
to make these practices and violations known to the outside world, given the large number of people
concerned by definition in this context.

136.

Given that the defendant plays a central role in the processing within the framework of the
transmission of personal data with a view to their publication in directories and
directory inquiry services in Belgium, it is therefore not desirable and not
possible to omit its identifiers. This would imply too much intervention in the

27

presentation of facts and motivation, to the point that it would become impossible for a reader
external to understand the motivation behind this decision. Given the specificity of the facts, the
re-identification is indeed very likely.

137.

Given the importance of transparency regarding the decision-making process of the Chamber
Litigation, in accordance with Article 100, § 1, 16° of the LCA, this decision is published
on the website of the Data Protection Authority, mentioning the data
of identification of the defendant, and this because of the specificity and the public interest that
presents the present decision, but omitting the identification data of the complainant, since
these are neither necessary nor relevant to the publication of this
decision.

FOR THESE REASONS,

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

at. to order the defendant, in accordance with Article 58, paragraph 2, point d)□

of the GDPR and Article 100, § 1, 9° of the ACL To take appropriate action and□

immediately upon withdrawal of consent by the complainant and thus, to make the data available□

personal character of the complainant in accordance with Article 6j° Article 7 of the GDPR;□

b. to call the defendant to order, in accordance with Article 58, paragraph 2,□

point b) of the GDPR and article 100, § 1, 5° of the LCA, for having provided the complainant□

information lacking transparency and for not having sufficiently facilitated□

the exercise of the rights of the complainant, in accordance respectively with Article 12,□

paragraphs 1 and 2 of the GDPR;□

vs. to call the defendant to order, in accordance with Article 58, paragraph 2, point□

b) of the GDPR and in Article 100, § 1, 5° of the LCA, for having breached its obligations□

and its responsibilities as controller, in accordance with Article□

24 GDPR, to take appropriate technical and organizational measures to□

ensure that the processing it carries out complies with the GDPR;□

d. to order the defendant, pursuant to Article 58(2)(c) of the□

GDPR and Article 100, § 1, 6° of the LCA, to comply with the requests of the□

data subject to exercise their right to erasure of the data, within a period□

one month from the notification of this decision;□

e. to prohibit the defendant, pursuant to Article 58, paragraph 2, point f) of the GDPR□

and article 100, § 1, 8° of the LCA, to continue the processing by which it□

unlawfully transmits (Article 6 of the GDPR) personal data to□

third-party providers of directories and directory inquiry services, when they□

simply obtained this data as a provider of directories and services of□

telephone information, with a grace period of one year from the date of□

notification of the decision, grace period during which the transmission as□

that treatment may continue in order to give the defendant the opportunity, and by□

association with the sector, to develop a new system in accordance with the law to facilitate

the transmission ; the defendant is required to inform the Litigation Chamber of the

changes in this respect within one year of the notification of the

this decision;

28

f. pursuant to Article 83 of the GDPR and Articles 100, § 1, 13° and 101 of the LCA,

to impose on the defendant an administrative fine of 20,000 euros for violation

of Articles 6, 7 and 12 of the GDPR.

Under article 108, § 1 of the LCA, this decision may be appealed within a period of

thirty days, from the notification, to the Court of Markets, with the Authority for the Protection of

given as defendant.

Hielke Hijmans

President of the Litigation Chamber