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Dispute room

Decision on the merits 125/2022 of 17 August 2022

File number : DOS-2019-05500

Subject : Complaint for data protection infringement

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

Hijmans, chairman, and Messrs Dirk Van Der Kelen and Jelle Stassijns, members.

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016

on the protection of natural persons with regard to the processing of

personal data and on the free movement of such data and revocation of

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

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

hereinafter WOG;

In view of the regulations of

internal order, as approved by the Chamber of

Representatives on 20 December 2018 and published in the Belgian Official Gazette on

January 15, 2019;

Having regard to the documents in the file;

Has made the following decision regarding:

The complainants:

X,

Mr X1 and Mrs X2,

all represented by Meester Kurt Vanthuyne, office holder in

8870 Izegem, Baronstraat 68,

hereinafter jointly referred to as “the complainant”;

The defendant:

Y, hereinafter referred to as “the defendant”. □

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I. Facts and procedure □

1. On □

8 □

November □

2019 □

serve □

the □

complainants □

a □

complaint □

in □

Bee □

the □

Data Protection Authority against Defendant. □

2. □

Defendant is a developer of several Y packs including a Y pack □

intended for commercial administration and financial accounting. The complainants are a □

company, together with its directors. The complainants are customers of the defendant for the □

above-mentioned customized Y package. However, the complainants found that at some point they □

moment had access to essential and delicate information from other customers of the □

defendant. In view of the deteriorating relationship between the two parties, the complainants □

a bailiff has been appointed to determine this security problem. She □

subsequently notified the defendant of this incident. Considering this □

incident and some prior issues □

in the implementation of the aforementioned□

agreement between the two parties, proceedings were initiated by the complainants□

made for the company court of Ghent, department Veurne with a view to the□

dissolution of the aforementioned agreement with regard to the Y package between both□

parties.□

3. On November 28, 2019, the complaint will be declared admissible by the Frontline Service on□

pursuant to Articles 58 and 60 WOG and the complaint pursuant to Article 62, § 1 WOG□

submitted to the Disputes Chamber.□

4. On September 11, 2020, the parties involved will be notified by registered mail□

of the provisions as stated in Article 95, § 2, as well as those in Article 98 WOG.□

They are also informed, pursuant to Article 99 of the WOG, of the deadlines to□

to file defences.□

5. The deadline for receipt of the defendant's response was□

laid down on October 22, 2020, this for the conclusion of the complainants' reply□

on 12 November 2020 and this for the defendant's reply on 3□

Dec 2020.□

6. On September 11, 2020, the defendant electronically accepts all communications regarding□

the case.□

7. On September 11, 2020, the defendant requests a copy of the file (Article 95, §2, 3°□

WOG) which was transferred to her on September 21, 2020.□

8. On September 15, 2020, the complainants electronically accept all communications regarding the□

matter.□

9. On September 30, 2020, an amended letter was sent to the parties at the request of the defendant□

conclusion calendar delivered. The latest date for receipt of the conclusion of□

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The defendant's reply was thereby recorded on November 5, 2020, this for the□

conclusion of the complainants' reply on 26 November 2020 and this for the conclusion of

Respondent's reply on December 17, 2020.

10. On November 5, 2020, the Disputes Chamber will receive the statement of defense from the defendant.

11. According to the defendant, there is no breach of personal data

since the Y in question only deals with the processing of company data (i.e. the

commercial administration and financial accounting). The complainants deliver

according to the defendant no evidence that documents containing personal data

could be consulted. The defendant then refers to the finding of

the bailiff appointed by the complainants to solve the security problem

to capture. In this determination, the content of two documents

added. These documents concern a third company, also a customer of the defendant, and

are the trial and trial balance of this third party as well as its VAT listing.

The defendant states first and foremost that a distinction must be made between its

Yservers and "the desktop", as described by the defendant, to which the customer

documents can be saved yourself (with or without password). The servers are

separately protected with password, on the "desktop" are normally access rights per

customer, but due to a problem in this regard, the complainants were able to

temporarily view some directories of other customers of the defendant.

The complainants allege that other companies have had or could have had access to

her data. The defendant argues that no proof of this is provided. Moreover

the complainants waited too long to report this vulnerability to her, according to the

defendant.

The defendant further argues that the complainants actively and unlawfully passed through the

directories of third-party companies. As a result, according to the

defendant pleaded guilty to hacking. They have therefore lodged a complaint with

submitted to the investigating judge.□

Finally, the defendant also cites arguments concerning the implementation of the□

agreement between the defendant and the complainants in respect of the Y package in question,□

the business results and default by the complainants' company. These arguments□

were also brought forward in the pending aforementioned procedure before the competent□

corporate court.□

12. On 19 November 2020, the Disputes Chamber will receive the statement of reply from the complainants.□

The complainants argue that they found that they were collecting data from other customers of the□

could consult the defendant in the above-mentioned Y package. It concerned their purchase and□

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sales prices and policies, profit margins, payroll, and passwords used.□

As a result, the complainants say that they no longer have faith in the defendant's Y.□

They further argue that the defendant did not make the slightest effort to□

to solve a security problem. The complainants then submit that they□

indeed did not provide prints of the documents they consulted because□

according to them this would be an impossible task, the added value of which they do not see. Until□

Finally, the complainants also formulate a response to the defendant's arguments regarding□

the complainants' results of business, the alleged default and the agreement on□

the Y package and the pending proceedings before the competent company court.□

13. On 17 December 2020, the Disputes Chamber will receive the statement of reply from the□

defendant.□

According to her, the documentary evidence only shows that only through the folders via the□

scout could be searched, but no evidence is provided that documents□

with personal data could be consulted by the complainants. In addition, the□

contents of the documents are password protected. In other words: the name□

seeing the files is not the same as seeing their contents, the defendant argues.□

The defendant then repeats that the Y only contains data necessary for the  
conducting commercial administration and financial accounting, including name, address,  
accounting information and contact details.

The defendant also argues that the complainants send screenshots of  
a Z, which is not a device of hers and over which she therefore has no control.

Finally, the defendant argues that the security flaw within three weeks of the notification  
was recovered from the defendant.

## II. Justification

### II.1. Identity of the complainants

14. First of all, the Disputes Chamber finds that the complaint was submitted on behalf of three  
complainants including the X.

15. Referring to its previous decision-making practice<sup>1</sup>, the Disputes Chamber refers to Article  
58 of the WOG, which states: “[e]an person may in writing, dated and  
sign a complaint or request to the Data Protection Authority”.

<sup>1</sup> See, among other things, Decision 30/2020 dated June 8, 2020, <https://www.dataprotectionauthority.be/publications/besluit-ter-grond-nr.-30-2020.pdf>

In accordance with article 60, paragraph 2 of the WOG “a complaint is admissible”

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when she:

- is drawn up in one of the national languages;
- contains a statement of the facts, as well as the necessary indications for the identification of  
the processing to which it relates;
- it falls under the competence of the Data Protection Authority”.

16. The

preparatory

activities

from

the WOG

determine:

"The

Data protection authority can receive complaints or requests from anyone;

natural persons, but also legal persons, associations or institutions that have a

alleged infringement of the Regulation. A complaint or a request

submitted to the Data Protection Authority in writing, dated and by the appropriate

authorized person must be signed. A request must be in the broad sense of the word

interpreted (request for information or explanation, a request to mediate,

...)"<sup>2</sup>.

17. The WOG therefore does not exclude that a person other than the data subject or the person

the person concerned is authorized, as referred to in Article 220 of the Act of 30 July 2018

on the protection of natural persons with regard to processing

of personal data, can file a complaint with the GBA. The Disputes Chamber decides

in that respect that Article 58 of the WOG gives every person the opportunity to file a complaint

submitted, provided that he has a sufficient interest in doing so.

18. While it is true that the GDPR looks at the 'complaint' from the point of view of the data subject,

by imposing obligations on the control authorities when a person makes a complaint

(see Articles 57, 1., f) and 77 of the GDPR), the GDPR does not prevent national law

gives persons other than the data subjects the opportunity to submit a complaint to

the national supervisory authority. The possibility of such referral is

moreover, corresponds to the tasks given to the supervisory authorities by the GDPR

promised. In that regard and in general terms, each control authority shall ensure: the

monitoring and enforcement of the application of the GDPR (Article 57, 1., a) of the GDPR), and

the performance of all other tasks related to the protection of

personal data (Article 57, 1., v) of the GDPR). A large filing can

otherwise and if applicable, be compensated by the jurisdiction of the

Disputes Chamber to dismiss a complaint (Articles 95, § 1, 3°, and 100, § 1, 1° of the

WOG).

2 Par. doc., Chamber of Representatives, 2016-2017, DOC 54 2648/001, p. 40 (comment to Article 58 of the original bill).

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19. In the present case, the legal person is a customer of the controller,

so that they have a business relationship. In carrying out this business relationship, the

complainant to establish a personal data breach in relation to

personal data relating to it.

## II.2. Jurisdiction Dispute Chamber

20. On the basis of the complaint and the conclusions, the Disputes Chamber determines that there is

a security issue that could have allowed access to “delicate and”

essential information”. What exactly should be understood by that information is a

point of contention between the parties.

21. In the complaint, the complainants state that the present complaint is the processing of the following:

data concerns: “accounting, wage and personnel data, compensation of

directors and business managers, purchase and sales invoices, financial data,

savings, bank transactions, investments”. In their reply, the

complainants also that the “buying and selling prices and policies, profit margins,

payroll and passwords used” could be identified.

22. The defendant submits, however, that the information to which the complainants refer

company data. They state the following about this: “[t]he complainants can even

do not indicate a file that refers to something with salary and personnel data, benefits

of directors and business managers, purchase and sales invoices, financial data,



savings, bank transactions, investments.[...]. This

is impossible because

such data simply does not reside on these servers. “

23. The Disputes Chamber is of the opinion that in this case a distinction must be made between

the company data and the personal data that are the subject of the complaint.

24. To the extent necessary, the Disputes Chamber refers to Article 2, paragraph 1 of the GDPR, which provides that

the GDPR applies to the processing of personal data. Article 4, 1) GDPR

defines personal data as “all”

information about an identified or

identifiable natural person

(“the data subject”); if

becomes identifiable

considered a natural person who can be identified directly or indirectly, with

name by means of an identifier such as a name, an identification number,

location data, an online identifier or of one or more elements that

to the physical, physiological, genetic, psychological, economic, cultural or

social

identity of that natural person”. It follows that data about

legal persons are not protected as such by the Regulation. The European

However, the Court of Justice has ruled that when based on the name of the

legal entity one or more natural persons can be identified, the

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personal data in question is protected on the basis of Articles 73 and 84 of the

Charter of Fundamental Rights of the European Union<sup>5.6</sup> Since the GDPR is an elaboration

one of the foregoing overarching safeguards contained in those provisions of the Charter

have been laid down, such protection for legal entities can also be derived from the GDPR

arise, although this protection does not concern the legal person as such, but the natural person(s) who constitute(s) the legal person(s), and probably mainly will arise in cases where the legal person is in fact a sole proprietorship or a small is a family business, as is the case here.<sup>7</sup>

25. The Disputes Chamber is not authorized *ratione materiae* to settle any infringements concerning assess company data (such as profit margins, investments, savings, etc.).

26. The Disputes Chamber has established that personal data is also the subject of the would be a security issue. In support of the complaint, several screenshots sent.

27. There were, as above already mentioned, but no documents with personal data that are the subject of the security problem, submitted to the Disputes Chamber. The Disputes Chamber will of course limit itself to: the supporting documents submitted. On these screen shots from the aforementioned explorer, the Dispute Chamber observes lists of folder and document names.

However, most of the screenshots are virtually illegible to the Disputes Chamber through which the qualification as personal or company data is these screenshots no statement can be made. The Disputes Chamber emphasizes that, despite the

low-threshold nature of the present procedure, the

It is the responsibility of the complainants to provide appropriate evidence to support the complaint can stave. On certain screenshots, the Dispute Chamber may have a very limited amount of person names as (part of) a file name or name of a folder determine. The Disputes Chamber will therefore limit itself to this in this decision.

3 Article 7: Everyone has the right to respect for his private and family life, his home and his communication.

#### 4 Article 8:□

1. Everyone has the right to the protection of their personal data.□
2. Their data must be processed fairly, for specified purposes and with the consent of the data subject or on□  
on any other legitimate basis provided for by law. Everyone has the right to inspect the information about him□  
collected data and its rectification.□
3. An independent authority ensures that these rules are observed.□

5 Available online at [https://eur-lex.europa.eu/eli/treaty/char\\_2007/oj](https://eur-lex.europa.eu/eli/treaty/char_2007/oj)□

6 See in this regard CJEU, cases C-92/09 and 93/09, Schecke, § 53, case C-419/14, WebMindLicenses, § 79; Case T-670 /□  
16, Digital Rights Ireland, §25□

7 Christopher Kuner, Lee A. Bygrave, Christopher Docksey, and Laura Drechsler, The EU General Data Protection Regulation□  
(GDPR)A Commentary, Oxford University Press, 2020, 111.□

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#### II.3. Decision□

28. On the basis of the elements in the file known to the Disputes Chamber, and on the basis□  
of the powers conferred on it by the legislator on the basis of Article 100, §1 WOG□  
allocated, the Disputes Chamber decides on the further follow-up of the file; in this case□  
the Disputes Chamber will dismiss the complaint in accordance with Article 100,□  
§1, 1° WOG, based on the motivation below.□

29. In the event of a dismissal, the Disputes Chamber must substantiate its decision step by step and:□

- pronounce a technical dismissal if the file contains no or insufficient elements□

contains that may lead to a sanction; or□

- declare a policy dismissal if, despite the presence of elements that lead to a□

may lead to sanctions, further investigation of the file does not seem opportune in the light□

of her priorities.□

30. In the event that more than one ground is discarded, the discarded grounds (resp.□

technical dismissal and policy dismissal) should be treated in order of importance.8□

31. In the present case, the Disputes Chamber decides to

to go

to a

opportunity dismissal on the following ground.

32. First of all, in accordance with its dismissal policy<sup>9</sup>, the Disputes Chamber checks whether the submitted

complaints contain grievances with a major social and/or personal impact.<sup>10</sup>

In order to evaluate the foregoing, the Disputes Chamber bases itself on the criteria that

European data protection authorities use to protect processing with a “high”

risk” within the meaning of Article 35 GDPR.

33. In the present case, the Disputes Chamber finds that the processing concerned to which the complaint

submitted by the complainants relates prima facie cannot be accommodated in

one of the cases listed in article 35.3 AVG.<sup>11</sup>

the

from

Cancellation Policy

dispute room,

8 Cf. Title 3 – In which cases is my complaint likely to be dismissed by the Disputes Chamber? from the

dismissal policy of the Disputes Chamber.

9

<https://www.dataprotectionauthority.be/publications/sepotbeleid-van-de-geschillenkamer.pdf>

10 ibidem section 3.2.1, p.9.

11 a) a systematic and comprehensive assessment of personal aspects of natural persons, based on

automated processing, including profiling, and on which decisions are based that affect the natural

legal consequences associated with the person or which materially affect the natural person in a comparable manner;

(b) large-scale processing of special categories of personal data as referred to in Article 9(1) or of

data relating to criminal convictions and offenses as referred to in Article 10; or

(c) systematic and large-scale monitoring of publicly accessible areas□

published□

2021,□

June□

on□

18□

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34. The Disputes Chamber understands from the documents in the file that both parties are□

were involved at the time of the complaint□

in a legal dispute before the□

Ghent company court, Veurne division. The grievances of the complaint regarding□

to the limited number of personal data, compared to the other data, are□

already the subject of legal proceedings pending at the time of the complaint.□

Intervening in ongoing judicial proceedings is not a priority of the Disputes Chamber□

procedures. Even if a judgment has already been handed down by the competent court in□

this case, the Disputes Chamber does not consider it expedient to pursue this complaint further□

to research. After all, it is not one of the Disputes Chamber's priorities to□

to re-examine the circumstances of the present complaint in order to□

to have any judicial decision already taken reviewed outside the ordinary□

appeal procedures.□

35. In the absence of documentary evidence of a manifest breach of the GDPR, in connection with□

the parallel proceedings before the competent company court, the□

Litigation Chamber that it is not appropriate on the basis of the current elements in the file□

to take enforcement action with regard to the present complaint.□

III. Publication of the decision□

36. Given the importance of transparency in the decision-making of the□

Litigation Chamber, this decision is published on the website of the

Data Protection Authority. It

however, it is not necessary that the

identifiers of the parties are disclosed directly.

FOR THESE REASONS,

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

- to dismiss the complaint pursuant to Article 100, paragraph 1, 1° WOG;

Against this decision, pursuant to art. 108, § 1 WOG, appeal to be lodged

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

Data Protection Authority as Defendant.

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Pursuant to Article 108, § 1 of the WOG, within a period of thirty days from the

notice against this decision, an appeal may be lodged with the Marktenhof (court of

profession Brussels), with the Data Protection Authority as defendant.

Such an appeal may be lodged by means of an adversarial petition that the

must contain the statements listed in Article 1034ter of the Judicial Code<sup>12</sup>. It

adversarial petition must be submitted to the registry of the Marktenhof

in accordance with article 1034quinquies of the Ger.W.<sup>13</sup>, or via the e-Deposit

IT system of Justice (Article 32ter of the Ger.W.).

(get). Hielke HIJMANS

Chairman of the Disputes Chamber

<sup>12</sup> The application states on pain of nullity:

1° the day, month and year;

2° the surname, first name, place of residence of the applicant and, where applicable, his capacity and his national register or

3° the surname, first name, place of residence and, where applicable, the capacity of the person to be

company number;

summoned;□

4° the subject matter and the brief summary of the grounds of the claim;□

5° the court before which the claim is brought;□

6° the signature of the applicant or of his lawyer.□

13 The application with its annex, in as many copies as there are parties involved, is sent by registered letter□

sent to the clerk of the court or deposited at the registry.□