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Litigation Chamber

Decision on the merits 07/2021 of 29 January 2021

File number: DOS-2019-06201

Subject: Communication of personal data to third parties without consent

of the person concerned

The Litigation Chamber of

the Data Protection Authority, made up of

Mr Hielke Hijmans, chairman, and Messrs Christophe Boeraeve and Jelle Stassijns, members;

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

protection of natural persons with regard to the processing of personal data and the

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

data protection, hereinafter the "GDPR");

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

"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:

- Mrs. X, hereinafter "the complainant"□

-□

Y1, hereinafter "Defendant 1"□

- Mr. Y2, hereinafter "respondent 2"□

1. Facts and procedure□

1. On December 11, 2019, the complainant filed a complaint with the Data Protection Authority,□  
hereinafter the DPA, against the defendants.□

The subject of the complaint concerns:□

- the refusal by defendant 1 to give the complainant access to her personal data□

staff ;□

- the sending by Mrs Z, a partner of defendant 1, of an e-mail containing 32 annexes, concerning□  
in part the company X sa, of which the plaintiff is a 100% shareholder, with the consequence that□  
this information would have allowed defendant 2, the plaintiff's former partner, to access the□  
personal activities, finances and personal data of the complainant.□

This information would have been communicated without the complainant's consent.□

Furthermore, the e-mail in question containing information concerning X sa would have been transmitted□  
by Respondent 2 to his Counsel who then in turn forwarded the email to Counsel for the□  
complainant.□

2. On January 7, 2020, the complaint is declared admissible on the basis of Articles 58 and 60 of the LCA and□  
the complaint is forwarded to the Litigation Chamber under Article 62, § 1 of the LCA.□

3. On January 29, 2020, the Litigation Chamber informed the complainant that under Article 95,□  
§ 1, 3° of the LCA, it was decided to close the complaint without further action, for reasons of opportunity.□

The decision indicates that the complaint does not include any grievance having a widespread social impact and that in□  
with regard to the ethical and professional misconduct committed by Mrs. Z,□  
a complaint is pending with the competent authority and the Litigation Chamber wishes□  
avoid possible double investigation.□

4. On March 5, 2020, the Litigation Chamber receives from the Brussels Court of Appeal the notification of a petition by the plaintiff against the DPA, filed at the court registry.

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5. On April 30, 2020, the registry of the Court of Appeal of Brussels notifies the Litigation Chamber that the introduction of the case originally scheduled for the period March-April 2020 has been canceled and that a new introductory date has been set for May 6, 2020.

6. By order of May 6, 2020, the Markets Court establishes the timetable for conclusions. The court also enacts that the councils have declared their agreement in writing for a written deliberation, which will take place on August 7, 2020, with judgment delivered in open court on September 2, 2020.

7. On September 2, 2020, the Market Court delivers its judgment.

Judgment<sup>1</sup> broadly includes the following points of attention concerning the evaluation of the subject of the request:

- Cancellation of the dismissal decision of the Litigation Chamber for lack of sufficient motivation

- Acceptance by the Court of the measure requested by the complainant, namely to decide that the file is ready to be examined on the merits within the meaning of article 95, § 1, 1° of the LCA and order the Data Protection Authority to deal with the case on the merits within the meaning of section 98 of the LCA.

The Markets Court not only annuls the decision of the Litigation Chamber of the

January 28, 2020, but it also orders the Litigation Chamber to take, in a

period of five months from the notification of the judgment, a new decision concerning the

complaint filed. Since the Market Court still wishes to compare the claims of the

plaintiff to the contradiction by the DPA, the Court requests that the DPA take a position concerning the request as formulated by the complainant.

The Court suspends the case in order to be able to verify whether the Litigation Division has taken a new

decision within the time allowed and in order to allow the complainant to still have recourse to the full jurisdiction of the Court of Markets, if the Litigation Chamber were not to take a new decision. The Court registers the case for review in open session on February 24, 2021, specifying that it is not for him to assess the merits of the new decision within the framework of this procedure.

1 The judgment is available on the website of the Data Protection Authority, at the following address:  
<https://www.autoriteprotectiondonnees.be/publications/arret-intermediaire-du-02-septembre-2020-de-la-cour-des-marches-available-in-dutch.pdf>

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8. Following the judgment, the Litigation Chamber decides on September 8, 2020, pursuant to Article 95, § 1, 1° and article 98 of the LCA, that the case can be dealt with on the merits.

9. On September 8, 2020, the parties concerned are informed by registered letter of the provisions as set out in article 95, § 2 as well as in article 98 of the LCA. In accordance with Article 99 of the LCA, the parties concerned were also informed of the deadlines for report their findings. The latest date for receiving the submissions in response from the defendants was thus set for October 20, 2020, that for the submissions in reply of the plaintiff on November 10, 2020, with the possibility for the defendants to introduce a conclusion in reply until December 1, 2020.

10. On October 19, 2020, the Litigation Chamber receives the submissions in response from the Respondent 2. The submissions made may be summarized as follows:

With regard to the competence of the DPA, it is argued that on the basis of article 100, § 1 of the LCA, the Litigation Chamber may proceed to a classification without follow-up of the complaint. Arguments are also drawn from the judgment of the Markets Court for demonstrate that the Litigation Chamber also has classification competence no follow-up in the proceedings on the merits. This leads defendant 2 to insist on the Litigation Chamber for it to take a new classification decision without follow-up

after comparing the facts and the basis of the complaint to the strategic plan□

and internal ODA filing guidelines.□

□ According to respondent 2, there would be no processing of personal data□

(article 2.1 of the GDPR), in the absence of an intentional element on the part of the defendant 2 to use the□

personal data, since he was only the recipient of the e-mail and did not□

performed only one action, namely forwarding the e-mail to his lawyer, after which the e-mail and□

its annexes have been erased.□

□□

Respondent 2 asserts that he cannot be qualified as either a data controller or a□

subcontracting. He states that he only meets the GDPR criteria to be considered□

as recipient and as third party, within the meaning of Article 4 of the GDPR.□

□□

Respondent 2 considers that sending an e-mail to his lawyer does not constitute□

a breach of the GDPR. He refers in this respect to Article 237 of the Flemish Code of Ethics□

lawyers and Article 29 Group Opinion 1/2010 on the notions of "person responsible for the□

processing" and "subcontractor", adopted on February 16, 2010<sup>2</sup>, to affirm that a litigant□

can provide information to his lawyer. To argue otherwise would imply, according to the□

defendant 2, that there would be a ban on passing information to a lawyer in□

2 [https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2010/wp169\\_en.pdf](https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2010/wp169_en.pdf)□

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to the extent that this information relates to personal data. The defendant 2□

adds to this that his lawyer was in turn ethically obliged to communicate the□

information received to the plaintiff's lawyer.□

□ Even if a violation were found, Respondent 2 considers that no sanction can□

be imposed on him, given the specific circumstances of the case. With specific regard to□

the possibility of imposing an administrative fine, defendant 2 indicates for each of the□

criteria mentioned in Article 83.2 of the GDPR to what extent these are applicable□

or not and this leads him to conclude that no fine can be imposed on him.□

11. On October 20, 2020, the Litigation Chamber receives the submissions in response from the□

Respondent 1. The submissions made may be summarized as follows:□

□ With regard to the competence of ODA, it is raised that even within the framework of a□

procedure on the merits, the Litigation Division may proceed with the dismissal, which□

which is confirmed by the judgment of the Market Court of September 2, 2020.□

□□

Sending the email with respondent 2 among the recipients constitutes human error□

unique by which certain data included in a single e-mail has been unintentionally□

sent to the defendant 2.□

□□

Defendant 1 states that he acted in good faith by immediately doing what was necessary to□

obtain deletion of the email from the respondent 2.□

□□

The rights of defense would have been violated because the complaint did not mention any rule□

by right.□

□□

Respondent 1 draws attention to the fact that it has always complied with its obligations in terms of□

of privacy.□

□□

Respondent 1 submits that no violation has been committed and that no sanction can□

be imposed.□

12. On November 10, 2020, the Litigation Chamber receives the submissions in reply from the□

complainant.□

Complainant alleges that Respondent 1 committed the following violations:□

- Violation of the right of access (Article 15 of the GDPR)□

- Violation of the legal basis requirement (Article 6.1 of the GDPR); of the principle of legality,□

transparency and fairness (article 5.1 a) of the GDPR); the principle of purpose limitation□

(article 5.1 b) of the GDPR) and the principle of minimization (article 5.1 c) of the GDPR), and this at each□

times both with respect to what Defendant 1 still currently holds and□

with regard to the sending by e-mail to the defendant 2.□

- Violation of the principle of integrity and confidentiality (article 5.1 f) of the GDPR and article 32 of the□

GDPR) and the obligation to notify a data breach (Article 33 of the GDPR)□

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With respect to Respondent 2, Complainant alleges the following violations:□

-□

Respondent 2 is a joint controller for breaches by the□

defendant 1.□

- Violation of the legal basis requirement (Article 6.1 of the GDPR), of the principle of legality and□

of transparency (article 5.1 a) of the GDPR) as well as the principle of limitation of purposes (article□

5.1 b) GDPR).□

13. On November 28, 2020, the Litigation Chamber receives the submissions in reply from the□

Respondent 2. The submissions in reply reproduce the full submissions in response□

filed on October 19, 2020. Respondent 2 further adds the following points:□

□□

Respondent 2 submits that the complaint should be declared inadmissible because the complainant leaves□

to hear in its reply submissions that "Respondent 2's use of the e-mail□

against plaintiff" constitutes the problem rather than "respondent 2's transmission of□

this e-mail to his lawyer", as formulated in the complaint [The quoted passages of the file have□

freely translated by the translation service of the APD, in the absence of an official translation].□

Thus, the complaint would not meet the requirement of Article 60, paragraph 2 of the LCA, which provides□

that a complaint is admissible when it contains a statement of the facts and the indications

necessary to identify the processing to which it relates. This requirement would not be

satisfied.

Regarding the Complainant's assertion in the Reply submissions that the

defendant 1 is only following the instructions of defendant 2, so that defendant 2

determines the purpose and means of the processing within the meaning of Article 4. 7) of the GDPR, this in

reference to a verbal statement by Defendant 1 that Defendant 2 allegedly

instructed not to provide any documents to the complainant without informing the

defendant 2, defendant 2 responds by replying that this is not supported by any evidence, of

so that contrary to what the Complainant maintains, Defendant 1 and Defendant 2 do not

cannot be qualified as joint controllers.

With regard to the Complainant's explanation in the Reply submissions regarding

legitimate interest as a legal basis for processing, Respondent 2 declares

not assert this legal basis.

The plaintiff's request to impose a penalty payment is inadmissible, at least unfounded, because

not applicable, since the e-mail and the annexes were erased on the first request.

14. On December 1, 2020, the Litigation Chamber receives the defendant's submissions in reply

1, which reproduces in full the elements of its conclusions in response and adds that

the extension of the plaintiff's arguments via its submissions in response leads to a violation of the

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Defendant's rights of defense 1. Defendant 1 also contests, both in fact and in law,

every fact that is not explicitly acknowledged in his rebuttal submissions.

2. Legal basis

Principles relating to the processing of personal data

Article 5.1 of the GDPR.



"1. Personal data are: ☐

a) processed in a lawful, fair and transparent manner with regard to the data subject ("lawfulness, ☐  
loyalty, transparency");" ☐

b) collected for specified, explicit and legitimate purposes, and not to be processed ☐  
subsequently in a manner incompatible with those purposes; further processing for the purposes ☐  
archives in the public interest, for scientific or historical research purposes or for ☐  
statistics is not considered, in accordance with Article 89(1), to be incompatible with ☐  
the initial purposes (limitation of purposes); ☐

c) adequate, relevant and limited to what is necessary in relation to the purposes for which ☐  
they are processed (data minimization);" ☐  
[...]☐

f) processed in a way that ensures appropriate security of personal data, including ☐  
protection against unauthorized or unlawful processing and against loss, destruction or damage ☐  
of accidental origin, using appropriate technical or organizational measures (integrity and ☐  
confidentiality); ☐

☐ Lawfulness of processing ☐

Article 6.1 GDPR ☐

"1. The processing is only lawful if and insofar as at least one of the following conditions is ☐  
filled: ☐

- a) the data subject has consented to the processing of his or her personal data for one or ☐  
several specific purposes; ☐
- b) the processing is necessary for the performance of a contract to which the data subject is party or ☐  
the execution of pre-contractual measures taken at the latter's request; ☐
- c) processing is necessary for compliance with a legal obligation to which the data controller ☐  
treatment is submitted; ☐
- d) processing is necessary to protect the vital interests of the data subject or of a ☐

other natural person;□

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e) the processing is necessary for the performance of a task carried out in the public interest or relating to the exercise of□

the public authority vested in the controller;□

f) the processing is necessary for the purposes of the legitimate interests pursued by the data controller□

processing or by a third party, unless the interests or fundamental rights and freedoms prevail□

of the data subject who require protection of personal data, in particular□

when the data subject is a child. Point (f) of the first paragraph does not apply to□

processing carried out by public authorities in the performance of their tasks.□

□ Right of access□

Article 15.1 GDPR□

1. The data subject has the right to obtain from the controller confirmation that□

personal data concerning him are or are not processed and, when they are,□

access to said personal data as well as the following information:□

a) the purposes of the processing;□

b) the categories of personal data concerned;□

c) the recipients or categories of recipients to whom the personal data have been□

or will be communicated, in particular recipients who are established in third countries or□

International organisations ;□

d) where possible, the envisaged retention period of the personal data□

or, where this is not possible, the criteria used to determine this duration;□

e) the existence of the right to request from the controller the rectification or erasure of□

personal data, or a restriction on the processing of personal data□

relating to the person concerned, or the right to object to this processing;□

f) the right to lodge a complaint with a supervisory authority;□

g) when the personal data is not collected from the data subject,□

any information available as to their source;□

h) the existence of automated decision-making, including profiling, referred to in Article 22,□

paragraphs 1 and 4, and, at least in such cases, useful information concerning the underlying logic□

underlying, as well as the importance and the expected consequences of this processing for the person□

concerned.□

### 3. Motivation□

#### A. Procedure□

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15. This case follows the judgment delivered by the Markets Court on September 2, 2020 in a□

case against the Data Protection Authority (APD) following the appeal brought by the□

complainant against the decision of the Litigation Chamber to close her complaint without further action under□

of article 95, § 1, 3° of the LCA.□

16. Currently, the Respondents argue in the proceedings before the Chamber on the merits□

Litigation that the latter can still proceed with the classification without follow-up of the□

complaint and that this would be appropriate in this case, certainly after comparison with the plan□

policy and internal filing guidelines without follow-up from the Chamber□

Litigation.□

17. However, the complainant considers that it can be said in this regard that the Litigation Division does not□

does not have the possibility of classifying without follow-up, which it deduces from the judgment in question of the□

Court of Markets indicating that the measure requested by the complainant to decide that the file□

is ready to be processed on the merits within the meaning of article 95, 1° of the LCA and to process the file on the merits□

within the meaning of article 98 e.s. of the ACL is accepted.□

18. The Litigation Chamber wishes to clarify this point, without prejudging the analysis of the facts□

underlying the complaint and any violations of the GDPR that may result.□

The Litigation Chamber refers for this purpose to Article 100 of the LCA<sup>3</sup>, where its jurisdiction□

<sup>3</sup> Art. 100. § 1. The Litigation Chamber has the power to:□

1° dismiss the complaint without follow-up;□

2° order the dismissal;□

3° pronouncing the suspension of the pronouncement;□

4° to propose a transaction;□

5° issue warnings and reprimands;□

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

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

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

9° order compliance of the processing;□

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

11° order the withdrawal of accreditation from certification bodies;□

12° to issue periodic penalty payments;□

13° to issue administrative fines;□

14° order the suspension of cross-border data flows to another State or an international body;□

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

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decision-making is defined within the framework of a procedure on the merits. This provision provides□

explicitly that, in addition to a series of other measures, the Litigation Chamber has the possibility of□

file a complaint without further action (article 100, § 1, 1° of the LCA), also in the procedure on□

the bottom. The Litigation Chamber stresses that it is free for it, even in this phase, to classify□

complaints not followed up for technical reasons or reasons of opportunity, in accordance with□

under the conditions set out in the case law of the Court of Markets4.□

19. The Litigation Chamber will examine below whether or not there is any violation□

of the GDPR and will assess, if necessary, what sanction should be considered adequate.□

20. Contrary to what the complainant asserts, in its judgment of September 2, 2020, the Court of□

markets has not included any restriction on the sanctions that can be taken by the Court□

contracts and the possibility of proceeding with the classification without follow-up is therefore also maintained.□

The judgment explicitly mentions that the Litigation Chamber is free to take a new□

decision and that it may indeed be a classification decision without follow-up. Stop5 indicates□

indeed that if the new decision should again be a decision of classification without follow-up,□

it should be ensured that this new decision is duly reasoned.□

B. Examination of the complaint as formulated vis-à-vis the respondent 1□

at. Object of the complaint and rights of defense□

21. Respondent 1 criticizes the complainant for having extended the complaint in its submissions in reply.□

Since the complainant did not include this argument in the initial complaint but only□

in the pleadings, defendant 1 considers that his rights of defense are violated.□

Respondent 1 adds to this that in the complaint no rule of law is invoked, which□

would also violate his rights of defence.□

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

§ 2. When, after application of § 1, 15°, the public prosecutor waives the right to initiate criminal proceedings, to propose a□  
amicable resolution or penal mediation within the meaning of article 216ter of the Code of Criminal Procedure, or when the minis

public has not made a decision for a period of six months from the date of receipt of the file, the Protection Authority□

data determines whether the administrative procedure should be resumed.□

4 Judgment of the Markets Court of September 2, 2020, 9.4.□

5 The judgment of the Cour des Marchés of September 2, 2020 indicates in its point 9.11. "If - as in the present case - the decis

classification without follow-up is not sufficiently justified, it will be cancelled. In this case, the Litigation Chamber is free to□

take a new decision and if this decision is again a classification decision without further action, to ensure that this□

once the new decision is duly substantiated."□

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22. The Litigation Division finds that the complaint, as formulated against the□

defendant 1, has two elements:□

- the refusal by defendant 1 to give the complainant access to her personal data□

staff ;□

- the sending by defendant 1 to defendant 2, the complainant's former partner, of an e-mail□

comprising 32 annexes concerning the complainant, with the consequence that this information□

would have allowed access to personal activities, finances and personal data□

complainant's staff. This information would have been communicated without the consent□

of the complainant.□

23. The Litigation Chamber considers that the plaintiff's submissions in reply repeat these□

two elements and that Complainant is doing precisely what Respondent 1 objects in its□

conclusions in response where he argues that the complainant must develop her complaint further in□

mentioning the rules of law invoked, in order to allow defendant 1 to refine his□

conclusions appropriately.□

24. Although Respondent 1 thus had the opportunity to respond to it in its reply submissions and□

to fully exercise his rights of defence, defendant 1 merely declares that the□

speech in law and in fact contained in the submissions in reply of the complainant is disputed□

both in fact and in law, and that the plaintiff must clarify the bases on which it□

attempts to substantiate his claims.□

25. The Litigation Division emphasizes that impartial and fair treatment must be ensured throughout□

of the course. The rights of defense of defendant 1 are not violated because the latter had□

the opportunity to fully present its argument through its conclusions, to all□

less via its submissions in reply.□

26. With regard to the defense against the plaintiff, namely that the latter must clarify the□

evidence on which its allegations are based, the Litigation Chamber again draws□

attention to the fact that for data subjects whose personal data□

are processed, it must be simple to lodge a complaint.<sup>6</sup> In particular, the Chamber□

Litigation points out that it is up to each of the parties to provide the evidence□

necessary to substantiate the alleged violations or to refute them. The complainant should not  
present this evidence in the complaint itself. It belongs to the Litigation Chamber  
to assess which alleged violations it considers to be sufficiently proven to be retained  
as a violation of the GDPR. In this regard, the Litigation Chamber has strategic freedom

6 See in more detail Decision on the Merits 05/2021 of 22 January 2021, 11.

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significant in determining the extent of the proceedings.<sup>7</sup> The absence of evidence to  
certain allegations cannot be invoked by the opposing party as being a violation  
of his right of defence.

b. Lawfulness of processing

27. The complainant submits that the processing of the complainant's personal data by  
Defendant 1 does not have any legal basis, both with regard to the preservation  
of the complainant's accounts only for the processing of personal data under  
the form of transmission of the e-mail with attachments to the defendant 2.

28. The Litigation Chamber first of all draws attention to the fact that with regard to the  
conservation of the complainant's accounts, the elements available to her do not allow her to  
not to judge to what extent the documents relating to the complainant's accounts which  
are in the possession of defendant 1 would still be required in the context of the dispute between  
defendant 1 and defendant 2. The Litigation Chamber examines below only in  
to what extent the sending of the e-mail with attachments to defendant 2 can be considered lawful.

29. Respondent 1 acknowledges that the email was indeed addressed to Respondent 2 as one of the  
recipients, but that this was the result of a single human error whereby data to  
personal character concerning the complainant were unwittingly sent to the respondent 2.  
He explains that this error comes from the fact that for many years, e-mails have been  
sent to both plaintiff and defendant 2 within the framework of a notarial association between the  
of them. He states in this respect that the e-mail which is the subject of the complaint included annexes

concerning both the notarial association and the plaintiff's personal company.□

Defendant 1 submits that such an involuntary, unintentional action cannot give□  
result in a violation of the GDPR.□

30. The Litigation Chamber draws attention to the fact that the presence or absence of an intention□  
does not constitute a criterion for the processing of personal data within the meaning of Article□

4. 2) GDPR8. Although it was not the intention of Respondent 1 to send the e-mail to□

7 See inter alia Decision on the Merits 05/2021 of 22 January 2021, 10-13.□

8 Article 4 GDPR□

For the purposes of these rules, the following terms mean:□

[...]□

2) "processing" any operation or set of operations whether or not carried out using automated processes and applied□  
to personal data or sets of personal data, such as the collection, recording, organization,□  
structuring, storage, adaptation or modification, extraction, consultation, use, communication by□  
transmission, dissemination or any other form of making available, aggregation or interconnection, limitation,□  
erasure or destruction;□

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defendant 2, the mere fact that the e-mail was indeed sent to defendant 2 is sufficient to qualify□  
this processing shipment.□

31. The sending by Respondent 1 to Respondent 2 of an e-mail containing 32 attachments concerning the□  
complainant, with the consequence that this information would have given access to the activities□  
personal information, finances and personal data of the complainant, constitutes a□  
processing, the lawfulness of which should be verified.□

32. In accordance with Article 5.1.b) of the GDPR, the processing of personal data for□  
purposes other than those for which the personal data was collected□  
initially should only be authorized if it is compatible with the purposes for which the□  
personal data was originally collected. Taking into account the criteria set out in□



section 6.4. of the GDPR and recital 50 of the GDPR<sup>9</sup>, it should be analyzed whether the processing  
later, in this case the sending of the e-mail with attachments to defendant 2, is or is not compatible  
with the initial processing consisting of keeping the accounts of the complainant's company  
by the defendant 1. During this analysis, the reasonable expectations of the person concerned  
play an important role. The Litigation Chamber comes to the conclusion that the plaintiff has  
used the services of defendant 1 solely for the accounting of his company and did not  
could not reasonably expect Respondent 1 to share this data with the  
defendant 2.

33. This leads to the conclusion that there is no question of compatible further processing, so  
that a separate legal basis is required for the communication of personal data  
Complainant's personal to Respondent 2 can be qualified as lawful.

34. Processing of personal data, and therefore also further processing  
incompatible as in the present case, is in fact lawful only if there is a legal basis to that effect.  
For incompatible further processing, reference should be made to Article 6.1. GDPR  
as well as on recital 50 of the GDPR. Recital 50 of the GDPR<sup>10</sup> indicates that a basis  
separate law is required for the processing of personal data for other

<sup>9</sup> Recital 50 of the GDPR: [...] In order to establish whether the purposes of further processing are compatible with those for which  
the personal data was initially collected, the data controller, after having complied with all the  
requirements relating to the lawfulness of the initial processing, should take into account, inter alia: any link between these purposes  
the intended further processing; the context in which the personal data was collected, in particular the  
reasonable expectations of data subjects, based on their relationship with the controller, as to  
further use of said data; the nature of the personal data; consequences for people  
data subjects of the planned further processing; and the existence of appropriate safeguards both in the context of the initial processing  
of the intended further processing."

<sup>10</sup> Recital 50 of the GDPR: The processing of personal data for purposes other than those for which  
the personal data was initially collected should only be allowed if compatible with the purposes

for which the personal data was originally collected. In this case, no separate legal basis

of the one that allowed the collection of personal data will be required. [...]

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purposes which are not compatible with the purposes for which the personal data

staff were initially collected. These distinct legal bases which allow

consider processing as lawful, including subsequent processing

incompatible, are defined in article 6.1. of the GDPR.

35. To this end, the Litigation Division examines to what extent the legal bases such as

defined in article 6.1. of the GDPR can be invoked by defendant 1 in order to justify the

further processing of personal data relating to the complainant.

36. Respondent 1 does not itself mention any legal basis that would allow it to proceed with the

data processing that is the subject of the complaint, namely the sending of the e-mail to the defendant 2.

Moreover, defendant 1 expressly admits that this send-off was a mistake and that the goal was not

no way to send the email to Respondent 2 as well. Respondent 1 therefore does not argue

that this sending could be done and he does not try to justify it either by invoking any

legal basis.

37. On the basis of the factual elements present in the file, the Litigation Chamber verifies ex officio

whether a legal basis can possibly be invoked allowing defendant 1 to proceed

sending the e-mail to the defendant 2. To this end, the Litigation Division examines whether the sending of

the e-mail containing the complainant's personal data may be based on a

any legitimate interest on the part of the defendant 1 (article 6.1. f) of the GDPR).

38. The other legal grounds listed in article 6.1. under a), b,) c), d) and e) of the GDPR

not apply in this case.

39. In accordance with Article 6.1.f) of the GDPR and the case law of the Court of Justice of the Union

European Union (hereinafter "the Court"), three cumulative conditions must be met for a

controller can validly invoke this basis of lawfulness, "namely,

firstly, the pursuit of a legitimate interest by the controller or by the  
third parties to whom the data are communicated, secondly, the necessity of the processing of the  
personal data for the fulfillment of the legitimate interest pursued and, thirdly,  
the condition that the fundamental rights and freedoms of the person concerned by the protection  
data do not prevail" (judgment "Rigas").

40. In other words, in order to be able to invoke the basis of lawfulness of "legitimate interest"  
in accordance with Article 6.1.f) of the GDPR, the controller must demonstrate that:

the interests it pursues with the processing can be recognized as legitimate

(the "finality test");

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the envisaged processing is necessary to achieve those interests (the "necessity test")

; and

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

data subjects weighs in favor of the data controller (the "test of

weighting").

41. With regard to the first condition (the so-called "finality test"), the Chamber

Litigation believes that the purpose of simultaneously joining all the parties

concerned by sending a single e-mail with annexes concerning all the

parties concerned must be considered to be carried out with a view to a legitimate interest.

According to recital 47 of the GDPR, the interest that respondent 1 pursued as

controller can in itself be considered legitimate. The first requirement

included in Article 6.1.f) of the GDPR is therefore fulfilled.

42. In order to fulfill the second condition, it must be demonstrated that the processing is necessary for the

achievement of the aims pursued. More specifically, this means asking whether the

same result cannot be achieved with other means, without data processing to

personal nature or without unnecessary substantial processing for the data subjects.

43. Starting from the purpose, namely to reach all the parties concerned by sending an e-

single email with annexes concerning all the parties concerned, it is clear that

in the head of the Litigation Chamber that the e-mail included both annexes concerning

the notarial association between the plaintiff and the defendant 2 and annexes concerning the company

personal of the complainant. In order to avoid confusion between the two types of annexes, it would have sufficed

that Respondent 1 send an e-mail to Complainant and Respondent 2 with the relevant annexes

to the notarial association between the plaintiff and the defendant 2 and a separate e-mail addressed

only to the plaintiff with the annexes referring to her personal company. the second

condition is therefore not met because the principle of data minimization (article 5.1.c)

GDPR) has not been complied with.

44. In order to check whether the third condition of Article 6.1.f) of the GDPR - the so-called "test of

balancing" between the interests of the controller on the one hand and the freedoms and rights

fundamentals of the data subject on the other hand - can be met, account must be taken of the

reasonable expectations of the data subject, in accordance with recital 47 of the GDPR.

In particular, it must be assessed whether "the data subject can reasonably expect, at the

time and in the context of the collection of personal data, that these

are processed for a particular purpose".

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45. This aspect is also underlined by the Court in its judgment "TK v. Asociația de Proprietari bloc

M5A-ScaraA" of December 11, 2019, which states the following:

"Also relevant for the purposes of this balancing are the reasonable expectations of the

data subject that his or her personal data will not be processed when,

in the circumstances of the case, that person cannot reasonably expect a

further processing thereof.□

46. With regard to this third condition, the Litigation Chamber can only note that at□

at no time could plaintiff expect sharing with defendant 2 of the annexes□

relating to his personal company.□

47. The Litigation Division considers that all of the elements presented demonstrate that the□

defendant 1 cannot rely on any legal basis demonstrating the lawfulness of the processing□

of data as implemented by it. Furthermore, Respondent 1 does not contest the facts□

and declares itself that in the e-mail subject of the complaint, the e-mail address of the defendant 2□

had been placed in the "CC"11 field, although this was done unintentionally.□

He thus indicates that he has committed a violation of the processing of the personal data of the□

complainant. The Litigation Chamber therefore decides that the breach of Article 5.1 b) juncto□

section 6.4. of the GDPR, in article 5.1 a) juncto article 6.1. GDPR and Article 5.1 c)□

of the GDPR is proven.□

48. The Complainant also alleges that Respondent 1 ignored the principles of transparency□

(article 5.1 a) of the GDPR, articles 12 and 13 of the GDPR) and loyalty (article 5.1 a) of the GDPR). In this□

regard, the Litigation Chamber considers that since the sending was an error and that the intention□

was not at all to also send the email to respondent 2, respondent 2 had not planned□

that such a sending would occur. This stems from the very nature of an error. In the absence of any□

intent to send the email to Respondent 2, Respondent 1 also failed to comply with the principles□

of transparency and loyalty which require that certain communications should have been made□

before Respondent 1 sends it to Respondent 2. Violation of these principles does not, however, affect□

in no way on the sanction imposed by this decision, given the fact that an error was at the origin□

data processing.□

49. In view of the fact that Respondent 1 states that he immediately took the necessary steps to□

obtain from defendant 2 the deletion of the e-mail and that the plaintiff's counsel have been informed□

confirmation of this deletion by respondent 2, which shows that respondent 1 had□

11 See along the same lines: Decision on the merits 03/2021 of January 13, 2021.□

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acted in good faith, and also taking into account that this is only the first time that the□  
violation has been committed, the Litigation Chamber considers it appropriate to issue a reprimand to□  
with regard to the defendant 1. In view of these circumstances, the Litigation Chamber waives the right to impose□  
administrative fine.□

vs. Permission to access□

50. Complainant submits that Respondent 1 is refusing to grant her access to the entire□  
accounts of his sole proprietorship and provide him with a copy. Defendant 1 does not take□  
not take a concrete position on this in his conclusions, but only state that he disputes□  
any fact that is not explicitly acknowledged in its conclusions.□

51. The Litigation Division finds that the plaintiff does not provide any document proving the refusal□  
by defendant 1 to give him access to all of his company's accounts□  
unipersonal. Consequently, the Litigation Division cannot find any□  
breach by respondent 1 of complainant's right of access (Article 15 GDPR).□

d. Security of processing and data leakage□

52. Complainant submits that pursuant to Article 33 of the GDPR, Respondent 1 should have notified□  
the Data Protection Authority that the transmission of personal data from the□  
Complainant to Respondent 2 constituted a personal data breach.□

53. The Litigation Chamber explains that article 33 concerns violations relating to the security□  
personal data as described in Article 32 of the GDPR. Recital 83□  
of the GDPR<sup>12</sup> provides that the controller must take technical and□  
appropriate organizational measures to mitigate data security risks.□

54. The Litigation Chamber considers that the access obtained by defendant 2 to the personal data□  
complainant's staff is not bound by insufficient technical and organizational measures□  
that Respondent 1 would have taken in order to protect the personal data of the□

security risk complainant. The e-mail was sent by Respondent 1 both to the

12 Recital 83 of the GDPR: In order to guarantee security and to prevent any processing carried out in violation of this Regulation

it is important that the controller or processor assesses the risks inherent in the processing and implements

measures to mitigate them, such as encryption. These measures should ensure an appropriate level of security, including

including confidentiality, taking into account the state of knowledge and the costs of implementation in relation to the risks and

the nature of the personal data to be protected. As part of the data security risk assessment,

account should be taken of the risks presented by the processing of personal data, such as

destruction, loss or alteration, unauthorized disclosure of personal data transmitted, stored or

otherwise processed or unauthorized access to such data, accidentally or unlawfully, which may

cause physical, material or moral damage.

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plaintiff than to respondent 2. The fact that the e-mail reached defendant 2 cannot be

linked to a problem of securing the personal data processed by

the defendant 1. The Litigation Chamber considers that no security measure can be

such as to totally exclude that following a human error, an e-mail is sent to a

unintended recipient. It cannot therefore be concluded that by sending the e-mail to Respondent 2,

defendant 1 allegedly took insufficient measures to protect the personal data

complainant's personnel against security risks, so that no violation

of Articles 32 and 33 of the GDPR cannot be ascertained.

C. Examination of the complaint as formulated vis-à-vis the respondent 2

at. Processing and controller

55. Respondent 2 denies that there was any question on his part of any treatment of

personal data within the meaning of article 2.1. of the GDPR. He argues that given

that he only had the status of recipient of the e-mail in question, there can be no question

of any treatment, given the absence of any initiative in this direction on his part. the

Respondent 2 thinks it can be said that processing involves an intentional element in order to

to use personal data.□

56. With regard to the notion of "processing", the Litigation Division observes that this notion□  
is defined in Article 4, 2) of the GDPR<sup>13</sup> and is clearly delimited. The one and only receipt of□  
personal data certainly does not constitute processing within the meaning of Article 4, 2) of the□  
GDPR. On the other hand, their consultation as well as the sending of the e-mail with the annexes relating thereto□  
containing personal data must indeed be considered as a□  
processing within the meaning of the GDPR. Although Respondent 2 maintains that he was unaware□  
annexes to the e-mail in question and that no consultation has therefore taken place, he acknowledges by□  
against forwarding the e-mail to his counsel, as a result of which it is indisputable that the□  
defendant 2 has provided personal data by means of transmission within the meaning of□  
article 4, 2) of the GDPR and with regard to this aspect, consisting of the transmission of the e-mail□  
<sup>13</sup> Article 4 GDPR□

For the purposes of these rules, the following terms mean:□

[...]□

2) "processing" any operation or set of operations whether or not carried out using automated processes and applied□  
to personal data or sets of personal data, such as the collection, recording, organization,□  
structuring, storage, adaptation or modification, extraction, consultation, use, communication by□  
transmission, dissemination or any other form of making available, aggregation or interconnection, limitation,□  
erasure or destruction;□

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with annexes containing personal data relating to the complainant, the□  
respondent 2 is to be considered a controller<sup>14</sup> within the meaning of Article 4, 7) of the□  
GDPR, because it determines the purpose and means of this transmission. Defendant 2 cannot□  
simply qualify as the recipient<sup>15</sup> of the e-mail within the meaning of Article 4, 9) of the GDPR, since it does not□  
was not limited to receiving the e-mail but that since he in turn sent it, he□  
made responsible for the treatment with regard to this transmission. By this act, he has indeed□



used the personal data received for its own purpose<sup>16</sup>. Given its quality of controller with regard to the transmission, respondent 2 also cannot more, and this contrary to what he maintains, to be considered as a third party<sup>17</sup> within the meaning of GDPR article 4, 10). The fact that he declares having deleted the e-mail with its annexes after the transmission does not change anything.

57. The Litigation Division observes, for the sake of completeness, that Respondent 2 does not provide the proof that his counsel also deleted the e-mail with attachments, Article 19 of the GDPR implying the obligation for the data controller to notify each recipient to whom personal data is provided, any erasure of personal data personal in accordance with Article 17 of the GDPR, unless this proves impossible or requires disproportionate effort. Based on the above, Respondent 2 should also have request the deletion of the e-mail in question from his counsel in his capacity as the recipient of the email sent by the defendant 2.

58. The Litigation Division further adds that with regard to the plaintiff's assertion that which Respondent 2 is a joint controller with Respondent 1, it considers

14 Article 4 GDPR

For the purposes of these rules, the following terms mean:

[...]

7) "controller": the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing; 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 for by Union law or by the law of a State member;

15 Article 4 GDPR

For the purposes of these rules, the following terms mean:

[...]

9) "recipient" means the natural or legal person, public authority, service or any other body which receives

communication of personal data, whether or not to a third party. [...]

16 Guidelines of the European Data Protection Board 07/2020 on the concepts of controller and processor in the GDPR (p. 29):

“A third party recipient shall be considered a controller for any processing that it carries out for its own purpose(s) after it receives the data.”

17 Article 4 GDPR

For the purposes of these rules, the following terms mean:

[...]

10) "third party" means a natural or legal person, public authority, service or body other than the person

concerned, the data controller, the processor and the persons who, placed under the direct authority of the data controller or processor, are authorized to process the personal data;

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that this assertion is not corroborated by any element of the file. The plaintiff indeed bases

this assertion solely on a statement allegedly made verbally by the defendant

1 during the complainant's last meeting with him. It would have been declared at this

occasion that Defendant 2 would have ordered Defendant 1 not to provide any documents to the

complainant without his being informed. This unilateral assertion by the complainant is not substantiated

by any evidence, so that there is no reason for the Litigation Chamber to admit

that the two defendants intervened as joint controllers.

b. Admissibility of the complaint

59. Although Respondent 2 denies any data processing on its part, it is apparent from what

precedes that on the basis of the concrete elements observed by the Litigation Chamber, the

respondent 2 should be considered as controller for the transmission of the e-mail

to his advice.

60. The Complainant argues in the Reply submissions that the transmission of the e-mail by the

respondent 2 to his counsel constitutes processing for which respondent 2 is responsible

of the processing and affirms that the grievance is not that defendant 2 transmitted the data of the plaintiff to his lawyer but although defendant 2 subsequently used this data, which were sent in violation of the GDPR, as an exhibit in the litigation against the plaintiff.

61. This last element, namely "the grievance is not that defendant 2 transmitted the data of the plaintiff to his lawyer but although defendant 2 subsequently used this data, which been sent in violation of the GDPR, as an exhibit in the litigation against the plaintiff" is used by respondent 2 to assert that the complaint should be declared inadmissible.

62. Since in the Reply submissions, the Complainant argues that the problem stems from "Respondent 2's use of the email against Complainant" and not just per se

"Respondent 2's forwarding of this email to his counsel", as worded in the Complaint,

Respondent 2 thinks it can be said that in its reply submissions, Complainant

suddenly develops a whole new request/violation. Seen from this angle, the complaint

would not meet the requirement of article 60, paragraph 2 of the LCA, which provides that a complaint is

admissible when it contains a statement of the facts and the information necessary to identify the

treatment to which it relates. Because the breach of the GDPR alleged in the complaint would be

fundamentally different from that set out in the complainant's reply submissions,

this requirement would not be met.

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63. The Litigation Chamber points out that already in the initial complaint, the plaintiff had

referred to as Exhibit 7, which was attached to the complaint. This piece is specifically about

an e-mail from the plaintiff's counsel which is addressed to the plaintiff herself in order to inform her

that the e-mail sent by defendant 2 to his counsel concerning personal data

Complainant's personnel was disclosed "as an exhibit" by counsel for Respondent 2 to the

plaintiff's counsel. The Complainant repeats this fact by referring to the same exhibit in the

rebuttal submissions. The problem of the e-mail used "as part" in a

proceedings pending between the plaintiff and the defendant 2 is therefore not new, as the

defendant 2 is trying to make it appear. The Litigation Chamber therefore concludes that Article 60, paragraph 2 of the ACL has been complied with, that the admissibility of the complaint is not affected and that the rights of defense are respected<sup>18</sup>.

vs. Lawfulness of processing

64. Respondent 2 states that the only act he did was to forward the email to his counsel and that it was done in a lawful manner on the basis of a specific legal basis which authorizes lawyers to receive information from their clients. He refers in this respect to Article 237 of the Flemish Code of Ethics for Lawyers and Opinion 1/2010 of the Article 29 Group on the notions of "controller" and "processor", adopted on February 16, 2010<sup>19</sup>, to affirm that a litigant can provide information to his lawyer. To argue otherwise would imply, according to defendant 2, that there would be a prohibition to transmit information to a lawyer insofar as this information relates to personal data.

65. Complainant responds to this by asserting that Respondent 2 wrongly argues that it would be permissible to communicate to a lawyer data of an opposing party obtained in violation of the GDPR for use them in this way against the opposing party. According to the complainant, this is completely contrary to the GDPR. The complainant alleges that respondent 2 transmitted his personal data staff by e-mail to her lawyer and used them in the dispute between him and her without power to invoke one of the legal bases defined in Article 6.1 of the GDPR.

66. The Litigation Division finds that Respondent 2 conceals the fact that he came into possession of the e-mail through defendant 1 who sent it to him in the absence of any basis legal for this purpose (see above). The transmission by defendant 1 to defendant 2 was therefore vitiated by a lack of legality. It is clear that Respondent 2 - in its capacity as addressee - does not may not use in turn - this time as data controller - these data to

<sup>18</sup> See also what is stated in point 26 with respect to Respondent 1.

<sup>19</sup> [https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2010/wp169\\_en.pdf](https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2010/wp169_en.pdf)

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personal nature unduly received by transmitting them to his lawyer in order to then use this

e-mail containing personal data of the complainant as an exhibit in a

pending proceedings.

67. The processing of personal data is only lawful if there is a basis

legal for this purpose. The Litigation Chamber can only note that absolutely no

legal basis as defined in Article 6.1. of the GDPR does not justify the transmission of the e-mail

by respondent 2 to his counsel. Respondent 2 also does not invoke any legal basis

of clause 6.1. of the GDPR and clearly confirms in its submissions in reply with regard to

concerns the legitimate interest (article 6.1. f) of the GDPR) that it does not even invoke this basis

legal. Defendant 2 only invokes Article 237 of the Flemish Code of Ethics for

lawyers who confirm that confidential communications from the client to his lawyer are taking place,

which are covered by professional secrecy. The Litigation Chamber recognizes

obviously the principle that a client should be able to make confidential communications

to his lawyer, but this is not possible, insofar as it concerns personal data

personal, only on condition that such personal data is processed in a manner

lawful vis-à-vis the data subject (Article 5.1. a) of the GDPR and Article 6.1. GDPR). It proves

however in the present case that the transmission to counsel for Respondent 2 took place in disregard

of the principle of legality, in the absence of any legal basis as defined in Article 6.1. from

GDPR.

68. The Litigation Division considers that all of the elements presented demonstrate that the

defendant 2 cannot rely on any legal basis demonstrating the lawfulness of the processing

of data as implemented by it. The Litigation Chamber decides that the offense

in clause 5.1. a) GDPR and Article 6.1. of the GDPR is proven.

69. In addition to the violation of the principle of legality, the Complainant also alleges that Respondent 2 allegedly

violated the principle of transparency (article 5.1 a), articles 12 and 14 of the GDPR) and the principle

of purpose (article 5.1 b) of the GDPR).

70. With regard to the principle of finality, the Litigation Division draws attention to the fact that

this principle requires that personal data be "collected" for purposes

determined, explicit and legitimate. However, there is no question of any collection for

Article 5.1 Personal data must be:

[...]

b) collected for specified, explicit and legitimate purposes, and not further processed in a manner

incompatible with these purposes; further processing for archival purposes in the public interest, for research purposes

scientific or historical or for statistical purposes shall not be considered, in accordance with Article 89(1), as

incompatible with the initial purposes (limitation of purposes);

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an explicit and legitimate purpose of the personal data of the complainant by the

defendant 2. He simply received the e-mail with personal data without this

can rely on any legal basis. By transmitting this data after receipt

to his advice, also without any legal basis, for use as

exhibit, Respondent 2 appropriated the quality of data controller, which implies

in principle the obligation to comply with all applicable provisions of the GDPR, including the principle

purpose and the principle of transparency.

71. These two principles simply could not be applied because treatment by the

Respondent 2 is fundamentally flawed by a lack of legal basis, so that

the Litigation Chamber cannot find any violation of the principle of transparency

(article 5.1. a), article 12 and article 14 of the GDPR) and the principle of finality (article 5.1. b) of the GDPR).

Since the sending by Respondent 1 to Respondent 2 is unlawful ab initio, any processing by

defendant 2 for any proper purpose is also wrongful. With regard to the principle of

transparency, the Litigation Chamber adds that even if defendant 2 had tried to

respect this principle, the sending to his lawyer and the use made of it nevertheless remain

illicit.

72. In view of the fact that Respondent 2 states that the e-mail with attachments has been erased immediately upon first request and that this is only the first time the breach has been committed, the Litigation Division deems it appropriate to order defendant 2 to prohibit definitively the processing of the e-mail with annexes in question (art. 100, § 1er 8° of the LCA), as well as to order the notification of this definitive ban to his counsel (art. 100, § 1, 10° of the ACL) both for the processing of the e-mail with attachments that have already taken place and for the treatment of this e-mail in the future.

73. When determining these penalties, the Litigation Division also takes into account the fact that the complaint is part of a larger dispute between the parties which is the subject of an arbitration proceedings concerning financial matters and refusal to hand over documents accountants and others in the context of the liquidation of the company in which the notarial activity was exercised by the plaintiff and the defendant 2, about which the Litigation Chamber considers that it is not within the remit of the Data Protection Authority to intervene for aspects that do not concern the processing of personal data.

The Litigation Chamber therefore decides that, in view of the concrete factual circumstances of this matter, the sanctions imposed are sufficient. Given these circumstances, the Litigation Chamber waives the imposition of an administrative fine.

D. No classification decision without follow-up

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74. Although in the context of the procedure prior to the decision on the merits, the Litigation Chamber proceeded to close the complaint without further action, the procedure on the merits revealed, on the basis of the detailed statement of factual elements in the conclusions of each of the parties, that fundamental principles of the processing of personal data have been violated. Consequently, the Litigation Chamber considers that a decision on the merits aimed at dismissal of the complaint is not compatible with the violations found but that at the otherwise, the penalties determined below must be applied.

E. Publication of the decision□

75. Given the importance of transparency regarding the decision-making process of the Chamber□

Litigation, this decision is published on the DPA website. However, it is not□

necessary for this purpose that the identification data of the parties are directly□

communicated.□

FOR THESE REASONS,□

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

□ vis-à-vis defendant 1, under article 100, § 1, 5° of the LCA, to formulate a□

reprimand following the violation of article 5.1. b) in conjunction with Article 6.4. of the GDPR, of article□

5.1. a) in conjunction with Article 6.1. GDPR and Article 5.1. c) GDPR.□

□ vis-à-vis defendant 2, following the violation of Article 5.1. a) GDPR and Article 6.1 GDPR□

GDPR:□

- pursuant to Article 100, § 1, 8° of the LCA, to order the definitive prohibition of the processing□

the e-mail concerned with its annexes;□

- under article 100, § 1, 10° of the LCA, to order the notification of this prohibition□

final to his advice both for the processing of the e-mail with annexes having already taken place□

only for processing this email in the future.□

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□