Litigation Chamber

Decision on the merits 38/2023 of 27 March 2023

File number: DOS-2020-05183

Subject: Acceptance of both the general conditions and the contact for purposes

commercial during the ordering process in the context of an online purchase

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

Hijmans, chairman, and Messrs. Dirk Van Der Kelen and Frank De Smet, members;

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

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

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

data protection), hereinafter "GDPR";

Considering the law of December 3, 2017 establishing the Data Protection Authority, hereinafter

"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;

Made the following decision regarding:

The complainant :

Mr. X, hereinafter "the complainant"

The defendant: Bpost SA, having its registered office Place de la Monnaie, 1000 Brussels and being

registered with the Crossroads Bank for Enterprises under number 0214.596.464,

represented by Me Heidi Waem and Me Simon Verschaeve, hereinafter

"the defendant"

I. Facts and procedure

1.

On November 1, 2020, the complainant lodged a complaint with the Protection Authority

data (hereinafter the DPA) against the defendant.

2.

The subject of the complaint concerns the ordering process for the MyStamp service offered by

the defendant. First of all, according to the complainant, no distinction is made, within the framework

of this ordering process, between

acceptance of the general conditions and

acceptance of contacts (by e-mail or otherwise) for commercial offers.

Furthermore, according to the plaintiff, the defendant did not react within one month to the

request of the complainant not to contact him again and to adapt the website in accordance with the

GDPR. The complainant also complained about the obligation to give his

consent. In this regard, the Complainant asserts the following: “You still have to always

accept and possibly notify your opposition afterwards. For all I know,

this is not legal."

carried out by the translation service of the General Secretariat of the ODA, in the absence of

official translation] The complaint concerns the website that allows the purchase of stamps

personalized. This MyStamp service is a separate service from the eShop (available via

https://mystamp.bpost.be/) which allows the user to create and buy stamps

customized via an online design module. On October 4, 2020, the plaintiff purchased

personalized stamps and was confronted with several conditions and provisions which, according to

him, do not comply with privacy regulations.

3.

On November 17, 2020, the complaint was declared admissible by the Front Line Service on

the basis of Articles 58 and 60 of the LCA and is transmitted to the Litigation Chamber pursuant to

of article 62, § 1 of the LCA.

4.

On December 16, 2020, in accordance with Article 96, § 1 of the LCA, the request of the

Litigation Chamber to proceed with an investigation is forwarded to the Inspection Service,

as well as the complaint and the inventory of parts.

5.

On June 16, 2021, the investigation by the Inspection Service is closed, the report is attached to the file

and this is forwarded by the Inspector General to the President of the Litigation Chamber

(art. 91, § 1 and § 2 of the LCA).

6.

The report summarizes the following findings with respect to the subject matter of the complaint

and concludes the following:

Violation of Article 5.1.c) of the GDPR, the Inspection Service having noted that the objection of the

complainant with regard to the website https://mystamp.bpost.be on which

custom stamps can be purchased and

THE

parcel service via

https://parcel.bpost.be/fr/home/residential was founded. For these two elements of the site

Internet, the mandatory acceptance of the conditions leads to an automatic coupling between the

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direct marketing (NdT: 'prospecting' within the meaning of the GDPR and the e-Privacy directive)

third-party advertising networks. According to the Inspection Service, this leads to a violation

the principle of purpose limitation set out in Article 5.1.b) of the GDPR1.

The report also contains findings that go beyond the scope of the complaint.

The Inspection Service observes, in general terms:

▪ A violation of article 5.1.c) of the GDPR (minimization of data) Due to the coupling

automatic between order processing and more personal data

necessary (the mobile phone number) or by providing unilaterally that the data
of a personal nature for the order undergo more processing than necessary
(third-party advertising platforms), the defendant violates the requirement set out in Article 5.1.c)
of the GDPR with its MyStamp service and its parcel service.

▪ A violation of Article 6 of the GDPR. According to the Inspection Service, it has been demonstrated that the disputed processing had no basis of lawfulness. According to the Inspection Service, a processing on the basis of legitimate interest in accordance with Article 6.1.f) of the GDPR is not no longer possible since it is established that the defendant applies coercion to obtain certain personal data for direct marketing purposes in order to be able to fairly carry out the first processing (online ordering of the service).

▪ A violation of Article 12.1 of the GDPR. According to the Inspection Service, the defendant uses a combination of several techniques that are contrary to the requirement of information clear in accordance with Article 12.1 of the GDPR.

▪ A violation of Article 12.2 of the GDPR. According to the Inspection Service, by offering limited possibility of opposition on the order form for the eShop and by coupling (for the eShop, MyStamp and the parcel service) the exercise of rights in the policy in privacy protection to limitations (mail, use of a form), the defendant does not apply Article 12.2 of the GDPR. The order form for the eShop does not contain the full functionality of the right to object against the direct marketing under Article 21.3 of the GDPR. By providing people concerned imprecise information on the processing(s) of personal data personal for direct marketing purposes and by not providing the possibility for data subjects to exercise their rights by e-mail, the defendant does not respect Article 12.2 of the GDPR, according to the Inspection Service.

▪ A violation of Articles 5.1.a), 5.1.c) and 25 of the GDPR. The Inspection Service points out that the way in which the defendant designed its contact form is both

disproportionate and dysfunctional for the purpose indicated (the exercise of the rights of the

1 The inspection report wrongly refers to Article 5.1.c) of the GDPR. Given that the defendant bases its defense on the principle of

purpose limitation and therefore recognizes the scope of the alleged infringement, this slip is without consequence.

concerned person). According to the Inspection Service, the form in itself constitutes a

violation of several basic principles of articles 5.1.a) (principle of loyalty and principle of

transparency) and 5.1.c) (data minimization) of the GDPR and therefore also a

violation of the requirement of data protection by design set out in article 25 of the

GDPR.

▪ A violation of Article 38.4 of the GDPR. According to the Inspection Service, the observation

relating to the contact form also has an impact on compliance with the function of

contact of article 38.4 of the GDPR. The aforementioned article is, according to the Inspection Service,

also violated given that the Data Protection Officer cannot be

attached other than via a contact form.

7.

On August 23, 2021, the Litigation Division decides, pursuant to Article 95, § 1, 1° and

article 98 of the LCA, that the case can be dealt with on the merits.

Based on the report of the Inspection Service, the Litigation Chamber decides to split

the case into two separate cases:

a) Under Article 92, 1° of the LCA, the Litigation Chamber will make a decision

on the merits with respect to the subject matter of the complaint.

b) Under Article 92, 3° of the LCA, the Litigation Chamber will make a decision

in substance, following the findings made by the Inspection Department in

outside the scope of the complaint.

Due to policy at the time and restrictions resulting from the pandemic

of covid, the parties are therefore informed by e-mail of the provisions such as mentioned in Article 95, § 2 and those appearing in Article 98 of the LCA They are also informed, pursuant to Article 99 of the LCA, of the deadlines for transmitting their conclusions. Given that the Litigation Division has not received any contrary opinion from the defendant following the aforementioned e-mail, it was decided to send the letter on February 22, 2022 to the defendant, this time by registered mail.

8.

On February 28, 2022, the defendant requests an extension of the deadlines for rendering the conclusions, given the size of the file and the fact that previous communications have not been received. The Litigation Chamber consents to this on March 4, 2022.

For findings relating to the subject of the complaint, the deadline for receipt of conclusions in response of the defendant was set for April 26, 2022, that for the conclusions in reply of the complainant on May 24, 2022 and finally that for the conclusions in respondent's reply dated June 21, 2022.

For findings that go beyond the subject matter of the complaint, a single time limit to render the conclusions has been defined, identical to the first deadline established on April 26, 2022.

9.

On February 28, 2022, the lawyer agrees, on behalf of the defendant, to receive all the communications relating to the case by electronic means and manifests its intention to make use of the possibility of being heard, in accordance with article 98 of the LCA.

The lawyer also requests, on behalf of the defendant, a copy of the file (art. 95, § 2, 3° of the LCA), which was sent to him on March 4, 2022.

10. On April 26, 2022, the Litigation Chamber receives the submissions in response from the defendant. The defendant mainly puts forward two pleas therein which, on the one hand, are of a procedural nature and on the other hand concern Directive 2002/58/EC concerning

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

electronic communications sector (hereinafter 'the e-Privacy Directive' or 'life directive'

privacy and electronic communications')2 and the fact that the DPA is not competent for the

apply. The other pleas put forward in the alternative concern the principle of

limitation of purposes, the principle of minimization of data, the obligation to inform

and facilitating the rights of the data subject in the process of ordering

MyStamp and the Shipping Manager Light service (SML service), as well as communication

of information and the facilitation of the rights of the data subject in the process of

eShop order. Finally, the defendant puts forward arguments to refute the

objections expressed by the Inspection Service regarding the contact form.

11.

On May 25, 2022, the complainant indicates that he is not submitting any submissions in reply, being

given that he considers that he has put forward sufficient arguments to induce the defendant to

act in accordance with the GDPR.

12.

On October 14, 2022, the parties are informed that the hearing will take place on

November 16, 2022.

13.

On November 16, 2022, the defendant was heard by the Litigation Chamber.

Although the complainant was duly summoned, he chose not to participate in the hearing.

14.

On November 28, 2022, the minutes of the hearing are submitted to the defendant and

forwarded to the complainant for information.

15.

On December 1, 2022, the Litigation Chamber received from the defendant some

remarks relating to the minutes which it decides to include in its deliberation.

2 Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data

personal character and the protection of privacy in the electronic communications sector, OJ (2002) L 201/37.

II. Motivation

a) Procedure

16. First, the Respondent asserts that it was unable to fully defend itself against the accusations made by the Inspection Service and the Litigation Chamber. According to defendant, the Litigation Division did not provide access to the complete file, implying that the defendant's rights of defense would have been irremediably affected. The Inspection Service indeed referred in its report to other complaints against the defendant (without mentioning the identification data of the plaintiffs) and specified in this context that the defendant could claim the complaints in question via the Litigation Chamber. The Litigation Chamber then refused to transmit these documents to the defendant, which would have infringed the rights of the defense.

17.

However, the complaints referred to by the Inspection Service in the report have not been not at all addressed during the deliberation of the Litigation Chamber and did not not taken into consideration in making this decision as to the bottom. In this regard, the Litigation Chamber considers that the reference in the inspection report of the Inspection Service to other complaints concerning the exercise of rights vis-à-vis the controller has not caused the slightest damage to the defendant.

18.

The defendant also specifies that the manner in which the investigation was conducted during the inspection phase has irreparably violated the principles of good administration and the

rights of defense against the defendant.

19.

The manner in which the inspection report was drawn up violates, according to the defendant, the principle precautionary, given that no information was collected on the services provided by the defendant, although it appears from the inspection report that there was a certain confusion on this subject in the head of the Inspection Service. According to the defendant, the report inspection is also based on multiple occasions on assumptions, the Service of Inspection is limited to the observation of what would be generally or a priori usual while he must carry out a concrete investigation. The Inspection Service would not mention either crucial information for the evaluation of the case and the findings of the Service d'Inspection are dated only in a fragmentary way, which complicates the defense.

20. Furthermore, according to the defendant, the principle of impartiality would also have been violated since given that the Inspection Service has not carried out any exculpatory investigation but is on the other hand based on the principle of the defendant's bad faith.

21.

According to the defendant, the obligation to hear the parties was also not respected in the species by the Inspection Service. The defendant refers in this respect also to the alleged violation of the precautionary principle (see point 19 above), which would require a scrupulous public authority to consult the defendant with a view to making a decision conscientious.

22. Regarding the finding of the Inspection Service that the defendant did not provided no explanation as to any of the charges, the defendant reacted within the conclusions by affirming that it has in no way had the possibility of bringing such clarification, which implies a violation not only of the precautionary principle

but also the principle of impartiality and the principle of reasonableness.

23. According to the defendant, the Litigation Division also failed to respect the principles of good administration, including the precautionary principle, the obligation to hear the parties, the principle of impartiality and the principle of reasonableness, given that it did not order any additional investigation to the Inspection Department after receipt of the inspection report, but that it nevertheless decided that the case could be dealt with on the merits.

24. All of the above elements together lead the Respondent to assert that the rights of defense have been violated.

25. Although the Respondent makes it clear that it still has the possibility of defend themselves during the substantive proceedings before the Litigation Chamber by means of written conclusions and the hearing organized in this context, according to her, this does not prejudice to the conclusion that a balanced investigation carried out by the Inspection Service default.

26. In this regard, the Litigation Chamber emphasizes that the procedural safeguards must fully be complied with and whether there had been a risk that the defendant would have been disadvantaged by the manner in which the inspection report was carried out, this disadvantage was completely eliminated thereafter3, which excludes any violation of the principles of good administration. The procedural elements raised by the defendant do not entail a violation of the rights of the defence, because the defendant had the opportunity to advance its argument in its entirety by means of its submissions in response and it has in moreover been able to fully exercise his right to contradict during the hearing of the Chamber Litigation. The defendant therefore suffered no prejudice and the rights of the defense were therefore been correctly observed.

3 See in this regard Decision on the merits 18/2020 of 28 April 2020; Decision on the merits 71/2020 of the October 30, 2020 and Decision on the merits 133/2021 of December 2, 2021.

b) e-Privacy Directive

27. According to the defendant, the Litigation Division is not competent to judge the

complaint. It maintains that the processing of data for direct marketing purposes does not fall

not GDPR but (the national transposition of) the e-Privacy Directive. Insofar

where the scope of the two instruments overlaps, the rules included in the

e-Privacy Directive should, as lex specialis, prevail over the GDPR rules.

However, the DPA would not be competent to apply the national transposition of the

e-Privacy Directive. In summary, the defendant's reasoning therefore comprises the three

following steps :

the e-Privacy directive is applicable;

the GDPR is therefore not applicable;

the Litigation Chamber is not competent to apply the e-Privacy Directive.

1.

2.

3.

28. The Litigation Chamber does not follow this reasoning. The Litigation Chamber

already pronounced on several occasions on its competences with regard to the e-Privacy directive and

refers in this respect to its decision on the merits 11/2022 of 21 January 2022 (paragraphs 22-40).

These are mainly cookie skills. Since this is

another issue and that the Court of Justice has provided further details in

Proximus judgment4 of 27 October 2022, these powers are further specified in the

this decision.

29. Firstly, the GDPR is applicable anyway, even if it is accepted that the

processing for direct marketing purposes referred to by the Inspection Service falls under the

scope of the e-Privacy Directive. The GDPR itself also contains

provisions on direct marketing, in particular concerning the right of opposition and

the possible use of legitimate interest as a legal basis, which must in any case

apply. The special rule resulting from Article 13, paragraphs 1 to 3 of the Directive

e-Privacy cannot change this. This rule must indeed apply in the context

general GDPR rules on purpose limitation, transparency, etc.,

to which the e-Privacy Directive does not derogate. Furthermore, Article 13, paragraph 2 of this

directive explicitly lays down the condition that the relevant data be

obtained in accordance with the GDPR.

30. Secondly, the jurisdiction of the Litigation Chamber does indeed extend to

the interpretation of the e-Privacy Directive, insofar as this is necessary for

apply the general rules of the GDPR. The legislator has defined the competence of the DPA to

4 CJEU, C-129/21, Proximus, 27 October 2022, EU:C:2022:833.

extended way, precisely so that it is clear that its material competence does not

not limited to the GDPR in the strict sense.

GDPR and e-Privacy directive

31.

The defendant wrongly claims that Article 13 of the e-Privacy Directive, as lex

specializes, excludes

the applicability of the GDPR. In case of communications by e-mail

('electronic mail') or through other channels, the processing of contact details of

customers could only be assessed in light of the e-Privacy Directive.

32. The Litigation Chamber points out that Article 13, paragraph 2 of the e-Privacy Directive,

which defines under which conditions direct marketing can take place, explicitly stipulates

that the GDPR must also be complied with in this context (own emphasis):

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“Rule 13

Unsolicited communications

1. The use of automated call systems without human intervention (call machines),

fax or e-mail for direct marketing purposes cannot be

authorized only if it targets subscribers who have given their prior consent.

2. Notwithstanding paragraph 1, where, in compliance with Directive 95/46/EC, a person

natural or legal person has, in the context of the sale of a product or service, obtained directly

of its customers their electronic coordinates for an electronic mail, said

natural or legal person can use these electronic coordinates for the purposes of

direct prospecting for similar products or services that it provides itself

that said customers are clearly and expressly given the right to oppose, free of charge

and in a simple way, to such exploitation of the electronic coordinates when they are

collected and during each message, in case they did not immediately refuse such

operation.

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[…]”.

33. Where the e-Privacy Directive refers so explicitly to the GDPR (or its

predecessor in law, Directive 95/45/EC5), the discussion on lex specialis/lex

generalis is simply “not relevant”6. We should not rely on this adage

only if the text of the law in question does not specify its relationship with another text of law. In

In this case, the Union legislature has on the contrary clearly prescribed that in the event of recourse to

13, paragraph 2 of the e-Privacy Directive, the GDPR must always be complied with.

The judgment in the Proximus case also deals with the relationship between the e-Privacy Directive and the GDPR

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

with regard to the processing of personal data and on the free movement of such data, OJ (1995) L 281/31. See also art. 94, paragraph 2 of the GDPR: “References to the repealed directive are understood as made to these rules.”

6 Opinion of Advocate General Collins to the CJEU., C-129/21, Proximus, 28 April 2022, EU:C:2022:332, § 48.

purely on the basis of the text of the two legal instruments: when the directive refers explicitly to the GDPR, there can be no doubt that the GDPR must be applied7.

34. The e-Privacy Directive and the GDPR contain numerous provisions indicating that, in principle, the two legal instruments apply simultaneously.

35. The e-Privacy Directive 'specified' the provisions of the GDPR in the sector of electronic communications8, but this does not mean that the application of the GDPR be excluded whenever electronic means of communication are used.

On the contrary: recital 10 of the e-Privacy Directive explicitly states that (proper underlining):

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“"In the electronic communications sector, [the GDPR] is applicable in particular to all aspects of the protection of fundamental rights and freedoms which do not fall expressly within the scope of this directive, including the obligations to which subject the person responsible for processing personal data and individual rights. [...]”.9

36. The GDPR also provides that it applies in principle simultaneously with the Directive e-Privacy in the electronic communications sector. Article 95 of the GDPR stipulates

indeed (proper underlining):

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“This Regulation does not impose any additional obligations on natural persons or
morality with regard to processing in the context of the provision of communications services
electronic devices available to the public on public communications networks in the Union in
with regard to the aspects for which they are subject to specific obligations having
the same objective set out in Directive 2002/58/EC”.

37. The GDPR therefore applies a particular interpretation of the lex specialis concept, to
which it must be (i) an obligation (and therefore not a rule in general) (ii) which is more
specific than the general obligation in the GDPR and (iii) which additionally also pursues the
same objective as this general obligation. The GDPR in no way binds the existence of a

7 CJUE C-129/21, Proximus, 27 October 2022, EU:C:2022:833, § 51 e.s.

8 Article 1, paragraph 2 of the e-Privacy Directive: "The provisions of this Directive specify and supplement
Directive 95/46/EC for the purposes set out in paragraph 1. In addition, they provide for the protection of the legitimate
interests of
subscribers who are legal persons." See also CJEU, C-543/09, Deutsche Telekom, 5 May 2011,
EU:C:2011:279, § 50; C-40/17, Fashion ID, conclusions AG Bobek, 19 December 2018, EU:C:2018:1039, § 114. See also
the European Data Protection Board (EDPB), Opinion 5/2019 on the interactions between the Privacy Directive and
electronic communications and the GDPR, in particular with regard to the competence, missions and powers of the
data protection authorities, 12 March 2019, §§ 37-42, available via the following link:
https://edpb.europa.eu/sites/default/files/files/file1/201905_edpb_opinion_eprivacydir_gdpr_interplay_en.pdf
(note: this French version has not yet been officially approved).

9 Recital 10 of the e-Privacy Directive: "In the electronic communications sector, Directive 95/46/EC is
applicable in particular to all aspects of the protection of fundamental rights and freedoms which do not fall
expressly within the scope of this directive, including the obligations to which the data controller is subject.
processing of personal data and individual rights. Directive 95/46/EC applies to the services of

non-public electronic communications."

specific obligation in the directive the consequence that the GDPR would no longer be

application in its entirety. The simple fact is that if both the GDPR and the

directive contain an obligation with the same objective, the specific obligation

of the directive must be applied and not the general obligation of the GDPR. For everything else,

the GDPR does indeed remain applicable to data processing carried out via means

of electronic communication.

38. The Court of Justice10 has also recently clarified that each obligation contained in the

e-Privacy Directive does not automatically constitute a 'specific obligation' within the meaning

of Article 95 of the GDPR. In the Proximus case, the Court ruled on the question of

whether the requirement of a subscriber to delete his personal data

personnel of a telephone directory - right attributed in these terms to the subscriber by Article

12, paragraph 2 of the e-Privacy Directive - constituted an exercise of the right to erasure

within the meaning of Article 17 of the GDPR. Since Article 12(2) of the Directive itself does not

did not refer to the GDPR nor did it use identical terms, the person responsible for the

processing argued that the right to have data deleted was an obligation

specific and that this had the consequence that the application of Article 17 of the GDPR

should be excluded under Article 95 of the GDPR. The Court of Justice contradicted this

assertion with the following reasoning (proper underlining):

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"61 Firstly, it is important to stress that, under Article 12(2),

second sentence of Directive 2002/58, subscribers must have, in particular, the possibility

to have their personal data removed from public directories.

62 That being so, the granting of such a possibility to subscribers does not constitute, in the case of

directory providers, a specific obligation, within the meaning of Article 95 of the GDPR, which would exclude the application of the relevant provisions of this regulation. Indeed, so as the Advocate General noted in substance in point 54 of his Opinion, [the Directive e-Privacy] does not contain indications on the modalities, implementation and consequences requests to obtain the deletion of personal data. For this reason, as is apparent, moreover, from recital 10 of that directive, read in conjunction with Article 94 of this regulation, the provisions of the GDPR are likely to be applied in such a scenario."11

39. The Court therefore held that Article 12(2) of the Directive did not constitute a 'specific obligation' because the details of the execution of this right had not been defined in the directive and the provisions of the GDPR could therefore still be perfectly applied. Therefore, the Court applied the principle of Article 95 of the GDPR, namely

10 CJEU, C□129/21, Proximus, 27 October 2022, EU:C:2022:833, § 57.

11 CJEU, C□129/21, Proximus, 27 October 2022, EU:C:2022:833.

that the GDPR remains applicable, together with the e-Privacy Directive, in the sector electronic communications.

40. With regard to direct marketing, the GDPR contains several provisions which explicitly govern the use of personal data for the purposes of Direct marketing. First, paragraphs 2 to 4 of Article 21 of the GDPR provide that "When personal data is processed for prospecting purposes", it must be able to oppose the use of their data at any time. If the person objects, the data may no longer be used for direct marketing purposes. At most late at the time of the first communication with the data subject, this right objection is explicitly brought to the attention of the person concerned and is presented clearly and separately from any other information12.

41. Secondly, recital 47 of the preamble of the GDPR specifies that the consent is not the only possible legal basis for processing for direct marketing purposes. The controller may also invoke a legitimate interest within the meaning of GDPR Article 6.1.f) (own emphasis):

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“(47) [...] The processing of personal data for commercial prospecting purposes can be considered to be carried out to meet a legitimate interest”.

42. Contrary to what the defendant maintains, one cannot deduce from this sentence that the processing of personal data for direct marketing purposes “is absolutely necessary for the purposes of the legitimate interests pursued by the controller. processing or by a third party” (article 6.1.f) of the GDPR) because this is part of the management normal of each company, and even less that these interests would necessarily prevail on the interests or fundamental rights of data subjects.

43. Recital 47 of the GDPR only decides here on the first stage of the test in three parts of Article 6.1.f) of the GDPR (purpose test, necessity test and weighting of interests) and therefore simply indicates that direct marketing must be admitted as a legitimate purpose, more specifically a legitimate interest of the controller. Unless the data controller has obtained the consent of the person concerned for this processing, he will therefore have to weigh up the interests prescribed by Article 6.1.f) of the GDPR. The limiting conditions under which a

12 The fact that opposition must be exercised free of charge, as required by Article 13(2) of the Directive e-Privacy, also derives from recital 70 of the preamble to the GDPR (own emphasis): "When data to personal character are processed for marketing purposes, the data subject should have the right, at any time and free of charge, to object to this processing, including profiling insofar as it is linked to such prospecting, whether initial or subsequent treatment. This right should be explicitly brought to the attention of the data subject and presented clearly and separately from any other information.”

processing of personal data is lawful according to Article 6.1 of the GDPR remain

application, even if the processing also falls under the e-Privacy Directive.

44. The defendant's reading of Article 13(2) of the e-Privacy Directive,

namely that for direct marketing by e-mail, no weighting of interests is

required, is clearly

incompatible with

article 8 of

the Bill of Rights

fundamental principles of the European Union ('the Charter') and the principle of proportionality of

Article 52, paragraph 1 of the Charter. This last provision in fact prescribes that "

limitations may not be made to the exercise of the rights and freedoms recognized by the

Charter only if they are necessary and effectively meet the objectives of interest

recognized by the Union or where necessary to protect the rights and freedoms of others".

The necessity test and the weighing of interests required by Article 6.1.f) of the GDPR in the

framework of recourse to legitimate interest therefore execute the primary law of the Union, to which

Article 13, paragraph 2 of the e-Privacy Directive cannot derogate. Since both the right to

the Union and its national transposition must be interpreted in such a way

in line with fundamental rights13, Article 13(2) of the e-Privacy Directive must

be read in such a way that, with regard to the legal basis, the directive is supplemented

by general article 6.1.f) of the GDPR.

45. It cannot reasonably be argued that the GDPR would not apply to marketing

direct through email and other channels. Article 13 of the e-Privacy Directive

cannot apply independently of the general rules of the GDPR, nor can

Article 12(2) of that directive, as the Court explained in the case

proximity. Article 13 of the e-Privacy Directive, for example, does not define what are the

consequences of the exercise of the right of opposition whereas on this point, article 21,
paragraph 3 of the GDPR can apply without problem. Article 13 of the directive does not
does not specify anything about the obligation to inform the data controller either. Since then,
the principle of Article 95 of the GDPR and Recital 10 of the Directive must also
apply here, i.e. both the GDPR and the directive apply.

46. The defendant objects to this that Article 6 of the e-Privacy Directive (processing of
'traffic data') must take priority over the GDPR, according to Opinion 5/2019 of the
European Data Protection Board14, as this provision explicitly limits
the conditions under which traffic data may be processed.
According to this opinion, with regard to such data, one cannot therefore resort to
all the legal bases of Article 6 of the GDPR. The Litigation Chamber cannot
in no way adhere to this position with regard to its application to marketing
direct. Contrary to the situation as it exists for the processing of data

13 CJEU C-569/16 and C-570/16, Bauer, 6 November 2018, EU:C:2018:871.

14 See footnote 8 above.

relating to traffic, the GDPR contains several provisions that specifically concern
direct marketing and have been cited above: according to recital 47 of the GDPR, for the
direct marketing, recourse can be had to the legal basis of legitimate interest and Article 21,
paragraph 2 of the GDPR specifically concerns the right to object in the context of the
Direct marketing. Furthermore, in the Proximus judgment, the Court of Justice clarified that even
when the e-Privacy Directive contains specific provisions on the legal basis
permitted, Article 6(1) GDPR must still be applied.

ODA Competence

47. According to the defendant, the DPA is not competent to enforce the (transposition
of the) e-Privacy directive because this competence has been entrusted to the FPS Economy

by the Belgian legislator. In addition, it would appear from opinion 5/2019 of the European Committee for data protection that the DPA must limit its examination in such cases to operations processing that does not fall under the specific rules of the e-Privacy Directive.

48. The Litigation Division refutes this assertion. Apart from the fact that the FPS Economy cannot be qualified as an independent monitor within the meaning of Article 8, paragraph 3 of the Charter of Fundamental Rights of the European Union, and for this reason alone already cannot be entrusted with the control, insofar as this control concerns the processing of personal data15, Article 4, § 1 of the LCA defines the competence of the DPA extensively, as already mentioned above. This extends to the "control compliance with the fundamental principles of personal data protection personnel, within the framework of this law and the laws containing provisions relating to the protection of the processing of personal data". Therefore, DPA is not only competent to monitor compliance with the GDPR which, as a legislative act directly applicable (under Article 288 of the Treaty on the Functioning of the European Union European), is automatically part of the Belgian legal order, but also of the laws national laws which contain provisions relating to the processing of personal data personal character, such as the provisions of national law which transpose the Directive e-Privacy.

49.

It appears from the preparatory work of the LCA that the legislator, after remarks by the Council of State in this sense, has deliberately chosen a formulation of the competence of the DPA which was much more extensive than the simple competence to enforce the GDPR (proper underlining):

–

“The Council of State rightly cites that the Commission for the Protection of Privacy has, according to the law on privacy, a more extensive material competence than that attributed to the Authority

data protection based on Regulation 2016/679. Whatever the future framework law

15 See points 52-56 below.

replacing the law on privacy, the question arises of the relationship of the Data Protection Authority

data to this additional material dimension, not only in relation to the law on

privacy but also with regard to other legislation under which

other tasks would fall to the authority overseeing legislation containing provisions

relating to the processing of personal data. To answer this, the project of

law clarifies the mandate of the Data Protection Authority by indicating that it is

responsible for monitoring compliance with the fundamental principles of data protection

personal data within the framework of this law and other legislations which contain provisions

relating to the processing of personal data." 16

50.

It was therefore considered desirable that the material competence of the DPA be broader than

monitoring compliance with the GDPR. Material competence had to be defined in such a way

that the DPA can also monitor other legislation on the protection of

data and even compliance with provisions relating to the processing of personal data

personnel in any other legislation. It cannot therefore be disputed that with Article 4,

§ 1 of the LCA, the legislator clearly intended to entrust the DPA with the competence to

monitor (in particular) the national transposition of the e-Privacy Directive.

51.

The jurisdiction of the Litigation Chamber follows the definition of material jurisdiction

of ODA. In accordance with article 32 of the LCA, the Litigation Chamber is indeed

"the administrative litigation body of

the Data Protection Authority".

Nothing in the LCA suggests that the Litigation Chamber could not

settle only disputes concerning the GDPR. On the contrary: Article 60 of the LCA requires only that a complaint lodged with the Front Line Service "falls within the jurisdiction of the Data Protection Authority" and Article 63, 6° of the LCA authorizes the Inspection Service to take up a case itself "when it finds that there are serious indications of the existence of a practice likely to give rise to an infringement of the fundamental principles of the protection of personal data, within the framework of this law and of the laws containing provisions relating to the protection of the processing of personal data". In both cases, the competence material to become aware of a possible violation of the right to protection of data is considerably more extensive than the GDPR.

52. The defendant attributes the incompetence of the DPA to the fact that the Code of Economic Law ("CDE") would entrust the implementation of the national transposition of the provisions of the e-Privacy Directive to the FPS Economy. This assignment of skills would exclude the competence of the DPA. The defendant thinks it finds a basis for this vision in Opinion 5/2019 of the European Data Protection Board.

16 Doc. Speak. Chamber 2016-2017, n° 54-2648/001, 9.

53. The Litigation Division points out that this argument is incorrect. As it emerges of Article 15a(3) of the e-Privacy Directive, nothing prevents a Member State from designate if necessary, several national bodies to enforce THE provisions of this directive17. We can therefore in no way deduce from a possible allocation of powers to the FPS Economy that ODA would automatically be incompetent to ensure the application of the e-Privacy Directive.

54. Rather than contradict this assertion,

the aforementioned Opinion 5/2019 confirms

specifically that Member States may designate several authorities responsible for

ensure compliance with

there

national legislation transposing

the e-Privacy Directive18.

In addition, the opinion emphasizes that data protection authorities are regardless

competent to apply the GDPR to data processing, even in the context

where other authorities would be competent, under the national transposition of the

e-Privacy Directive, to control certain elements of personal data processing

staff :

–

“The data protection authorities are competent to control the application of the

GDPR. The mere fact that a subset of the processing falls within the scope of the

directive "privacy and electronic communications" does not limit the competence of the authorities

data protection under the GDPR-.” 19

55. Obviously, they can only apply the e-Privacy Directive if they have been

empowered under

there

national legislation20. As has been demonstrated

previously, this is indeed the case.

56. Furthermore, it should be noted that the FPS Economy, unlike the ODA, does not fulfill

the requirements of Article 8 of the Charter of Fundamental Rights of the European Union and

cannot therefore act as a national controller of compliance with the e-Privacy Directive.

Paragraph 3 of Article 8 of the Charter indeed explicitly prescribes that an "authority

independent" must monitor compliance with Union legislation on the protection

law

fundamental to

the protection of personal data.

This independence is particularly developed in Articles 52 and 53 of the GDPR and in

recitals 117 to 122 and is accompanied by a prohibition on accepting instructions

from anyone. It goes without saying that the FPS Economy, as part of the executive power, does not

17 Article 15a, paragraph 3 of the e-Privacy Directive: “Member States shall ensure that the competent national authority and, where appropriate, other national bodies have the necessary investigative powers and resources, [...]”. See also recital 117 of the preamble of the GDPR: "[...] Member States should be able to put in place several supervisory authorities according to their constitutional, organizational and administrative structure”.

18 Opinion 5/2019, § 74, see footnote 8 above.

19 Ibid., § 69.

20 Ibid., § 75.

does not fulfill this independence requirement and therefore cannot be considered

as an independent authority within the meaning of Article 8, paragraph 3 of the Charter.

57. Competence of the Litigation Chamber for the application and control of the application

both of the GDPR and of the e-Privacy Directive is therefore indisputably established.

c) Principle of purpose limitation and lawfulness of processing

58. The Inspection Service asserts that with regard to

the site

Internet

https://mystamp.bpost.be/

(MyStamp)

Thus

that

For

https://parcel.bpost.be/fr/home/residential (SML), the purpose limitation principle is

violated by the fact that an automatic coupling is established in the terms and conditions that it

must necessarily agree between own direct marketing and advertising networks

of third parties. According to the Inspection Service, this is a combination of incompatible processing

totally different, i.e. ordering and using for two incompatible forms

direct marketing. Thus, the Inspection Service further asserts that the defendant does not

does not determine the purposes and means of advertising platforms, in particular

Google and Facebook, and that the data subject has the right to be clearly informed

of each purpose of use that will be pursued with the data communicated.

59. The Litigation Chamber specifies that contrary to what the inspection report leaves

understand, this is not the case of the least incompatible processing within the meaning of the

GDPR. It is indeed possible to process personal data for several

distinct purposes, provided that these purposes are from

the start clearly

communicated to the person concerned and that the latter is therefore informed at the

time of data collection. The defendant collected the personal data

complainant's personnel for specified, explicit and legitimate purposes (Article 5.1.b)

of the GDPR), namely to place an order AND for direct marketing purposes, and

informed at the time of data collection as part of the ordering process.

60. Incompatible processing within the meaning of Article 5.1.b) of the GDPR is only considered if the

data already collected are processed by the data controller after the collection of the

data for a purpose other than the one(s) initially communicated and that this

purpose of the further processing envisaged is incompatible with the initial purposes21.

This is not the case here, given that the defendant communicated each

of the purposes of the processing at the time of data collection.

21 See, a contrario, recital 50 of the GDPR: "The processing of personal data for purposes other than those for which the personal data was originally collected should only be allowed if it is compatible with the purposes for which the personal data was originally collected."

61. In addition, each of the two purposes of data processing has a legal basis

(Article 6 GDPR). The processing of data in order to place an order is based on Article 6.1.b) of the GDPR and the processing of the data thus obtained with a view to carrying out direct marketing is based on Article 6.1.f) of the GDPR. To this end, the defendant refers to the privacy statement in which the legal bases are mentioned by finality. Thus, during the hearing, the defendant again explicitly referred to the 'tick box' mentioning "I accept the general conditions and I have been informed about the processing of my personal data described therein, such as the use of my data by bpost to inform me of similar services and actions from bpost. You can unsubscribe at any time via each e-mail. "[NdT: translation produced by the translation service of the General Secretariat of the APD, in the absence of official translation]. This tick box is necessary for distance selling and by ticking this tick box, the customer agrees to the general conditions and the Confidentiality declaration. The defendant thus fulfills its obligation to inform and the customer's consent is not requested in any way, nor does he give their consent for the processing of personal data. The tick box simply indicates that the customer is in the ordering process and that the necessary information has been given in order to be able to draw up a contract. Bedroom Litigation therefore considers that the processing of personal data collected as part of the order process is lawful under Article 6.1.b) of the GDPR.

62. In addition, the defendant has, with regard to its customers, the possibility of processing

personal data in question for direct marketing purposes under

the legitimate interest (article 6.1.f) of the GDPR), provided that the conditions for this purpose are

fulfilled.

63. In accordance with the case law of the Court of Justice of the European Union, three

cumulative conditions must be met for a controller to be able to

validly invoke this basis of lawfulness, "namely, first, the prosecution of a

legitimate interest by the controller or by the third party(ies) to whom the data

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

personnel for the achievement of the legitimate interest pursued and, thirdly, the condition

that the fundamental rights and freedoms of the person concerned by the protection of

data do not prevail" (judgment "Rigas"22).

22 CJEU, 4 May 2017, C-13/16, Valsts policijas Rīgas reģiona pārvaldes Kārtības policijas pārvalde v Rīgas pašvaldības SIA „Rīgas satiksme”, recital 28. See also CJEU, 11 December 2019, C-708/18, TK v Asociația de Proprietari block M5A-ScaraA, recital 40.

64. 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:

1.

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

(the "finality test");

2.

3.

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

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

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

weighting").

65. With regard to the first condition (the so-called "finality test"), the Chamber
Litigation believes that the purpose of promoting its own products and
defendant's services via several channels can be qualified as a legitimate interest.
In accordance with recital 47 of the GDPR, the interest that the defendant pursues as
as controller can in itself be considered legitimate. The first one
condition set out in Article 6.1.f) of the GDPR is therefore fulfilled.
66. In order to fulfill the second condition, it must be demonstrated that the processing is necessary
for the achievement of the purposes pursued. This means more precisely that one must
ask if the same result cannot be achieved with other means, without
processing of personal data or without substantial processing unnecessary for the
persons concerned. In order to be able to reach its customers to promote services and
similar actions, the defendant must be able to use the contact details of its clients to
commercial actions. Without these coordinates, it is simply not possible
for the defendant to reach out to clients to promote such actions
commercial. The need to use customer data also for purposes
trade is therefore established. Faced with this, there is the right of opposition of the complainant who can
be exercised at any time and without the slightest motivation and to which the defendant must
simply follow through. In concrete terms, the defendant also acted on it.
The defendant provides a document which demonstrates that at the time of receipt in its
personal data systems from the ordering process, a
opt-out email is sent to MyStamp customers with information about the possibility
to oppose the use for direct marketing purposes and the opposition can be exercised
simply, that is to say by means of a single click. The defendant thus refutes the assertion
of the Inspection Service according to which no right of opposition is offered, given that the
observation of the Inspection Service is based on a simulated and not finalized purchase which has not
not led to an effective order, which implies that the Inspection Department did not

received the opt-out email.

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67. Using the documents disclosed, the defendant also demonstrates that in the context of

of the ordering process for an SML service, it provides data subjects with

practical and operational information concerning the exercise of rights, including the right

of opposition, both in the general conditions for the SML service and in the

specific privacy statement for the SML service. The same goes for the eShop,

for which the defendant also demonstrates on the basis of documents that during the

ordering process, the person concerned is informed, by a reference to the

privacy statement, of the processing activities that the defendant carries out at

for direct marketing purposes and the person concerned has the possibility of opposition via the

'checkbox' in

the ordering process. According

bedroom

Litigation, the defendant thus complies with the requirements set out in Articles 12.1 and

12.2 GDPR.

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

weighting" between the interests of the controller on the one hand and the freedoms and

fundamental rights of the data subject on the other hand - can be fulfilled, one must take

account 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 data collection, to

personal character, that they are processed for a given purpose"23.

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

block M5A-ScaraA" of December 11, 201924, which specifies 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

where, in the circumstances of the case, that person cannot reasonably

expect further processing of these."

70. Already at the time of data collection in the context of placing the order, it is

clearly indicated to the customer from the outset that this same data may also be

used for direct marketing purposes. The two initial purposes, namely the processing of

data for the execution of the order on the one hand and the making of contact for the purposes of

direct marketing on the other hand, are known to the customer from the start since the

defendant informed him explicitly. Thus, it is clear from the start for the customer that he

can expect to be contacted for commercial actions. The third condition is

therefore also fulfilled.

23 Recital 47 GDPR.

24 CJEU, 11 December 2019, C-708/18, TK v Asociația de Proprietari block M5A-ScaraA, recital 58.

71. In this context, the Litigation Chamber emphasizes, for the sake of completeness, that the

data obtained is only used for direct marketing purposes by the defendant

itself, namely to provide information on similar services

offered by the defendant.

72. The fact that the defendant can use the personal data obtained in

as part of the ordering process for advertising purposes relating to services

analogues derives from Article XII.13 of the CDE25, as established in the Royal Decree on

electronic mail26, and the provisions of articles VI.110 e.s. of the CDE for the sending of

direct marketing through other channels. In other words, reasonable expectations

data subjects can also be deduced from these provisions of the CDE.

The Litigation Chamber clarifies this element below.

73. For electronic mail, Article 1 of the Royal Decree on electronic mail provides

the following (proper underlining):

“Article 1. Notwithstanding article 14, § 1, first paragraph, of the law of 11 March 2003 on certain aspects

information society services, and without prejudice to Article 2 of this Order,

any service provider is exempted from seeking prior consent to receive advertisements by

email :

1° with its customers, natural or legal persons, when each of the following conditions

is fulfilled:

a) he obtained their electronic contact details directly in the context of the sale of a product or

of a service, in compliance with the legal and regulatory requirements relating to the protection of the

private life ;

b) it uses said electronic contact details for advertising purposes exclusively for

similar products or services provided by itself;

c) it provides its customers, at the time their electronic contact details are collected, the option

to oppose, free of charge and in a simple manner, such exploitation.

2° with legal persons if the electronic contact details he uses for this purpose are

impersonal."

74. For direct marketing through channels other than email,

Article VI.110, § 2 of the CRC provides the following (own emphasis):

"Art. VI.110. § 1. The use of automated call systems without human intervention and

fax machines for direct marketing purposes is prohibited without the prior, free,

specific and informed of the recipient of the messages. The person who has given his consent may

withdraw it at any time, without giving reasons and without any costs being charged to it.

25 The Code of Economic Law.

26 Royal Decree of 4 April 2003 regulating the sending of advertisements by e-mail.

charge. The burden of proof that the communication made by means of a technique

mentioned in this paragraph, or determined pursuant to this paragraph has been requested,

to the transmitter. The King may, by decree deliberated in the Council of Ministers, extend the prohibition referred to in

paragraph 1 to communication techniques other than those mentioned therein, given their

evolution.

§ 2. Without prejudice to Article XII.13, unsolicited communications for prospecting purposes

direct, carried out by techniques other than those mentioned in paragraph 1 or determined

pursuant to this, are only authorized in the absence of manifest opposition from the recipient,

natural or legal person or with regard to subscribers subject to compliance with the

provisions set out in articles VI.111 to VI.115.

[…]"

75.

Moreover, it does not in any way appear from the factual elements of the file that these data are

made available to third parties who in turn use them for their own marketing purposes

direct, as the inspection report assumes. The Inspection Service alludes to a

sale or rental of personal data to a third party in cases where the

defendant uses a social media platform specifying that the data to be

personal character obtained for the execution of the contract are automatically coupled

not only to the use of personal data for marketing purposes

directly for similar services offered by the defendant but also to

use for third-party advertising platforms that are not so listed

limited ("Google, Facebook, Twitter, LinkedIn, ..."). According to the Inspection Service, this is

here of a coupling of completely different and incompatible treatments and there is a

automatic coupling of a command to the use of two incompatible forms of

direct marketing for which the defendant does not determine the purposes and

means of advertising platforms, in particular Google and Facebook.

76. The Litigation Chamber must note in this respect that the Service's allegation
of Inspection that third parties use the personal data of customers
of the defendant for its own direct marketing purposes has not been examined and that in
Consequently, no element supporting this information appears in the file.
77. The Litigation Chamber considers that with regard to direct marketing activities,
the defendant rightly invokes Article 6.1.f) of the GDPR and the processing of data
as part of the ordering process is based on Article 6.1.b) of the GDPR. Bedroom
Litigation also concludes that no element is provided indicating that for what
concerns the MyStamp and SML services, the defendant would have acted against the
requirements of Article 5.1.b) of the GDPR and Articles 12.1 and 12.2 of the GDPR.
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d) Data minimization principle
78. According to the Inspection Service, the defendant violates the principle of data minimization
(article 5.1.c) of the GDPR) on the one hand by coupling the processing of the order to more than
personal data as necessary, namely the mobile phone number, and on the other hand
unilaterally providing that personal data for the
order undergo more processing than necessary (advertising platforms of
third parties), both for the MyStamp service and for the parcel service (SML).
79. The defendant explains that with regard to the MyStamp service, at the time of the
complaint, both the e-mail address and the mobile phone number of the customer, and therefore also of the
complainant, had to be provided to place an order. At the time, the mobile number
was considered necessary in order to quickly contact the customer if a problem of
delivery arose. The defendant also points out in this context that at no time,
the mobile number was only used to approach customers for direct marketing purposes.
Since the use of the GSM number has greatly decreased in practice, this data
is no longer a mandatory field either.

80. With regard to the SML service, the defendant points out that at no time did the number

de GSM was not a mandatory field and has therefore always been optional.

81.

It follows from the foregoing that the defendant gives a convincing justification for

the processing of customers' mobile phone numbers as part of the MyStamp service and that it is

left to the free choice of the customer to communicate or not his GSM number within the framework of the

SML service. The Litigation Chamber therefore considers that a violation cannot be held

of Article 5.1.c) of the GDPR with regard to the processing of the mobile phone number by the

defendant.

82. The Inspection Service asserts that the principle of data minimization has been violated given

that the defendant may use third-party advertising platforms for the purposes of

direct marketing concerning similar products of the defendant.

83. The Litigation Chamber judges in this respect that the principle of data minimization in

the case cannot have the consequence that certain means which are used, in

the occurrence of social media channels, are excluded. Article 5.1.c) of the GDPR establishes

that personal data must remain adequate, relevant and limited to

what is necessary in relation to the purposes for which they are processed, involving

that personal data may only be processed if the purposes of the

processing cannot reasonably be performed in any other way.

84.

It is necessary to determine to what extent, for the processing of personal data

personal data for direct marketing purposes, certain personal data of

customers must necessarily be treated. The principle of data minimization does not

however, cannot be used to assert that by definition, media channels

are not the appropriate instrument for this purpose. This principle applies only

to assess to what extent personal data may or may not be

processed to achieve the purpose, not to assess whether the means used to achieve the purpose

may be authorized if it is already established that a certain data processing is required for

to be able to achieve the goal. The file also does not contain any elements or evidence

that the use of social media channels would in this case have given rise to a violation

the principle of data minimization. It follows that the Litigation Chamber concludes

about the use of third-party advertising platforms for direct marketing purposes

concerning similar products of the defendant, both as regards the service

MyStamp than the SML service, there is no evidence of a violation of Article 5.1.c) of the GDPR.

e) Default Data Protection and Data Protection Officer

• Possibilities of communication with the defendant

85. The Inspection Service asserts that the defendant must provide customers with an address

e-mail for the exercise of rights, in addition to the possibility already provided to contact via

a contact form online or by mail.

86. Referring to articles 13.1.a) and b) and 14.1.a) and b) of the GDPR, the Litigation Chamber

points out that the GDPR requires that "the contact details of the controller" be

provided to the person concerned, as well as "where applicable, the contact details of the delegate to

data protection". The controller is free to use the means

appropriate to fulfill this obligation. This also conforms to the lines

guidelines on transparency within the meaning of Regulation (EU) 2016/679 of the Working Party

"Article 29" on data protection which provides in the appendix that the information

included in Articles 13.1.a) and 14.1.a) of the GDPR promote different forms of

communication with the data controller (for example, telephone number,

e-mails, postal address, etc.)27. With regard to the contact details of the delegate for the

data protection, the aforementioned guidelines refer to the guidelines

Guidelines for Data Protection Officers, which provide that data protection officers

contact details of the data protection officer must contain information

allowing data subjects and supervisory authorities to reach it

easily (a postal address, a specific telephone number and/or a

27 Guidelines on transparency within the meaning of Regulation (EU) 2016/679 of the Article 29 Working Party on the

data protection: "This information should make it possible to easily identify the data controller and

favor different forms of communication with the data controller (for example, telephone number,

e-mail, postal address, etc.)."

specific email). If necessary, for the purposes of communication with the

public, other means of communication could also be provided, for example,

specific telephone assistance, or a specific contact form addressed to the

DPO on the organization's website28.

87. Given that the defendant opted for communication via a form of

contact online and by post, the choice of an online contact form rather than a

simple e-mail having been dictated by the considerable number and the wide variety of requests

of the persons concerned (in the context of which it is important that they contain

ab initio as much essential and relevant information as possible, which is more

easily applicable via a contact form), which, in accordance with the GDPR, must

obtain a response within one month of receipt, the Litigation Chamber in

concludes that the respondent complies with the requirements set out in Articles 13.1.a) and b) and

14.1.a) and b) GDPR.

•

Place where the information on the possibilities of communication for the person is located

concerned

88. The Inspection Service considers that the hyperlink for the exercise of human rights

concerned should be published on the home page of the defendant's website

rather than in the privacy statement. The Inspection Service also asserts
that the data subject has to go through too many steps before finding the
contact details for consulting the defendant electronically. This would constitute a
violation of Article 12.2 of the GDPR.

89. The defendant demonstrates that the information on the processing of personal data
personnel, including contact details for a request to exercise rights, are included
in the privacy statement. The actual privacy statement
can be consulted via a hyperlink mentioned on each page of its website.

90. Under Article 12.2 of the GDPR, the Litigation Chamber cannot establish that it would be
required to resume the hyperlink for the exercise of rights directly on the home page
of the website. Nor is it required by the guidelines on the
transparency29 nor by the guidelines on the rights of the data subject30.

Furthermore, the defendant demonstrates that the declaration of confidentiality does indeed include

28 Guidelines for Data Protection Officers (DPOs) of the Article 29 Working Party on the
data protection: "The contact details of the DPO must contain information allowing persons
concerned and to the supervisory authorities to reach it easily (a postal address, a telephone number
specific and/or a specific e-mail address). If necessary, for the purposes of communication with the
public, other means of communication could also be provided, for example, telephone assistance
or a specific contact form addressed to the DPO on the organisation's website."

29 Guidelines on transparency within the meaning of Regulation 2016/679 of the Article 29 Working Party on the protection
Datas.

30 Guidelines 01/2022 on data subject rights - Right of access (currently only available in English).

a direct hyperlink to the online contact form, both for MyStamp, SML or
the eShop. On this basis as well as due to the fact that the defendant provides
information on contact options regarding the exercise of personal rights

concerned, combined with information on these rights, in the declarations of confidentiality both of the general website and of the MyStamp, SML and eShop websites, the Litigation Chamber affirms that there was no violation of article 12.2 of the GDPR and that the defendant therefore effectively facilitates the exercise of human rights concerned.

•

The contact form

91.

The Inspection Service asserts that the way in which the defendant designed its form of contact is both disproportionate and dysfunctional in light of the exercise of rights of the data subject. According to the Inspection Service, the form constitutes a violation of the principle of fairness and transparency (article 5.1.a) of the GDPR) and the principle of minimization of data (Article 5.1.c) of the GDPR), as well as the obligation to facilitate the exercise of the rights of the data subject (article 12.2 of the GDPR) and the requirement of data protection by design (article 25 of the GDPR).

92. The defendant argues that explanations are included in the contact form for each field to be completed in the form on the intended use of this data determined, precisely with a view to indicating the need for processing them. Furthermore, the defendant demonstrates that the online contact form offers a structured process that guides the data subject through the information whose defendant needs in order to be able to respond to a request from the person concerned, with a view to organizing and facilitating the exercise of rights.

93. The Litigation Division also notes in this respect that the contact form in respondent's line meets the requirements of Articles 5.1.a), 5.1.c), 12.2 and 25 of the GDPR.

III. Publication of the decision

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

Litigation, this decision is published on the website of the Protection Authority

of the data, with mention of the defendant's identification data. This notice

is justified by the inevitable re-identification of the defendant in the event of pseudonymization.

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FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority decides, after

deliberation, to close this complaint without further action, pursuant to Article 100, § 1, 1° of the

LCA, since no violation of the GDPR can be established in this regard.

Pursuant to Article 108, § 1 of the LCA, this decision may be appealed to the

Court of Markets (Brussels Court of Appeal) within thirty days of its

notification, with the Data Protection Authority as defendant.

Such an appeal may be lodged by means of a contradictory request which must include the

particulars listed in article 1034ter of the Judicial Code31. The contradictory request must be

filed with the registry of the Markets Court in accordance with article 1034quinquies of the Code

court32, or via the e-Deposit computer system of Justice (article 32ter of the Judicial Code).

(Sr.) Hielke HIJMANS

President of the Litigation Chamber

31 "The request contains on pain of nullity:

the indication of the day, month and year;

1°

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

number or

Business Number ;

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

4° the object and the summary statement of the means of the request;

5° the indication of the judge who is seized of the application;

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

32 "The request, accompanied by its appendix, is sent, in as many copies as there are parties involved, by letter recommended to the clerk of the court or filed with the registry."