Decision on the merits 48/2021 of 08 April 2021

Litigation Chamber

File number: DOS-2020-02322

Subject: Complaint against a notary for unlawful consultation of the National Register

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

Hijmans, chairman, and Messrs. Y. Poullet and C. Boeraeve, members, taking up the case in this

composition;

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 GDPR;

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

Having regard to the Law of August 8, 1983 organizing a National Register of Natural Persons (hereinafter the RN Law);

Having regard to the Rules of Procedure 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: Mrs. X. Hereinafter “the complainant”.

The defendant: Mrs Y, Having as counsel Maître Sari Depreeuw, lawyer, whose firm is

established avenue Louise, 81 in 1050 Brussels. Hereinafter “the defendant”.

1. Feedback from the procedure

Having regard to the complaint filed by the complainant with the Data Protection Authority (APD) on May 14

2020;

Having regard to the decision of June 11, 2020 of the Front Line Service (SPL) of the APD declaring the complaint admissible

and the transmission thereof to the Litigation Chamber;

Having regard to the letters of July 14 and August 19, 2020 from the Litigation Chamber informing the parties of

its decision to consider the file as being ready for substantive processing on the basis of Article

98 LCA and communicating to them a timetable for the exchange of conclusions;

Having regard to the submissions filed by the defendant on October 1, 2020;

Having regard to the conclusions filed by the complainant on October 21, 2020;

Having regard to the final conclusions filed by the defendant on November 13, 2020;

Having regard to the invitation to the hearing sent by the Litigation Chamber to the parties on January 20, 2021;

Having regard to the hearing during the session of the Litigation Chamber of March 2, 2021 in the presence of Maître S.

DEPREEUW and Maître O. BELLEFLAMME representing the defendant;

Having regard to the minutes of the hearing and the observations made thereon by counsel for the

defendant which have been attached to these minutes.

2. The facts and the subject of the request

1. The defendant is a notary in Flanders.

2. The defendant, in the course of 2019, hired the complainant as a notarial lawyer

in his office under a permanent contract that started in August 2019. Under the terms of the

contract, the complainant is identified as being domiciled in Wallonia. A second relative contract

to the awarding of ecocheques was also signed between the parties. Under it, the

complainant is also identified as being domiciled in Wallonia. This contract provides in its

article 4 that the ecocheques will be credited monthly to the ecocheques account of the

complainant. During the hearing (see below), the defendant however indicated that there was always

sending ecocheques by post for the duration of the contract with the complainant.

3. The defendant explains that the complainant had settled in Flanders near the office during

that she worked with her to limit the travel time between her place of work and her place of

residence, while retaining his domicile in Wallonia.

4. This working relationship ended in February 2020 following the complainant's resignation in

a climate which the defendant describes as tense, all trust having been broken between the parties.

Decision on the merits 48/2021- 3/15

5. At the end of this employment relationship, the defendant remained liable for an amount of 56.07

euros in ecocheques vis-à-vis the complainant. After an initial reminder, the complainant sent a

second reminder to the defendant by e-mail on March 16, 2020.

6. These ecocheques were sent by the defendant to the plaintiff's home address, namely

in Wallonia, by registered letter of March 16, 2020. Beforehand, the defendant indicates

having verified the complainant's address in the National Register.

7. On April 19, 2020, the Complainant sent an email to the Respondent complaining about this

consultation of its National Register on the previous March 14.

8. In response, the defendant explained to the complainant the reasons for this consultation. The

defendant thus indicated that it had wanted to verify the exact address to which it should

send the ecocheques to the complainant, as soon as she knew that the complainant had several

addresses, in Flanders and Wallonia. The defendant explained that at the end of the relationship

contractual, she was not certain as to the address to which it was appropriate, on the eve of

the entry into force of the containment measures, send the ecocheques to the complainant.

9. On May 14, 2020, the Complainant filed a complaint with the DPA.

Subject of complainant's complaint

10. According to the terms of her complaint, the complainant complains “of a consultation of her national register by

the defendant outside any consent on its part and any legal framework” as well as

“use of access to the population register outside the specific regulations

obtaining information from population registers”.

11. According to her conclusions, the complainant also raises a lack of information in the

head of the defendant in violation of Article 14 of the GDPR. Specifically the complainant

-

-

asks the Litigation Chamber:

to declare his complaint admissible and founded;

to note the violation of the Law of August 8, 1983 organizing a National Register of persons

(RN Law) and the Royal Decree of 11 September 1986 authorizing access by notaries to the

national register of natural persons;

-

to note the violation of the fundamental principles of data protection

personal;

-

to pronounce a penalty.

Defendant's position

Decision on the merits 48/2021- 4/15

12. Principally, the defendant asks the Litigation Chamber to declare itself incompetent

to deal with the complainant's complaint and to dismiss it as inadmissible.

13. In the alternative, the defendant asks the Litigation Chamber to declare the complaint

unfounded, considering that it did not violate the fundamental principles of data protection

personal and therefore to order a dismissal.

14. In the further alternative, if the Litigation Division were to find a violation of the principles

fundamentals of the protection of personal data, the defendant requests the

suspension of the pronouncement.

15. Finally, as an infinitely subsidiary matter, the defendant asks that account be taken of the

mitigating circumstances to limit the corrective measure pronounced to a warning, or even to

a reprimand.

3. The hearing of March 2, 2021

16. During the hearing, the minutes of which were drawn up, the following elements were brought to light

-

-

light by the defendant, the complainant not being present at the hearing:

the incompetence of the Litigation Chamber to deal with the complaint;

the relationship difficulties encountered from the outset with the complainant and the loss of trust

of the defendant with regard to the plaintiff, this rupture reaching its apogee

at the end of the contract;

-

the fact that it is inaccurate to claim that notaries would have access to all the data to be

personal character contained in the National Register, their consultation being limited to

data covered by the Royal Decree of 11 September 1986 on the one hand and the mention that

the application available to notaries does not allow consultation targeting only data

“address” to the exclusion of any other on the other hand;

-

the good faith of the defendant who, faced with a conflicting situation, acted out of a concern to

protect against any reproach of sending to an address which would not have been the correct one;

-

the implementation of a series of measures adopted by the defendant aimed at putting itself in

compliance with the obligations of the GDPR which arise from its capacity as responsible for

processing: security policy, register of processing activities, appointment of a delegate

data protection etc.

PLACE

Decision on the merits 48/2021- 5/15

4. As to the competence of the DPA, in particular of its Litigation Chamber

17. The DPA is the Belgian authority responsible in particular for monitoring compliance with the GDPR in application

Article 8 of the Charter of Fundamental Rights of the European Union (EU), Article 16 of the

Treaty on the Functioning of the European Union (TFEU) and Article 51 of the GDPR. Regarding

of Article 51 of the GDPR more specifically, it requires each EU Member State to

set up one or more independent public authorities responsible for monitoring

the application of the GDPR in order to protect the fundamental rights and freedoms of natural persons

with regard to the processing of their data. The GDPR adds to this effect that each authority must

benefit from a certain number of missions (listed in article 57 of the GDPR) including that of processing

complaints (Article 57.1.f) of the GDPR) as well as a number of powers (Article 58 of the GDPR).

18. Under the terms of article 3 LCA, the Belgian legislator instituted the DPA whose Litigation Chamber is

the administrative litigation body (article 32 LCA).

19. This control by the DPA, via its Litigation Chamber in particular, is an essential element of the

protection of individuals during the processing of personal data concerning them.

20. As the Litigation Chamber has already had occasion to express in its decisions 17/20201 and

80/20202 among others, the supervisory authorities - such as the DPA - must exercise their powers

for the effective application of European data protection law. To guarantee

the effectiveness of European law is one of the major tasks of data protection authorities

member states under EU law. The control by the Litigation Chamber constitutes

In this respect, one of the instruments available to ODA to ensure compliance with the rules relating to the

data protection, in accordance with the provisions of the European treaties, the GDPR and

of the ACL.

21. In Article 4 LCA, it is provided that the DPA is “responsible for monitoring compliance with the principles

fundamentals of the protection of personal data, within the framework of this law

and laws containing provisions relating to the protection of the processing of personal data

staff ".

22. The explanatory memorandum to the LCA clearly and unequivocally clarified the interpretation to be

give in article 4 LCA in the following terms: “Art. 4: The Data Protection Authority

1 https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-17-2020.pdf

2 https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-80-2020.pdf

data is competent to exercise the missions and mandates of control of the respect of the principles

fundamentals of personal data protection as established in the Regulation

2016/679. The Data Protection Authority acts with regard to the regulations which

contains provisions relating to the processing of personal data such as, for

example, the law establishing a national register, the law relating to the crossroads bank for security

social security, the law relating to the crossroads bank for companies, etc. (…)"3 (This is the Chamber

Litigation that emphasizes).

23. Under these "laws containing provisions relating to the protection of the processing of personal data

of a personal nature", Law RN4 is therefore explicitly mentioned.

24. In conclusion, the control mission of the DPA encompasses compliance with the GDPR in its entirety.

This reading is the only one that gives useful effect to Articles 3 and 4 LCA, which must be read in

combination with Article 51 GDPR. The jurisdiction of the DPA (and of its litigation body

administrative – the Litigation Chamber) is therefore, in support of the foregoing, in no way limited

by the notion of "fundamental principles of data protection" read in isolation, regardless of

either the content that some would seek to give to this notion for the needs of one or

the other cause or attempt to escape the control of the DPA (see point 26 below). Likewise, it is certain

that the competence of the DPA also includes the control of compliance with the protection provisions

data contained in specific legislation such as the RN Law or the "Law

Cameras"5 to cite just these two examples6. Here again, all of these provisions are

referred to and not only those which would participate in the "fundamental principles of the protection

Datas ".

3 Explanatory memorandum to the Law of 3 December 2017 establishing the Data Protection Authority (APD),

House of Representatives, DOC 54 2648/001, page 13 under article 4.

4 Ibid.

5 Law of 21 March 2007 regulating the installation and use of surveillance cameras (hereinafter the Cameras Law),

MB, May 31, 2007.□

6 Decision 19/2020 to□

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-19-2020.pdf□

Decision 16/2020 at□

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-16-2020.pdf;□

Decision 61/2020 on a complaint of unlawful processing of personal data after□

consultation□

audience:□

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-61-2020.pdf□

Decision 80/2020 on camera surveillance in a car wash:□

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-80-2020.pdf□

.□

consultation of the National Register within a city:□

look of surveillance cameras□

store entrance:□

installed at□

with regard to□

organization□

of interest□

national□

Register□

in□

through□

a□

the□

25. Finally, the Litigation Chamber draws attention to the fact that Article 4.2 LCA excludes jurisdiction
ODA in a very limited number of cases, specifically provided for by the LCA itself or by
other legislation. The DPA is the competent data protection supervisory authority.
defect, any legal vacuum, any lack of competence to control one or other processing
of personal data should be avoided.
Application to the present case – the question of access to the National Register (rather than to another
database)
26. While admitting the competence of the APD with regard to the RN Law, the defendant nevertheless indicates
only to avoid conflicts of jurisdiction (with regard to the Minister of the Interior with regard to the
RN in this case), the legislator would have limited the competence of the DPA to monitoring compliance “with the
fundamental principles of data protection”. These "fundamental principles of
data protection” not being defined by the national legislator, it would be appropriate according to the
defendant to understand them as being limited to the principles set out in section 8 of the Charter
fundamental rights of the Union and, having regard to the structure of the GDPR, the content of Chapter II
of the GDPR and the rights of data subjects.
27. In this respect, the defendant highlights the fact that “If Me Y, [read the defendant], as
that notary had access to the National Register and, as an employer, to the Banque-Carrefour de la
Social Security (BCSS) and whether the National Register and the BCSS both contain the same
information relating to the address of Ms X [read complainant], the relevant question before the DPA
is not that of the legitimacy of the processing of personal data but that of access to
respective databases. The defendant adds in conclusion that "what remains to be verified
is compliance with the conditions of access to the national register resp. BCSS”. This check would be
according to the defendant of the competence of the Minister of the Interior, the DPA not having the competence
to decide on the preference for access to one or the other database. The defendant
considers that this access preference is not part of the "fundamental principles of
data protection”.

28. The Litigation Division refutes the arguments developed by the defendant with regard to its skill. As it explained above at points 21-24, its jurisdiction is in no way limited to monitoring compliance with “the fundamental principles of data protection” such as only restrictively interpreted by the defendant.

29. The Litigation Chamber will also demonstrate that there is not, and cannot be, a conflict of jurisdiction with the Minister of the Interior (point 35).

Decision on the merits 48/2021- 8/15

30. The Litigation Chamber is therefore of the opinion that the complaint was rightly declared admissible by the SPL on the basis of article 60.1. LCA for the following reasons.

31. The Chamber notes on the one hand that under the terms of her complaint, the Complainant alleges that the Respondent to have consulted their data in the National Register outside any legal framework and in the absence basis of lawfulness. Access to the National Register being strictly regulated as will be detailed below, its consultation (which constitutes processing within the meaning of article 4.2. of the GDPR) must, in order to be qualified as lawful, meet all the conditions required by both the GDPR and by the RN Law (see point 35 and title 5 below).7

32. The Litigation Chamber recalls article 5.1 of the RN Law which lists in its paragraph 4 the notaries among the professionals authorized to access the data of the National Register, including the address, subject to authorisation.8 This authorisation, now issued by the Minister of the Interior, was in the past either by the Sectoral Committee of the National Register (CSRN) or by means of an order royal.9

33. The Litigation Chamber points out that in this case, the Royal Decree of 11 September 1986 specifies in its article 1 that it is for the accomplishment of the tasks which fall within their competence that notaries are authorized to access the information referred to in Article 3, paragraph 1, 1° to 9°, and paragraph 2 of the RN Act, which includes the “address” data (M.B., 2 October 1986).

34. Therefore, it is not irrelevant to consult the National Register rather than another database even if both contain, in part, similar data. Legally regulated access

to a database such as the National Register cannot be diverted from its purpose on the pretext

that whoever consults it has, in any case, authorized access to the data consulted

7 Along the same lines see. Decision 16/2020: “The processing of images filmed by surveillance cameras

is indeed, since these images constitute personal data, subject to the GDPR to

apply in parallel with the Cameras Act”.

8 Art. 5 § 1. The authorization to access the information referred to in Article 3, paragraphs 1 to 3]1 or to obtain it

communication, and authorization to access information concerning foreigners registered in the register

waiting referred to in Article 1, § 1, first paragraph, 2°, of the law of 19 July 1991 relating to population registers,

identity cards, foreigners' cards and residence documents and amending the law of 8 August 1983

organizing a National Register of natural persons, are granted by the Minister responsible for the Interior in

its powers: (…) 4° to notaries and bailiffs for the information they are authorized to provide

know by virtue of a law, a decree or an ordinance;

9 See. article 5 of the RN law before its amendment by the law of November 25, 2018 (M.B. December 13, 2018) which

granted authorization powers to the Sectoral Committee of the National Registry. See. also article 5 of the

initial law of August 8, 1983 (M.B. April 21, 1984) which granted the King the power to authorize access to the Register

before this competence is entrusted to the Sectoral Committee of the National Register.

(the address of the complainant in this case) via another database (the BCSS in this case). In

that, the consultation of the National Register by the defendant must be examined from the point of view of its

lawfulness, an examination which undoubtedly falls within the competence of the DPA.

35. As to the division of jurisdiction with the Ministry of the Interior invoked by the defendant,

the Litigation Chamber notes that since the abolition of the CSRN pursuant to Article 109

LCA, it is indeed the Minister of the Interior who is responsible for issuing access authorizations

in the National Register. This power of authorization in no way excludes the power of control

of ODA. Access to the National Register constitutes, as already mentioned in point 31 below,

above, processing within the meaning of Article 4.2. of the GDPR, by definition subject to the control of a

independent authority within the meaning of Article 8 of the EU Charter of Fundamental Rights, Article 16 TFEU and Article 51 GDPR (see above). This competence of control, in addition to the fact that it is not, in concreto, granted by law to the Minister of the Interior10, cannot in any assumption be exercised by a Minister who, by definition, does not meet the required conditions to carry out the tasks of an independent data protection authority within the meaning of Article 51 of the GDPR (and which more generally must meet all the conditions set out in Chapter VI of the GDPR). There is therefore no question here of a "conflict of jurisdiction with the Ministry of inside" contrary to what the defendant claims. On the contrary, section 17 of the Act RN itself refers to the competence of APD.

36. Thus, Article 17 requires that each public authority, public or private body having obtained authorization to access the information in the National Registry is able to justify the consultations carried out and that to this end, in order to ensure the traceability of the consultations, each user keeps a record of consultations.

37. This article 17 further specifies that this register must contain: (1) the identification of the user individual (or process or system) that accessed the data, (2) the data that was consulted, (3) the way in which they were consulted, namely for reading or for modification, (4) the date and time of the consultation as well as (5) the purpose for which the data was consulted.

38. Finally, the same Article 17 further provides that this register of consultations is made available of the Data Protection Authority (APD) and this, in the opinion of the Litigation Chamber, for him

10 See. also in this regard Decision 61/2020 of the Litigation Chamber, point 40: "Under Article 4 of the LCA, the Data Protection Authority is competent to monitor compliance with "laws containing provisions relating to the protection of the processing of personal data". Given that in case, no other supervisory authority is competent under the legislation in force, and that no competence has been withdrawn from the Data Protection Authority in this specific context, it is authority

2□

ACL)".□

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-61-2020.pdf□

competent□

control□

(item□

indentation□

4.2.□

of□

Decision on the merits 48/2021- 10/15□

enable it to carry out its control mission. It is indeed up to the data controllers□

authorized to consult the National Register to implement the conditions of the authorization in□

compliance with its prescriptions, in accordance with the principle of accountability set out in□

sections 5.2. and 24 of the GDPR, compliance with which is monitored by the DPA.11□

39. In conclusion of the foregoing, the Litigation Chamber rejects the argument of inadmissibility□

invoked primarily by the defendant and continues the examination of the merits of the complaint below.□

5.□

As to the breaches on the part of the defendant□

40. As the Litigation Chamber pointed out in point 32 above, Article 5.1 of the RN Law lists□

in its paragraph 4 the notaries among the professionals authorized to access the data of the Register□

national, including the address, subject to authorization.□

41. The Royal Decree of 11 September 1986 specifies in its article 1 that it is for□

the performance of the tasks that fall within their competence that notaries are authorized to□

access the information referred to in Article 3, paragraph 1, 1° to 9°, and paragraph 2, of the RN Law among□

which includes the data "address" (M.B., 2 October 1986) (point 33).□

42. The Litigation Chamber is of the opinion that by consulting the plaintiff's "address" data, either□

of an employee, the defendant did not carry out a consultation within the framework of

the performance of a task which falls within his competence as a notary. These tasks should

be understood as being limited to what falls within the specific performance of the profession of

notary and not tasks that are common to any employer, whatever it may be, such as sending

one or the other mail to its employees.

43. By virtue of his office, and for the sole performance of the tasks pertaining thereto, the notary has

access to certain data from the National Register. It is his responsibility to scrupulously respect

the purposes of this access which he favors because of his profession. The circumstance that in any

hypothesis, the defendant would have had access to the address data via another source (i.e. the BCSS

in this case) is irrelevant in this regard. Indeed, the bases of legitimacy authorizing, under

of article 6 of the GDPR, access to these databases is distinct, as is the data

to which access is therefore authorized are different. It is thus rightly that the plaintiff

highlights the fact that the data contained in the BCSS and in the National Register (article

3 RN law) are not identical - even if there is data common to the two databases

data and that notaries do not have access to all the data contained in the Register

national - and that the basis of legitimacy for accessing it is their own. At most, the fact that the

defendant would, in any event, have had access to the “address” data via another source

could be taken into account in the assessment of the sanction that the Litigation Chamber

would decide to impose (see below).

44. By failing to respect the purpose of the access granted to it, the defendant consulted

the National Registry without an adequate legal basis. Therefore, she proceeded to a treatment of

data in respect of which it is not able to validly invoke any basis of lawfulness

required by Article 6 GDPR. In so doing, the defendant was guilty of a

breach of Article 6 of the GDPR. This failure is combined with a failure to

Article 5.1.a) of the GDPR according to which the processing of personal data must,

in particular, to be lawful. This requirement, while not limited to compliance with Article 6, encompasses it.

undoubtedly.

45. Nor does it appear to the Litigation Chamber that consultation of the National Register or

the BCSS, moreover, would have been necessary in this case. Indeed, the official address of the complainant

appeared in the two contracts which bound it to the defendant. This address had been recalled by

twice by email dated January 23 and February 2, 2020 by the complainant. Same day of dispatch

ecocheques by mail on March 16, 2020, the plaintiff had written to the defendant. This

the latter could have, in response, inquired about the address to which to send the requested ecocheques.

Given the context described by the defendant, the Litigation Chamber limits itself here to recalling

that the principle of minimization expressed in article 5.1.c) of the GDPR under the terms of which only the

processing of data necessary for the achievement of the purpose pursued must be respected.

6. Regarding corrective measures and sanctions

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

1° dismiss the complaint without follow-up;

2° order the dismissal;

3° order a suspension of the pronouncement;

4° to propose a transaction;

5° issue warnings or reprimands;

6° order to comply with requests from the data subject to exercise these rights;

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

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

9° order the processing to be brought into conformity;

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

data recipients;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

13° to impose administrative fines;

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

international;

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

data on file;

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

data.

47. It is important to contextualize the breaches for which the defendant is responsible in view

to identify the most appropriate corrective measures and sanctions.

48. In this context, the Litigation Division will take into account all the circumstances of

the species.

49. The Litigation Chamber found a breach of Article 6 combined with Article 5.1.a) of the GDPR

on the part of the defendant, i.e. a breach of one of the founding principles of the protection

data devoted to Chapter II "Principles" of the GDPR: the principle of lawfulness (Article 5. 1. a)

of the GDPR. In the absence of a basis of lawfulness, the processing of data simply cannot have

place (Article 6 GDPR).

50. Without this circumstance alone founding the seriousness of the breach, the Chamber

Litigation recalls that the violation of the provisions listed in Article 83. 5 of the GDPR (including the

articles 5 and 6 of the GDPR) can lead to a fine of up to 20,000,000

euros or in the case of a company, up to 4% of the total worldwide annual turnover of

the previous exercise. The maximum amounts of fines that can be applied in the event of a violation of

these provisions are superior to those provided for other types of breaches listed in Article

83.4. of the GDPR.

51. The quality of the defendant is a factor that contributes to the seriousness of the breach. Indeed,

as the Litigation Chamber explained above, access to the National Register is strictly

regulated and limited to certain professions in particular. Indeed, the National Register is not a

anodyne database. As the Litigation Chamber had the opportunity to point out in its

Decision on the merits 48/2021- 13/15

Decision 19/2020, this database including a certain amount of information – admittedly

limited – relating to more than 11 million people, it requires, by nature, a framework

particularly rigorous, not only in view of its scale, but also because of its

very vocation of recording, memorizing and communicating information relating to

the (unique) identification of natural persons12. It is therefore absolutely essential that those who

benefit from access to the National Register scrupulously respecting the conditions. The notary

is a public officer, appointed by the King. He performs this public function within the framework of a

liberal profession strictly regulated. He exercises public power by establishing acts

authentic which have the force of a judgment in particular. The notary is also subject to a

Code of ethics. All of these elements require that he adopt an exemplary attitude with regard to

compliance with the law, including data protection rules. The Litigation Chamber

has already had occasion to emphasize this requirement with regard to public officials such as

mayors and aldermen13, but also companies benefiting from public concessions of

parking or with regard to bailiffs14. The same goes for notaries.

52. The Litigation Chamber also finds that this is an a priori isolated breach, committed

by a notary within the framework of the activities of his firm, which can be qualified as an SME. the said

breaches only concern an employee in a specific, one-time context, marked by

loss of confidence and fears. These fears were linked both to the tense climate between the parties

and potential travel difficulties in the event of shipment to the wrong address within the

context of the emerging containment following the covid-19 pandemic. Nothing allows the

Litigation Chamber to think that the disputed processing is structurally part of the

defendant's professional practice.

53. The fact that the "address" data is relatively innocuous, deemed not particularly

sensitive by the defendant as well as the fact that it was already in the possession of the defendant and

that this data was in any case accessible to him via the BCSS are also taken into account,

19/2020

,

the

the

of

See.

See.

page

Decision

Bedroom

regulated,

Litigation

Decision 81/2020 of

the Litigation Chamber

12

13:

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-19-2020.pdf In the same

sense, see. with regard to the database of the Vehicle Registration Department (DIV) to which access

is also

(item 82):

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-81-2020.pdf

13

Litigation:

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-10-2019.pdf as well as the

Decision 11/2019: https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-11-

2019.pdf and Decision 53/2020: https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-

fund-n-53-2020.pdf

14 See. Decision 81/2020 of the Litigation Chamber:

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-81-2020.pdf

Bedroom

Decision

10/2019

of

the

the

Decision on the merits 48/2021- 14/15

to a certain extent, by the Litigation Chamber in its assessment of the sanction

adequate. In fact, by consulting the National Register, the defendant nevertheless also

access to a certain number of other data – admittedly limited by the royal decree of September 11

1986 already cited – relating to the complainant. The defendant further states in this regard that it

has no choice but to access all of this data, the available application does not

not make it possible to target its consultation on the unique “address” data. The Litigation Chamber

takes note of this double consideration.

54. The Litigation Division would like to emphasize that it should not, however, be misunderstood as to the scope

of this decision as to the merits and as to the breach sanctioned. It is, as it was

explained above, access to data X (in this case the address) contained in a database

data with strictly reserved access outside the legal conditions which is at the heart

of this decision and here sanctioned; and this, much more than the knowledge of the data

"address" as such. However, the Litigation Chamber is no less sensitive to the

fact that in the present case, the impact of this consultation on the plaintiff is slight and a possible prejudice

in its undemonstrated head.

55. Finally, the Litigation Division also takes into account the measures put in place by the defendant to comply with the obligations incumbent upon it in its capacity as responsible for processing: appointment of a data protection officer (Article 37-39 of the GDPR), establishment of a register of processing activities (Article 30 of the GDPR), adoption of a policy protection of personal data intended for citizens, adoption of a security policy information accompanied by a procedure in the event of a data breach as well as the implementation a procedure for managing the rights of data subjects.

56. In conclusion from the foregoing, and in view of all the circumstances of the case, earlier aggravating, sometimes mitigating, the Litigation Chamber considers that the reprimand (i.e. the warning referred to in Article 58.2.b) of the GDPR)15 is in this case the effective sanction, proportionate and dissuasive which is necessary with regard to the defendant.

57. Finally, with regard to the breach of Article 14 of the GDPR invoked by the complainant by way of conclusions, the Litigation Chamber decides to close the complaint with regard to this grievance. The Litigation Chamber is of the opinion that this grievance comes on top of that of the absence of legality of the consultation of the National Register is not such as to modify its decision. The defendant stated in the terms of its submissions that the work regulations signed by the

15 As it has already had the opportunity to specify in several decisions, the Litigation Chamber recalls here that the warning penalizes a failure which is likely to occur: see. Article 58.2(a) GDPR in this regard.

complainant contains a certain amount of information relating to the data processing carried out by the defendant with regard to its employees (Title VIII). The defendant states in this regard that this regulation dates from 2016 and is currently being updated. The Litigation Chamber recalls here the necessary compliance with the obligation of transparency and articles 12, 13 and 14 of the GDPR in terms of information to the persons concerned, including by an employer to its employees.

7.

As for publicity and transparency

58. Given the importance of transparency with regard to the decision-making process and the decisions of the Litigation Chamber, this decision will be published on the DPA website subject to the deletion of the direct identification data of the parties and of the persons physics cited.

FOR THESE REASONS,

THE LITIGATION CHAMBER

Decided

- To pronounce against the defendant a reprimand on the basis of article 100.1, 5° LCA in view of the breach found in Article 6 of the GDPR combined with Article 5.1.a) of the GDPR;

-

To close the complaint for the surplus without follow-up on the basis of article 100.1.1° LCA.

Under Article 108.1 LCA, this decision may be appealed to the Court of contracts (Brussels Court of Appeal) within 30 days of its notification, with the Data Protection Authority as defendant.

(Sé) Hielke Hijmans

President of the Litigation Chamber