Litigation Chamber

Decision when on the merits 13/2022 of January 27, 2022

File number: DOS-2018-04433

Purpose: online publication of raw data (tweets) and performance of an analysis

from these data

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

Hijmans, chairman, and Messrs. Yves Poullet and Christophe 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

to 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

ACL);

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 defendants:

-

The a.s.b.l. EU DisinfoLab (hereinafter, EU DisinfoLab), with registered office at […],

registered with the Banque Carrefour des Entreprises (BCE) under number […],

represented by Me Griguer, established at the Edouard VII Business Center, 3 square

Edward VII, 75009 Paris, France (first defendant).

- Mr N. Vanderbiest, established in […] (second defendant).

I. FACTS AND BACKGROUND TO THE PROCEDURE

1.

This procedure is part of a very specific and very media-friendly context. Following a debate conducted on the Twitter platform concerning an employee of the President of the French Republic, an analysis was carried out on these "tweets" by a Non-profit organization whose aim is to fight against disinformation (“fake news”). Even before the publication of the result of this analysis, the raw data analyzed, including the personal data, of a large number of people, have been published by this ASBL and one of its voluntary collaborators.

2.

Following these publications, a large number of people concerned filed complaints. with the DPA, as well as with the French data protection authority, the National Commission for Information and Liberties (CNIL).

a) The defendants

3.

EU DisinfoLab, the first defendant, is a Belgian association which pursues a mission research and the fight against misinformation. According to its statutes, its purpose is in particular to “promote the circulation of verified information on social networks, all techniques, actions, initiatives and campaigns that contribute to this goal and defend them individuals against the spread of malicious information, the

disinformation and the phenomenon of ‘fake news’ at national, European and

international ; […] it supports any initiative tending to source, inform, fight and

check for false information, especially on social media”.

4.

This mission is pursued via “the development and promotion of methodologies,

technologies and processes around the sourcing of fake news and disinformation in

general [and] the development and promotion of studies, analyzes and publications on the subject

disinformation, the fight against it and the new related risks”.

5.

In 2018, EU DisinfoLab was composed of three volunteer-founding members: Mr. Gary

Machado and Mr. Alexandre Alaphilippe (directors), as well as Mr. Nicolas Vanderbiest,

second defendant.

6.

At the time of the facts in dispute, in July 2018, Mr Nicolas Vanderbiest was author/publisher of

blog ReputatioLab, and researcher at the Catholic University of Louvain (UCL). Mr Nicholas

Vanderbiest was also manager of the s.p.r.l. Saper Vedere (hereafter ‘Saper Vedere’), a

company providing social media auditing services, in the capital of which

also the administrators of EU DisinfoLab, MM. Gary Machado and Alexander

Alaphilippe, at the time of the facts.

Decision on the merits 13/2022 - 3/55

b) Complaints and requests for information

7.

The Data Protection Authority (“DPA”) and the CNIL were each seized of

complaints and requests for information about the processing of personal data

personnel carried out in the context of a study entitled “Affaire Benalla. The springs of a

hyperactivism on Twitter” (hereafter: the Study). The Study, published online by the first

defendant, in August 2018, was carried out on the basis of an article published a month earlier by

Mr. Nicolas Vanderbiest on his blog. According to the complaints, the Study aimed to identify the origin

policy of tweets relating to a French controversy known as the “Benalla affair” disclosed on the 18

July 2018 by the newspaper Le Monde1.

8.

Complainants develop various grievances regarding the use of their data

personal data for carrying out the Study, and also aim for online publication by

DisinfoLab Excel files containing personal data extracted from accounts

Twitter, which served as the basis for this Study, for the purposes of transparency and justification

of the Study methodology2. The plaintiffs question in particular the legality of

the Study, and point to the fact that they have not consented to their personal data

are subject to such processing (including political profiling) by EU DisinfoLab

and/or Mr. Vanderbiest.

9.

The complaints received in Belgium date respectively from 10, 11, 13 and 16 August 2018 and have

been deemed admissible by the APD Front Line Service in letters dated 20

September 2018. These complaints were also forwarded to the Litigation Chamber at

this date.

10.

At the same time, France being the country in which the majority of the people concerned

found and within which the “Benalla” affair broke out, the CNIL received 236 complaints and

requests for information. In accordance with its procedure, the CNIL has summarized the grievances provided

by the complainants3 and forwarded this summary to the DPA. These complaints were the subject of a

procedure for identifying the lead authority according to Article 56 of the GDPR. In session of

October 3, 2018, the Litigation Chamber recognized the DPA as supervisory authority

leader within the meaning of Article 56.1 of the GDPR, while the CNIL has declared itself the "authority of

control concerned" within the meaning of Article 4.22, b) and c) of the GDPR.

1 See https://www.lemonde.fr/societe/video/2018/07/27/l-affaires-benalla-resumee-en-5-minutes_5336901_3224.html;

https://www.lemonde.fr/police-justice/article/2018/07/19/affair-benalla-l-elysee-mis-en-cause-pour-ne-pas-avoir-saisi-

justice_5333570_1653578.html; article quoted in the Inspection report, p. 5.

2 Description of complaints according to the Inspection report, p. 1.

3 The CNIL was justified in transmitting the complaints received in the form of a summary in accordance with the national proced

in which the complainant does not have an active role

the role of the plaintiff under Belgian law:

https://autoriteprotectiondonnees.be/publications/note-relative-a-la-position-du-plaignant-dans-la-procedure-au-sein-

of-the-contentious-chamber.pdf.

. See about this

Decision on the merits 13/2022 - 4/55

11.

The GDPR contains special rules for handling complaints about

cross-border processing. The lead supervisory authority is the one that will pursue the

processing of the case on the merits. In this context, it regularly informs the authorities of

relevant checks on the status of the file and — in accordance with the

cooperation set out in Article 60 of the GDPR — also involves them in taking a

final decision. Cases in which the cooperation mechanism applies

mentioned above are often complex, for the following reasons:

several national supervisory authorities are involved in the case and they are

each subject to its own national procedural rules (which concern, for example,

example, the role of the complainant in a control and sanction procedure in the event of non-compliance

compliance with regulations, or with regard to the use of languages).

12.

In its capacity as lead authority, the Litigation Chamber, a DPA body, has prepared

a draft decision based on the arguments of the parties concerned, and had to submit it

to the CNIL, the authority concerned, in order to obtain its opinion (article 60.3 of the GDPR). The CNIL has

for its part, the competence to examine the project submitted to it by the APD. The CNIL

may formulate a relevant and reasoned objection within the meaning of Article 60.4 of the GDPR.

13.

In all cases, the DPA and the CNIL remain the privileged interlocutors of the complainants in

waiting for the final decision. After finalization of the decision, the DPA and the CNIL are

responsible for communicating the decision to the Belgian and French plaintiffs who have lodged

complaints to their departments (according to the specific rules set out in articles 56.7

and 56.8, 60.7 and 60.8 GDPR).

14.

During the session of October 3, 2018, the Litigation Chamber decided that an investigation

by the Inspection Department was necessary prior to the drafting of its draft

decision. The related files were sent to the Inspection Service on October 5, 2018,

on the basis of articles 63, 2° and 94, 1° of the LCA.

15.

On April 2, 2020, the Inspector General sent his report to the President of the Chamber

Litigation (Articles 91, § 1 and § 2 of the LCA).

c) Inspection report

16.

The Inspection Service has attached to its report the complaints and requests for information received

by ODA.

17.

The Inspection Service also attaches to its report the elements communicated by the

CNIL:

▪

reports sent on August 17, 2018 about the online check it carried out

regarding EU DisinfoLab;

Decision on the merits 13/2022 - 5/55

▪

summary of the elements contained in the 236 complaints then received by the CNIL,

transmitted to the APD on August 22, 2018;

▪ letter from the President of the CNIL to the APD of October 16, 2018, in which the

Chairperson draws the attention of the DPA to the complaints received (then numbered

of 241) on this date.

18.

The Inspector General states in his report that these complaints forwarded by the CNIL

constitute “additional serious indications of the existence of a practice likely to

give rise to breaches of data protection rules. The service

d’Inspection therefore made use of its power of initiative under article 63 6° of the law

DPA to investigate these French complaints on the basis of the summary sent by the CNIL to

as an index of offences.

19.

The Inspection report identifies the different data processing operations as follows

personal in question:

▪ Processing activities 1: “processing activities related to the performance of a

study by the first Defendant, based on the processing of data

personal information posted publicly on Twitter. This Study is introduced as

follows: “The Benalla Affair, revealed by Le Monde, followed by several twists

on the part of the French executive, exists without social networks. In the same

time, the Benalla affair occupied Twitter in this month of July in volumes that

we had hardly ever crossed paths before. This volume was also

greatly amplified by a small number of accounts. We then pose the

question: how is this hyperactivity exerted? Are these militant shares or

is it also a digital inflation contaminated by misinformation? » ;

The Study published by the first defendant refers to four other

"studies" concerning the analysis of the political affinities of the author of tweets,

in particular their presumed proximity to Russian media "Russia Today" and

"Sputnik". The first defendant specifies that it is a question of treatment of

Twitter pseudonyms, freely chosen by each user, without any

identification of natural persons using pseudonyms has been carried out5.

▪ Processing activities 2: “these are processing activities related to the publication

online Excel files containing in particular the data that served as the basis

for this Study and for the purposes of transparency and justification of the loyalty of

the Study”. Two of these Excel files contain "raw" data extracted

4 Inspection Report, p. 7.

5 Comments by the first defendant following the hearing report, p. 3.

from Twitter. In particular, the “Data brutes.csv” folder contains the data

“bio” (i.e. biography “description”) of Twitter user accounts

concerned. The Inspection Service considers in this respect that "the purpose of the

processing activities 2 was […] to justify the integrity of the Study which had just been

carried out by EU DisinfoLab and Mr. Nicolas Vanderbiest following the criticisms made to

[his] opposition, through access to his sources (his basic data)6”. Bedroom

Litigation specifies however that at the time of the online publication of the files

Excel concerned, the Study had not yet been published.

20.

The Inspection report points out that in addition to account identification data

Twitter users, these are also public tweets from thousands of users,

identified by means of a specific request, which have been processed in order to carry out the Study.

21.

More specifically, the Inspection report states that the data concerning 55,000

Twitter users formed the basis of the Study, and that more than 3,300 accounts

Twitter users were classified according to four classes in

part of treatment 1:

▪ Class 1: the community of sovereigntists close to movements against the

marriage for all (“the Republicans”);

▪ Class 2: the community of national unity, sovereigntists and

a few people from the movements against equal marriage;

▪ Class 3: the community constituted by rebellious France with porosities of

link with other communities which causes some false positives;

▪ Class 4: the community made up of media and porosities with others

communities and the Republic on the move.

22.

The Inspection report finds various breaches of the GDPR related to the activities of

processing 1 and 2, after having identified the respective data controllers.

23.

The grievances upheld by the Inspection Service are as follows:

a) for processing activity 1 (processing activities related to carrying out the Study), the

Inspection Service finds that:

▪

“EU DisinfoLab would be responsible for processing within the meaning of article 4.7 of the GDPR and

would be guilty of the following breaches of the GDPR:

▪ by not having documentary evidence of a nature to demonstrate compliance

of the GDPR, with regard to the information of the persons concerned (Articles 12 and 14 of the

6 Inspection Report, p. 22.

Decision on the merits 13/2022 - 7/55

GDPR), as to the completion of the register of processing activities (Article 30 of the

GDPR), as to the analysis to be carried out under Article 6, 1, f) of the GDPR, as to the

carrying out a data protection impact assessment (Article 35

of the GDPR), as to the implementation of technical and organizational measures

within EU Disinifolab (article 32) and as to the existence of a contract with the

subcontractors it has used in the context of processing activity 1

(Article 28.3 of the GDPR), the first defendant breached the obligations

enshrined in Articles 5.2 and 24 of the GDPR);

▪ by not having contracts concluded with Visibrain and Talkwalker, the two

main partners used in the context of the activity of

treatment 1, the first defendant breached the obligations enshrined in

GDPR Article 28.3;

▪ by not having a record of processing activities,

the first one

defendant breached the obligations enshrined in Article 30 of the GDPR.

▪ by not having a confidentiality policy, the first defendant has

breached the obligations set out in Articles 5.1.a (transparency), 12 and 14 of the

GDPR;

▪ by not carrying out a prior impact analysis, the first defendant

breached the obligations set out in Article 35 of the GDPR;

▪ by not keeping the "Actorsclassified sss.xlsx" file under its control, and by not

not pseudonymizing the data of this file allowing an identification

directly from people via the “label” or “screen name”, the “display name” and the

"organic", by not notifying the DPA of the data breach resulting from the updating

disposal of the file “Actorsclassified sss” and “Databrutes.csv” from Twitter,

via a Dropbox link, by the second defendant, the first defendant

breached the obligations set out in Articles 32 and 33.1 and 5.1.f of the GDPR. In this

regard, the first defendant acknowledges that the second defendant disseminated

these files without its authorization and in violation of its internal procedures”.

b) for processing activity 2 (publication of the raw data of the Study):

▪

“EU DisinfoLab and Mr. Vanderbiest would respectively be responsible for

processing for the raw data (XL files) that they put online, and in this

quality, would have been guilty of the following breaches of the GDPR:

▪

the purposes and means of processing personal data consisting of

by providing files (“acteursclassés.sss” and “databrutes.csv”) to

from Twitter, via a Dropbox link to a Dropbox account of

Decision on the merits 13/2022 - 8/55

the company Saper Vedere of which he was the manager, were determined by Mr. Nicolas

Vanderbiest who is therefore the data controller within the meaning of

GDPR Article 4.7; in this respect, the Inspection Service notes that according to its

appreciation, this processing of data constitutes a breach of the obligations

enshrined in Articles 5.1.a (lawfulness), 5.1.c of the GDPR; 5.1.f and 32; 5.1.a

(transparency), 12 and 14 of the GDPR, and finally, articles 6.1 and 9 of the GDPR.

▪

the purposes and means of processing personal data consisting of

by providing “Rumeurs&items” and “databrutes1” files, from

Twitter, via a dl free.fr link, have been determined by EU DisinfoLab. EU DisinfoLab

is therefore the data controller within the meaning of Article 4.7 of the

GDPR; the Inspection Department finds that, in its assessment, this processing

of data constitutes a breach of the obligations set out in Articles 5.1.c

GDPR, 5.1.f and 32; 5.1.a (transparency); 12 and 14 GDPR; and 6.1 GDPR. »

d) Invitation to conclude addressed to the defendants and dismissal

complaints received

24.

After receipt of the Inspection report, in session of June 30, 2020, the Chamber

Litigation estimated on the basis of article 95, § 1, 1° and 98 of the LCA that the file was

ready for substantive treatment and has decided:

▪ send the Inspection report to the two parties identified in this report

as being responsible for the disputed data processing;

▪ to close the Belgian complaints received by the DPA without further action, and decide at an early stage

later on how the complainants would be informed of this decision.

25.

These decisions to dismiss Belgian complaints have no equivalent in law

French where the complainant has a less active role than in Belgium and where complaints can be

examined and closed without the intervention of the complainant7. So that the many complainants

French cannot misunderstand the scope of these decisions of "classifications without

more » Belgians, in case they are aware of it, the Litigation Chamber has decided in

session of May 5, 2020 that the Belgian complainants would be informed of the rankings without

subsequent to the date on which the final decision would be published, in order to allow

complainants to familiarize themselves immediately with all the elements of the

decision, namely, the final decision and the classification without further action. Given the specifics

the role of the complainant in the French procedure, the complaints received by the CNIL and

7 See the note from the Litigation Chamber on the role of the plaintiff:

https://www.autoriteprotectiondonnees.be/publications/note-relative-a-la-position-du-plaignant-dans-la-procedure-au-

within-the-litigation-chamber.pdf.

Decision on the merits 13/2022 - 9/55

transmitted to the DPA by the CNIL in the form of a summary as an indication of harm, must not

not be dismissed without further action by the CNIL or the APD.

26.

By e-mail from the Litigation Chamber of July 2, 2020, the two defendants

received a copy of the inspection report, including the inventory of parts, and were invited

to conclude on this report in accordance with Article 98 of the LCA, with the deadline of

receipt of the conclusions of EU DisinfoLab and Mr. Vanderbiest, on August 31, 2020. The date

deadline for receipt of brief reply submissions has been set for both parties

September 30, 2020. The Litigation Chamber invited the parties to ensure the

confidentiality of the documents in the procedural file in order to promote a serene debate.

27.

On July 2 and 6, 2020, the defendants agreed to all

communications regarding their complaint are made electronically. The first one

defendant is requesting a copy of the documents in the file on July 20, 2020. This copy is

sent by the Litigation Chamber on July 28, 2020, which proceeds in the same way for the

second defendant.

28.

EU DisinfoLab submitted its conclusions to the Litigation Chamber and to Mr. Nicolas

Vanderbiest by e-mail of August 28, 2020, and sent his reply conclusions by e-mail

from October 1, 2020.

29.

Mr. Nicolas Vanderbiest submitted his conclusions to the Litigation Chamber and to EU

DisinfoLab via email dated August 31, 2020, and did not

introduction of argument

additional information later, apart from his reaction to the hearing report (see below).

e) Hearing

30.

On April 19, 2021, the defendants are informed by e-mail of the holding, at their

request, for a hearing scheduled for May 17, 2021, on the basis of article 98 2° of the LCA and

Article 54 of the Internal Rules of

ODA. Via this email,

the parts

defendants are advised that this hearing will be conducted by teleconference

in the context of Belgian government recommendations related to the pandemic.

31.

The hearing was postponed to June 2 following a case of force majeure encountered by one of the

parts. The two defendants presented their arguments during the hearing,

following which the Litigation Chamber closed the debates.

32.

On June 14, 2021, the minutes of the hearing are sent to the defendants. On June 21, the two

defendants send the Litigation Chamber their comments on the minutes

hearing, with a copy to the other defendant. The Litigation Chamber appends these

remarks to the document.

Decision on the merits 13/2022 - 10/55

f) Penalty form and European cooperation procedure

33.

On September 23, 2021, the Litigation Chamber submits, in accordance with Article 60.3 of the

GDPR, its draft decision to the relevant supervisory authority, the CNIL, with a view to obtaining

his opinion. On October 21, the CNIL introduced a relevant and reasoned objection within the meaning of

Article 60.4 of the GDPR8. This objection contains the following arguments:

▪ qualification of Mr. Vanderbiest as data controller;

▪ reasons for the dismissal of the grievance related to Article 28 of the GDPR;

▪ reasons for the dismissal of the grievance related to Articles 28 and 30 of the GDPR;

▪ reasons for the shortcomings noted by the Belgian authority in the context of

processing activities 2;

▪ application of article 83.2 of the GDPR and choice of the proposed corrective measure:

the APD proposed issuing a warning and a call to order; the CNIL

considers that a fine should be imposed given the circumstances of the

cause (number of complaints, sensitivity of the data and severity of the

shortcomings).

34.

On October 29, 2021, the Litigation Chamber informs the defendant of its

intention to proceed with the imposition of an administrative fine as well as the amount of

the latter, and offers the defendants a response period until November 19 inclusive.

35.

On November 4, 2021, the Litigation Chamber receives a request for information from the

first defendant on the progress of the cooperation procedure

with the CNIL. The first defendant also asks whether its future comments

on the draft sanction will or will not be brought to the attention of the CNIL.

36.

By e-mail of November 10, 2021, the Litigation Chamber responds, with Mr Nicolas

Vanderbiest in copy, that the draft decision of the Data Protection Authority

Belgian was made available to the CNIL on September 23, 2021 and that the CNIL introduced a

relevant and reasoned objection within the meaning of Article 60.4 of the GDPR on October 21, 2021. The

Litigation Division also specifies the scope of the sanction form in connection with

the cooperation procedure, namely that

▪

the communication of this form takes place for the specific purpose of complying with the

rights of defense of defendants in accordance with case law

the Court of Markets;

8 Deliberation of the Restricted Committee no. OBJ-2021-002 of October 21, 2021 concerning the EU DisinfoLab association an

Mr. Vanderbiest.

Decision on the merits 13/2022 - 11/55

▪

the Litigation Chamber does not consider itself obliged to submit, jointly with

the draft decision, any documents necessary to provide the

proof of respect for the right to be heard, provided that it mentions the

measures taken to that effect in this Decision.

▪

the Litigation Chamber is however prepared to send the CNIL the

comments of the first defendant, subject to the agreement of the latter,

as part of the submission of the revised draft decision. Finally, the Chamber

Litigation also specifies that a new sanction form will be

addressed if necessary in the event that new points are raised

under the cooperation procedure, and provided that these new

elements lead to findings on which the parties have not yet been able to

defend.

37.

On January 4, 2022, the Litigation Chamber submitted its revised draft decision to the

CNIL, in accordance with article 60.5 of the GDPR. Following approval of the draft decision

revised by the CNIL, on January 17, 2022, and in the absence of points raised in the procedure

of cooperation, on which the parties would not have yet been able to assert their

arguments, the procedure was formally closed on January 18, 2022.

II. MOTIVATION

II.1. Jurisdiction of the Litigation Chamber from a temporal point of view

and territorial

38.

Given the temporal proximity between the facts concerned by the complaints and the entry

into force of the GDPR, on May 25, 2018, the Litigation Chamber specifies that the GDPR is indeed

of application to the processing of personal data carried out in the context of the Study

published on August 8, 2018 by the first defendant (treatment 1). Tweets analyzed

in this Study relate to facts disclosed by the newspaper Le Monde on July 18

20189. The GDPR, which entered into force on May 25, 2018, was therefore indeed applicable to

processing of personal data contained in these tweets. GDPR is also

of application to the disclosure of personal data (publication of data files

gross) carried out by the second defendant after the publication of the Study

(treatment 2).

39.

The territorial jurisdiction of the Litigation Chamber and the applicability of Belgian law do not

are not in dispute, in the context where the two data controllers identified by the

Inspection Service in its report, have their establishment in Belgium. GDPR, in

9 Inspection report, p. 5.

effect, applies to the processing of personal data carried out within the framework

the activities of an establishment of a data controller or a processor on

the territory of the Union, whether or not the processing takes place in the Union (Art. 3.1 of the GDPR). In

In this context, the DPA is competent to act as lead authority with regard to the

cross-border data processing carried out by the controller(s) whose

the main establishment is located on its territory (Art. 56.1 of the GDPR).

II.2. On the background

a) Structure of the decision

40.

The Litigation Chamber will identify the data processing concerned and will ensure that

qualify the roles of defendants as controllers/processors

(article 4.7 and 4.8 of the GDPR) with regard to the data processing concerned.

41.

Then, the Litigation Chamber will successively examine the breaches that may

be retained for each processing activity borne by the first and/or the

second defendant.

42.

Finally, the Litigation Chamber will motivate any corrective measures and sanctions

imposed on the defendants.

b) Data processing and data controllers

43.

With regard to the personal data processed, the Litigation Chamber is responsible

the description of the facts and their qualification by the Inspection Service in its report

investigation, which distinguishes on the one hand, “processing activities related to the performance of

the EU DisinfoLab Study” (processing activities 1) and on the other hand “the activities of

processing related to the online publication of Excel files containing in particular the

data that served as the basis for this Study for the purposes of transparency and

rationale for the Study” (processing activities 2).

44.

According to article 4.7 of the GDPR, the data controller is the natural person or

morality which, alone or jointly with others, determines the purposes and means of the

treatment - i.e. the one who decides that treatment should take place and determines

effectively for what purposes and by what means this processing takes place.

45.

In the absence of legal or contractual provisions making it possible to determine which

party exercises this decisive influence, the Litigation Chamber must proceed to

the identification of the data controller by analyzing the factual elements and the

circumstances — concrete activities and specific context — of the case10. Bedroom

10 EDPB, Guidelines 07/2020 on the concepts of controller and processor in the GDPR, para. 19, 23, 24, 26.

Litigation takes into account the following factual circumstances to determine

the influence of the parties on the definition of the purposes and/or means of the processing of

data in question.

46.

With respect to processing activities 1 as identified above, both the

first and second defendant attribute to each other the qualification of responsible

treatment :

▪ EU DisinfoLab acknowledges having entrusted Mr. Vanderbiest with the task of drafting the Study in

cause, but affirms that the latter had a margin of maneuver concerning

the effective realization of this one, that he alone determined the means of treatment to

implement to achieve the result produced as well as the purpose of the Study. US

DisinfoLab considers that its own role was limited to a role of "support,

proofreading and publication", and that Mr. Nicolas Vanderbiest alone would have decided the

means of carrying out the Study, in particular, the use of extraction software

of data provided by the third-party provider Visibrain with which EU DisinfoLab has not

entered into any partnership agreement11. EU DisinfoLab further states that Mr.

Nicolas Vanderbiest was a voluntary collaborator within

the association12. Finally, EU DisinfoLab points out that

the participation of its

directors (Messrs. Alexandre Alaphilippe and Gary Machado) in the drafting of

the Study takes place at the end of the preparation of this Study, on August 6, 2018.

hearing, EU DisinfoLab insists on recalling that Mr. Vanderbiest is co-

founder of EU DisinfoLab (which is duly indicated in the report

of Inspection, contrary to the assertions of EU DisinfoLab). EU DisinfoLab

draws the conclusion that the first defendant is jointly responsible for the processing.

▪ Conversely, Mr. Nicolas Vanderbiest asserts that he had no decision-making power or

decision-making function concerning the publication of the Study, being under the authority of

its manager Gary Machado at all stages of the Study. He

admits, however, to having "dictated the methodology and carried out a large part of the

statistical analyses”13, the results of which were then communicated and published

on the EU DisinfoLab website.

47.

The Litigation Chamber judges that as sponsor and publisher of the Study, EU

DisinfoLab is indeed responsible for the processing of the personal data concerned by

the Study. EU DisinfoLab, in fact, has clearly determined the purposes of the Study via the order

of the Study and its decision to publish it. In addition, the realization of this framework study in the

achievement of its corporate purpose and the Study, in its final form, is presented as a

11 Conclusions of EU DisinfoLab ASBL of 28 August 2020 (not paginated - p. 7).

12 Exhibit 10, p. 1 of the Inspection File.

13 Response to the request for information from Mr. Nicolas Vanderbiest of October 1, 2019, p. 4.

EU DisinfoLab study, which is part of its social mission. This document is also

still available on the EU DisinfoLab website during the findings of the Inspection report

in April 2020.

48.

The Litigation Chamber does not follow the arguments of the first defendant in this

that it rejects almost entirely the responsibility for the Study and the data processing

concerned on the shoulders of volunteer researcher Nicolas Vanderbiest, in particular because

that he would have contributed to the definition of the means of carrying out the Study, according to EU

DisinfoLab.

49.

On the question of the definition of the means of data processing, the Chamber

Litigation judges that by deciding that the Study would be carried out by three of its members (to

knowledge, writing by Mr. Vanderbiest and another member of DisinfoLab, and proofreading by a

third member of DisinfoLab), EU DisinfoLab has determined the main means of

treatment. In addition, in the end, two EU DisinfoLab administrators proofread and "corrected"

the Study before its publication, which implies effective participation in the means of

processing of personal data used to carry out this Study. EU DisinfoLab a

also determined the means of treatment used by Mr. Vanderbiest in that the 30

July 2018, Mr. Gary Machado, Managing Director of EU DisinfoLab, asks Mr.

Vanderbiest to search for matches between Twitter user data

assets in the Benalla case and the data collected by Mr. Vanderbiest in his analysis

prior to Macronleaks (misinformation in the presidential campaign).

50.

The Litigation Chamber argues that by publishing the Study under its name and on its website, EU

DisinfoLab has taken responsibility not only for the purposes but also for the means

treatment of the Study, including comparison with older “studies” of Mr.

Vanderbiest and the use of tweet analysis tools provided by a third-party service provider,

namely the Visibrain software (which is not a party to the cause according to the scope of the investigation defined by the Inspection Service). In this regard, the Inspection Service rightly points out that "[w]hen even Mr. Vanderbiest would have on his own comparison with these old studies, it has in any case been approved and permitted by EU DisinfoLab which took it up in the Study finally published"14.

51. According the Litigation Chamber, Mr. Vanderbiest can be considered as co-responsible for processing this Study insofar as he carried out the Study as a voluntary contributor, according to the same qualification used by EU DisinfoLab in its responses to the Inspection Service15: "The publication of the so-called "cluster" file containing raw data was carried out on the personal initiative of Mr. Nicolas Vanderbiest, then a volunteer with the non-profit association EU DisinfoLab, outside of any instruction

14 Inspection report of April 2, 2020, p. 11.

15 Exhibit 10 of the Inspection report, letter from EU DisinfoLab to the Inspection Service of May 13, 2019.

of the EU DisinfoLab association and in complete violation of internal procedures". Mr. Vanderbiest also points out that his work for the ASBL DisinfoLab was not remunerated16.

52. As a voluntary participant in EU DisinfoLab activities, Mr. Vanderbiest can be considered as voluntary within the meaning of the law of 3 July 2005 relating to the rights of volunteers, it being understood that the characteristics of volunteerism are the exercise of activity within an organization "without compensation or obligation", that is to say an activity exercised freely and free of charge. Unlike an employment contract, there is therefore no link of subordination within the framework of voluntary service. Nevertheless, the volunteer – without being

subordinate – can voluntarily accept the rules of operation of the association

for the benefit of which he performs tasks on a voluntary basis (internal rules,

articles of association) and agree to perform the services required to fulfill the mission defined by

association, which is the case here.

53.

The Litigation Chamber recalls that in its judgment of July 10, 2018, the CJEU upheld the

joint responsibility for data collection and processing

by Jehovah's Witnesses acting as volunteers within the framework of the

objectives of their association, even in the absence of direct instructions from the association in

with regard to the collection of data concerned17. In this case, Mr. Vanderbiest is

joint data controller 1, insofar as he has voluntarily drawn up

the Study and partly determined the means of processing (e.g. use of Visibrain software

to collect the data). In addition, Mr. Vanderbiest has not entered into any subcontract

contracting with EU DisinfoLab in order to supervise this processing and define its responsibility

as a processor within the meaning of Article 28 of the GDPR. In response to questions from

defendants as to the relevance of the questions of the Inspection Service on this subject, the

Litigation Chamber specifies that a subcontract would certainly not have

constituted the decisive element allowing to qualify the role of Mr. Vanderbiest, but

that such a circumstance could have been taken into consideration as an indication of the will

of Mr. Vanderbiest to act as a subcontractor, if indeed Mr. Vanderbiest had in

the facts limited its role to that of a processor as defined in Article 4 (8) of the GDPR, to

namely, the natural or legal person who “processes personal data for

the account of the data controller", quod non. In this case, the Litigation Chamber

considers that the elements determining the quality of the data controller are

essentially the voluntary drafting of the Study by Mr. Vanderbiest and the decision of this

the last to use the Visibrain software to collect the data.

16 Conclusions of Mr. Vanderbiest, p. 1.

17 CJEU, C-25/17, para. 66.

54.

The responsibility of Mr. Vanderbiest as co-controller is however

limited insofar as he waited for the instructions of his association before starting the

processing of the data concerned, and insofar as a person in charge of the association,

Mr. Machado exercised editorial control over the draft of the Study submitted to him by Mr.

Vanderbiest. Mr. Machado also gave specific instructions to modify it

("proofreading to be done, put references, clarify elements of the FAQ, etc") and he

supervised the publication of the Study in its final version.

55.

The Litigation Division takes note of the argument of the first defendant, according to which

Mr. Vanderbiest is a co-founding member of the non-profit organization EU DisinfoLab. The quality of

co-founder does not, however, imply any personal liability on the part of Mr. Vanderbiest in

with regard to the processing of personal data such as that carried out through the Study,

in order to achieve the social purpose of the ASBL, because Mr. Vanderbiest is in principle exempt from

any responsibility for the acts carried out by this ASBL within the framework of its reason

social, in the same way as its other co-founders, and this, by virtue of the very statutes of EU

DisinfoLab and article 14 of the law on ASBL.18.

56.

In conclusion, regarding

the role of EU DisinfoLab as responsible for

processing with regard to the processing of personal data in order to carry out the Study,

the Litigation Chamber argues that

▪ as sponsor and publisher of the Study, EU DisinfoLab is well

responsible for processing the personal data concerned by the Study;

▪ by deciding that the Study would be carried out by Mr. Vanderbiest and by a member of

DisinfoLab, with proofreading by another DisinfoLab member, EU DisinfoLab has

contributed to the definition of processing methods and finally,

▪ by publishing the Study under its name and on its website, EU DisinfoLab has endorsed the

responsibility not only for the means of processing but also for the purposes of

the Study.

57.

Mr. Vanderbiest is co-responsible for this processing as an EU volunteer

DisinfoLab, insofar as it voluntarily wrote the Study and decided to use the

Visibrain software to process personal data in connection with the activities of

treatment 1.

58.

With regard to processing activities 2, in accordance with the declarations of the

parties on this subject, as EU DisinfoLab itself acknowledges, the Litigation Chamber

deems that EU DisinfoLab is the sole data controller regarding the updating

18 Article 14 of the law of 27 June 1921 on non-profit associations: “The association is liable for faults

imputable either to its agents or to the organs through which its will is exercised”.

layout of the compressed file containing the documents ‘Rumeurs&Items.xlsx’ and ‘Data

raw 1 – 47.xlsx’ by uploading to the dl.free.fr server and including a link to this

server in Study 19.

59.

Regarding the role of Mr. Vanderbiest, the Litigation Chamber judges that he is the only

responsible for processing consisting of the provision of the 'Classified Actors' files

sss.xlsx’ and ‘Databrutes.csv.xlsx’ by uploading to Saper Vedere Dropbox account

and relay this link on his personal Twitter account. Indeed, he confirms having "shared these files without any validation with [his] superiors whether they are from DisinfoLab or UCL”20. Mr. Vanderbiest acknowledges having shared these raw data files outside instructions from EU DisinfoLab: for this part of processing 2, he therefore acted as separate controller.

c) Shortcomings observed on the part of the persons in charge of treatment

1. Failures relating to processing activities 1

60.

The Inspection Service identifies four types of shortcomings relating to the activities of treatment 1 in the head of EU DisinfoLab and Mr. Vanderbiest, co-responsible for treatment. Two of these breaches relate to obligations that may exception for processing for journalistic purposes (Art. 85 of the GDPR) and/or for processing for scientific purposes (art 89 of the GDPR). Before going into the details of the examination of these grievances, the Litigation Division briefly summarizes the principles applicable to processing for journalistic purposes, processing for scientific purposes, as well as some rules regarding the processing of "public" personal data, given that the personal data concerned was accessible on the Internet at the time of the facts and are still so, in spite of themselves, according to the defendants.

1.1. Applicable principles

1.1.1 The “journalistic” and “scientific” exceptions invoked by the parties defendants

61.

The Litigation Chamber duly noted the exceptions invoked by the two parties. In their written conclusions, they invoke both the exception of scientific treatment and the journalistic exception.

62.

In hearing, Mr. Vanderbiest specifies that it is necessary to distinguish “scientific research”

of “scientific communication”21, and explains the interaction between these two

19 Conclusions of EU DisinfoLab, p. 10.

20 Response to the request for information from Mr. Nicolas Vanderbiest of October 1, 2019, p. 6.

21 Remarks by Mr. Vanderbiest on the minutes of the meeting, June 21, 2021.

exceptions applied to the Study: "we can very well have a scientific communication

on scientific research, without state of the art, and even more when the format is intended

operational and of journalistic interest”. In this regard, he explains that, to be perfectly

in line with the codes of scientific communication, the Study should have referred to a

“state of the art” that was non-existent in disinformation research.

63.

The Litigation Division must therefore examine to what extent one or other of these

exceptions (journalistic and/or scientific) remove the defendants from their

obligations with regard to treatments 1 and 2.

1.1.2 Exception to processing for journalistic purposes: applicable law and

terms of application

64.

Article 85 of the GDPR offers the possibility for Member States to reconcile, through their law

national, various fundamental rights such as the right to data protection at

personal character, on the one hand, and the right to freedom of expression and information on the other.

go. Member States are free to provide for this purpose in their national law, a regime

particular applicable to the processing of personal data for journalistic purposes or

of freedom of expression, in the form of exemptions or derogations from certain rules of the

GDPR. For example, data processors for purposes

journalists can be exempted from their obligation to provide information

to the persons concerned (chapter III of the GDPR). As specified in Article 85 of the

GDPR, such derogations or exemptions are only possible insofar as

they prove to be "necessary" to reconcile the right to the protection of personal data

personal and freedom of expression and information.

65.

Before examining the condition of "necessity" required, it is necessary to specify the right

applicable to the present case ratione temporis given that the alleged acts took place

at a time when the right to data protection was not yet fully established

in Belgian law with regard to the journalistic exception.

 Applicable law ratione temporis

66.

At the time of the publication of the Study and the litigious “Excel” files, the exception

journalism provided for in Article 85 of the GDPR had not yet been implemented in law

Belgian. Such an exception was, however, still provided for in Belgium in Article 3 § 3, b) of the

Law of 8 December 1992 on the protection of privacy with regard to the processing of

personal data. Indeed, the law of December 8, 1992 had only been

partially repealed by article 109 of the law of December 3, 2017 creating

Decision on the merits 13/2022 - 19/55

the DPA, leaving intact the exemption of individual information provided for in Article 3 § 3, b) of

this law for the benefit of processing for journalistic purposes22.

67.

In the context where the Belgian legislator had not yet implemented Article 85 of the GDPR,

the Litigation Chamber judges that the defendants cannot be deprived of the possibility

to invoke an exception based on freedom of expression or on the rights of the press in

reason for this legislative delay. The Litigation Chamber emphasizes that in all cases,

Article 85 of the GDPR must be interpreted in the light of the Charter of Fundamental Rights

of the European Union, which provides in its Article 11 for the right of everyone to

freedom of expression and information23.

68.

The Litigation Chamber therefore examines below, when this is relevant in relation to

to the grievances raised, to what extent the defendants can validly invoke

the journalistic exception provided for in article 3 § 3, b) of the law of December 8, 1992 for

processing of personal data 1 and 2, taking into account the case law of the Court of

Justice of the European Union (CJEU) and Article 85 of the GDPR.

 Conditions of application of

the exception

journalistic GDPR/Directive

95/46/EC

69.

The conditions for exercising the balancing of the right to data protection and the

right to freedom of expression have not fundamentally changed in the GDPR in

comparison with Directive 95/46/EC24, subject to the following significant change:

according to the GDPR, the duty to reconcile the right to the protection of personal data

seems to cover a broader scope than that retained in Directive 95/46/EC.

70.

Indeed, Article 85 of the GDPR generally aims at the need to reconcile the right to

data protection with freedom of expression, giving as examples not

limitations of this second parameter, processing for journalistic purposes and for purposes

of academic, artistic or literary expression. This therefore allows Member States to

provide exemptions for freedom of expression beyond cases of expression

“journalistic”, which could imply the freedom of everyone to express themselves on the

social networks without necessarily claiming to be a journalist25.

22 This article 3 § 3, b) provides that articles 10 (information obligations) and 12 (right to rectification) of the Belgian law on the

protection of privacy of 8 December 1992 do not apply to the processing of personal data

made solely for the purposes of journalism or artistic or literary expression to the extent that their application

jeopardize a planned publication or provide indications of sources of information.

23 See Article 52 of the Charter; see also Q. VAN ENIS, Freedom of the press in the digital age, CRIDS, 2015.

24 Q. VAN ENIS, Balancing the right to freedom of expression and the right to the protection of personal data

personnel in the GDPR, C. DE TERWANGNE and K. ROSIER, GDPR, CRIDS, 2018, p. 763; H. KRANENBORG, Commentary

85, in: The EU General Data Protection Regulation: A Commentary. 22, C. KUNER, L.A. BYGRAVE, Lee A. and C. DOCKSEY,

2020.

25 Th. LÉONARD and Y. POULLET, The general interest as arbiter of the privacy versus freedom of expression debate in the G

Privacy, freedom of expression and democracy in the digital society, dir. Y. POULLET, CRIDS 2020, p. 76.

71.

By contrast, Directive 95/46/EC did not explicitly cover processing carried out

for free speech purposes outside of professional journalism. The directive

95/46/EC, in fact, invited the Member States to provide, for the processing of data to

personal character made for the sole purpose of journalism (or artistic expression or

literature), exemptions and derogations necessary to "reconcile the right to privacy

with

the rules governing

the

freedom of expression", without explicitly covering

them

processing carried out in the context of the exercise of freedom of expression independently

of the journalistic sphere. This explains a tendency observed in case law to

interpret the notion of “journalism” very broadly so as to cover all

forms of freedom of expression, before the entry into force of the GDPR, the provisions of which

offer distinct protection to freedom of expression outside the context of

journalism.

72.

After the facts of the case, article 85 of the GDPR was implemented in article 24

of the law of 30 July 2018 on the protection of individuals with regard to

processing of personal data. This provision conditions the invocation

from the journalistic exception to the consideration of rules of ethics, and included

the “journalistic” exception in the context of professional journalism.

" Art. 24 – Processing of personal data for the purposes

journalism the preparation, collection, editing, production, dissemination or

archiving for the purpose of informing the public, using any media and where the person in charge of the

treatment imposes rules of journalistic ethics”.

73.

The Litigation Chamber examines below, when relevant in relation to the

grievances raised, to what extent the defendants can validly invoke

the “journalistic” exception for the processing of personal data 1 and 2, on foot

of article 3 § 3, b) of the law of 8 December 1992 relating to the protection of privacy at

with regard to the processing of personal data, taking into account the conditions

application of this exception at the time of the facts, as defined in

the

case law of the CJEU (broad interpretation of the notion of journalism in the absence of

stand-alone exception covering freedom of expression).

74.

The “Buivids” judgment of the CJEU of February 14, 2019 makes a broad application of the concept

journalistic exception provided for in Article 3.2 of Directive 95/46/EC without formulating

requirement as to the professional quality of the person or organization invoking the

benefit of the journalistic exception: the video recording of members of the police

in a police station and the publication of these images on a website were considered

such as personal data processing carried out for journalistic purposes.

In this judgment, the Court takes into account the “evolution and multiplication of the means of

Decision on the merits 13/2022 - 21/55

communication and dissemination of information”. Similarly, in the “Satamedia” judgment, the

CJEU held that the purpose of journalistic processing included "disclosure to the

public of information, opinions or ideas, by any means of transmission whatsoever.

either (para. 61)”, and that such a purpose could be pursued by “any person”

(para. 58), without laying down any requirement as to journalistic status or a profit motive27.

75.

The Litigation Chamber therefore decides – in contrast to the Inspection Report on this

point - that the defendants do not have to show that they belong to a profession

as a journalist or the submission to specific ethical rules in order to be able to

invoke the exception of journalistic treatment within the framework of their freedom of expression.

Require

demonstration of a professional affiliation to the

journalism

(ex.

subscription to a code of ethics) would not make it possible to give practical effect to the right to

freedom of expression provided for in Article 11 of the Charter in the context where Belgian legislation

applicable at the time of the facts did not yet provide for the explicit possibility of invoking

an exception covering freedom of expression outside a journalistic context,

contrary to Article 85 of the GDPR.

76.

The Litigation Chamber examines below the other conditions of application of

the journalistic exception invoked by the defendants (who would also have

could refer to article 85, directly applicable in Belgian law, in order to benefit from a

freedom of expression protection).

 Meaning of the application condition “for journalistic purposes only”

77.

One of the conditions of application of the journalistic exception in terms of the protection of

personal data under Directive 95/46/EC, as interpreted by the CJEU, is that

the provision of information containing personal data is made

“for the sole purpose of journalism”, as this is a parameter to be taken into account for

assess whether the data processing concerned is “necessary in a company

democratic” to reconcile the right to privacy with the rules governing the freedom

of expression28.

78.

This requirement of exclusivity as regards the journalistic purpose is also reflected in the

Belgian law applicable at the material time (article 3 § 3, b) of the law of 8 January 1992). There occurs

properly interpret the scope of this restriction in order to assess whether the parties are entitled to

invoke concurrently

processing exceptions

journalistic and

scientific. Thus, for example, the Litigation Chamber notes the explanations provided by

26 CJEU, 14 February 2019, C-345/17, Buivids, ECLI:EU:C:2019:122, para. 56.

27 CJEU, 16 December 2008, C-73/07, Satakunnan Markkinapörssi and Satamedia, (Satamedia), ECLI:EU:C:2008:727.

28 CJEU, 14 February 2019, C-345/17, para. 60; Th. LEONARD, “The general interest as arbiter of the privacy versus freedom

of expression in the GDPR”, in Privacy, freedom of expression and democracy in the digital society, dir. Y. POULLET,

CRIDS 2020, p. 80.

Decision on the merits 13/2022 - 22/55

Mr. Vanderbiest in audience, and supplemented by his remarks on the minutes, namely,

that his publications are "scientific communications on research

scientific" in a format "operational and of journalistic interest"29.

79.

The Advocate General states, in his Opinion on the Buivids30 case, that it is for the

national court, as sole judge of the merits, to determine whether the purpose of publication

is that of a journalist inspired by the general interest or if there are other elements

motivating the publication. The CJEU specifies in its "Satamedia" judgment that a processing "with

sole purpose of

journalism" is not excluded

when next to

Communication

information and ideas on matters of public interest, commercial purposes are

also prosecuted.

80.

The Litigation Chamber considers that the scientific and journalistic purposes are not

not mutually exclusive and can in principle be invoked for the same

data processing (see the aforementioned "Satamedia" ruling).

81.

Thus, for example, processing 1 (processing for the purpose of carrying out and publishing the Study) could

be covered by the exception of Article 85 and the exception of Article 89 of the GDPR, under

reserves the right to fulfill the conditions of application of these two provisions insofar as

the data processed is intended to contribute to a public debate through the production and publication

of a Study.

□ Criteria of “necessity” in a democratic society□

82.□

Finally, it emerges from the case law of the CJEU that any processing of data for the purposes□

journalism must be "necessary" in a democratic society and within this framework,□

balanced against freedom of expression by means of a series of criteria, including “the□

contribution to a debate of general interest, the notoriety of the person concerned, the subject of the□

report, the previous conduct of the person concerned, the content, form and□

repercussions of the publication, the mode and the circumstances in which the□

information was obtained as well as its veracity”.32□

83.□

Consideration should also be given to the "possibility for the person responsible for□

treatment to adopt measures to mitigate the extent of the interference in the□

right to privacy”.□

29 Reaction of Mr. Vanderbiest to the minutes of the hearing, June 21, 2021.□

30 Opinion of Advocate General Eleanor Sharpston, 27 September 2018, C-345/17, para. 59.□

31 CJEU, 8 May 2008, C-73/07, para. 82.□

32 CJEU, C-345/17, para. 66.□

33 Ibid., para. 66.□

84.□

The Litigation Chamber will apply these criteria below when examining□

details of the grievances raised by□

the Inspection Service at□

against the parties□

defendants.□

1.1.3 Data processing for scientific purposes□

85.

Articles 13 and 14 of the GDPR impose information obligations on the address of

data subjects, prior to processing. This obligation may also

result from the legal basis "legitimate interest" when it is invoked to justify the

treatment. Indeed, when processing is based on the legitimate interest of the person responsible for

treatment, the latter must in principle provide prior information to the person

concerned whose data are processed, in addition to the possibility of opposing a priori the

processing (Art. 21.1 GDPR). The obligations of information and prior opposition

may be waived provided that the data controller rightly invokes

a specific exemption, for example in the context of scientific purposes (Art. 89

GDPR).

86.

The defendants both invoke the exception of scientific processing in

with a view in particular to alleviating

their prior information obligations relating to the

data processing. In this context, the Litigation Chamber recalls that Article 89

of the GDPR, read in conjunction with Article 14.5.b) of the GDPR, exempts the controller from

processing to provide prior information on the processing of data to

data subjects, provided that the provision of such information proves

impossible or requires disproportionate effort, and provided that the person responsible for

processing take appropriate measures to protect the rights and freedoms as well as

the legitimate interests of the data subject, including making the information

publicly available.

87.

Such an exemption is also subject to taking into account the other requirements

imposed in the context of data processing for scientific purposes. Thus, the item

89 requires the implementation of appropriate safeguards for the rights and freedoms of
data subjects, including the implementation of technical measures and
organizational measures, such as pseudonymisation.34 Article 89 of the GDPR
also requires that personal data be processed in such a way that it no longer
allow the identification of data subjects where possible. the
recital 156 of the GDPR further clarifies that, as a general rule, the data controller
processing must “evaluate whether it is possible to achieve these purposes through the processing of

34 At the material time, the law of 30 July 2018 on the protection of natural persons with regard to the processing of
personal data (and its provisions implementing Article 89 of the GDPR relating to the processing
data for scientific purposes) was not yet applicable. Article 89 of the GDPR, on the other hand, was directly
applicable under Belgian law.

personal data which do not or no longer allow individuals to be identified
concerned, provided that appropriate safeguards exist (such as, for example, the
pseudonymization).

88.

Article 89 of the GDPR requires the achievement of scientific purposes as a priority by means of
non-identifying data. The rules regarding the processing of data for purposes
science are not new and are also the subject of Council recommendations
of Europe no. R (83) 10 regarding the protection of personal data used for
research and statistical purposes.

89.

Recourse to Article 89 of the GDPR juncto Article 14.5(b) of the GDPR may exempt the
controllers to the obligation of information prior to processing (art. 13 and
14 of the GDPR), but does not release them from other obligations of the GDPR, such as the obligation
to invoke an adequate legal basis for the intended data processing.

1.1.4 Need for an adequate legal basis for any processing for the purposes

journalists or scientists

90.

Any processing of data requires an adequate legal basis, for example, the interest

public pursued by the data controller (art. 6.1.e of the GDPR) or the interest

legitimacy of the data controller (art. 6.1. f of the GDPR). The Litigation Chamber makes

argue that a journalistic approach can be based on the legitimate interest of the person responsible

processing in the context of his fundamental right to freedom of expression, or,

its legitimate interest in exercising a right of digital reply. A scientific approach

may find justification in the legitimate interest of the data controller,

or will find its basis in a public interest if it relates to the exercise of authority

public authority of which the data controller under private or public law is responsible, or even if

it takes place in the performance of a legally recognized mission of public interest36.

91.

When the processing of data for journalistic or scientific purposes is not

made from personal data collected directly from the person

concerned, this processing will constitute further processing of personal data

initially collected for other purposes, within the meaning of Article 6.4 of the GDPR. The manager of

processing must then first assess the compatibility of the purposes of the processing

later with the purposes of the initial data processing, according to the criteria provided for in

Article 6.4 of the GDPR.

1.1.5 Principle of purpose and compatible further processing

35 Recommendation No. R (83) 10 of the Committee of Ministers to member states on the protection of personal data

personal data used for the purposes of scientific research and statistics, adopted by the Committee of Ministers on

September 23, 1983.

36 Art. 6.1.e of the GDPR juncto recital 45 of the GDPR.

92.

Data processing 1 and 2 constitute subsequent data processing such as

as defined in Article 6.4 of the GDPR (processing carried out for purposes other than the purpose for

which the personal data was originally collected).

93.

In the context of processing 1, in fact, the data processed by Twitter have been subject to

a study for the purposes of political categorization (profiling within the meaning of Article 4.4 of the

GDPR), therefore being a new purpose. In the context of data processing

2, the raw data processed for the purposes of carrying out the Study were subsequently processed at

for publication on the Internet.

94.

Personal data must be collected for specific purposes

and may not be further processed in a manner incompatible with these purposes.

This “principle of purpose and compatible further processing” is not new and has been

expressed both in Directive 95/46/EC (art. 6.1, b) and in the provisions of the GDPR (art.

5.1, b and 6.4).

95.

Pursuant to Article 89 of the GDPR juncto 5.1, b) of the GDPR, further processing for the purposes

scientific is considered compatible with the initial purposes, provided that

the rules specifically provided for in Article 89 of the GDPR - obligation to provide

appropriate safeguards - are complied with. Recital 156 of the GDPR invites States

Member States to provide such appropriate safeguards in their national legislation. This

implementation of Article 89 of the GDPR was lacking in Belgian law at the time of the facts at the

cause.

96.

In this context, in addition to the principles specific to data processing

personal data for scientific purposes provided for in Article 89 of the GDPR,

bedroom

Litigation refers to article 6.4 of the GDPR which lists criteria for the evaluation of

accounts as follows:

▪ Possible existence of a link between the purposes for which the data to be

personal character were collected and the purposes of the further processing

considered;

▪ Context in which the personal data was collected, in particular

particular, with regard to the relationship between the data subjects and the

controller;

▪ Nature of the personal data, in particular if the processing relates to

special categories of personal data;

▪ Possible consequences of the envisaged further processing for persons

concerned;

▪ The existence of appropriate safeguards which may include encryption or

pseudonymization.

97.

Recital 50 of the GDPR specifies in this respect that it is necessary to take into account the expectations

data subjects in the context in which the data was

collected “in order to establish whether the purposes of further processing are compatible with

those for which the personal data was initially collected, the

controller, after having complied with all the requirements relating to the lawfulness of the

initial processing, should take into account, inter alia: any link between these purposes and the

purposes of the intended further processing; the context in which the personal data

personnel have been collected, in particular, the reasonable expectations of persons

concerned, depending on their relationship with the data controller".

98.

In the absence of Belgian implementation of Article 89 of the GDPR (scientific exception) in

time of the facts, the criteria provided for in article 6.4 juncto recital 50 of the GDPR

constitute at the very least milestones of reflection concerning the parameters to be considered

to assess the compatibility of a scientific treatment. The Litigation Chamber

considers this frame of reference to be equally relevant for any processing of

data for journalistic purposes which would constitute further processing, in the absence of

transposition of Article 85 of the GDPR (journalistic exception) at the time of the events.

99.

Therefore, it is necessary to take into account the expectations of the persons concerned (article 6.4.a) and

b) in the present case: this implies that when people have disseminated their data

with a primary data controller (e.g. Twitter) and do not expect

reasonably to be the subject of a particular further processing by another controller

processing (e.g. policy profiling 4.4 of the GDPR), such reuse of

data for new purposes is only possible with their consent, except for

have another legal basis such as the legitimate interest of the person responsible for

treatment.

100.

The Litigation Division applies the above principles to the examination of each

data processing concerned.

1.1.6 Processing of personal data made public

101.

The defendants

insist on

the fact that

the data they process

(in particular, the Twitter handles) have been made public by the persons

concerned. The second defendant deplores the fact that, in its opinion, there is no line

director of the data protection authorities on this subject.

102. As a preliminary matter, the Litigation Chamber therefore wishes to provide some explanations to the

subject of the rules to be taken into account when processing personal data

Decision on the merits 13/2022 - 27/55

public, which rules already existed under Directive 95/46/EC (and its implementation

under Belgian law under the law of 8 December 1992).

103. These already old rules have been the subject of explanatory documents from the authorities.

data protection. For example, since 2016, the CNIL has been providing details

following on its site37: the massive collection of data from social networks is not

not legal in the absence of prior information to the persons concerned; the character

public of personal data available on social networks does not cause them to lose

the status of personal data and its processing is subject to all the conditions

provided for by French data protection law, including the condition of legality

(legal basis).

104. More particularly, when the processing of data from social networks is

based on the legitimate interest of the data controller, prior information and

possibility of opposing the collection and processing of personal data must

principle be provided, in accordance with Article 21.1 of the GDPR juncto the obligations

general information provided for in Articles 12 and 14 of the GDPR, except for exceptions, based on

example, processing for scientific or journalistic purposes.

105.

The Litigation Chamber also refers to the judgment of the CJEU Satamedia, in which

the Court of Justice clarified that such data processing could take place for the purposes

journalistic as long as they are respected

the conditions of application of

exemption

journalism and, in particular, that

the activity can be described as

journalistic and “has the sole purpose of disclosing to the public information, opinions,

of ideas, which it is for the national court to assess”38.

106.

The CJEU has also repeatedly clarified the criteria for balancing the right

data protection (Art. 8 of the Charter of Fundamental Rights of the European Union

European Union), and the fundamental right to privacy (art. 7 of the Charter of Rights

fundamentals of the European Union) with the right to freedom of expression in the

context of the reuse of public data39.

107. Thus, for example, in the Österreichischer Rundfunk judgment40, the CJEU specified that the rules

protection of personal data within the meaning of Article 8 of the Charter apply to

public data (salary data of employees of a semi-public company):

the processing of this personal data for purposes other than those for

which they were initially collected (in this case, for the purposes of transparency

37 https://www.cnil.fr/fr/communication-politique-quelles-sont-les-regles-pour-lutilisation-des-donnees-issues-des-

networks.

38 CJEU, C-73/07, para. 62.

39 C. DOCKSEY, “Four fundamental rights”, International Data Privacy Law, 2016, vol. 6, no. 3.

40 Joined cases C-465/00, C-138/01 and C-139/01, Österreichischer Rundfunk and others, ECLI:EU:C:2003:294.

budget) is subject to the rules set out above: compliance with the principle of purpose and

compatibility of any subsequent data processing except for legal exceptions

framed.

108. In the light of this case law, it is clear that personal data of a nature

public cannot be processed for new purposes outside a legal framework

valid.

1.2. Application of these principles to processing activities 1

109.

The Litigation Chamber examines below

the grievances upheld by

the service

of Inspection with regard to EU DisinfoLab. The grievances relating to treatment 1 have not been the subject of

an examination vis-à-vis Mr. Vanderbiest by the Inspection Service, which had not

considered responsible for processing 1. Given the limited liability of Mr.

Vanderbiest in the context of processing 1 (see above), the Litigation Chamber does not

not reopen the debate on this subject.

1.2.1 Obligation of prior individual information – art. 5.1.a), 12 and 14 GDPR

110.

In its capacity as data controller, EU DisinfoLab is required to comply with the

Articles 5.1.a), 12 and 14 of the GDPR, namely the obligation to inform data subjects

when their data has been collected indirectly.

111.

In this case, the collection of personal data via publicly available sources

such as public publications on Twitter, and this, through software subcontractors

like Visibrain, constitutes a collection

indirect, subject to obligations

prior information of article 14 of the GDPR.

112.

In this case, the GDPR makes it possible to waive the obligation of prior information to individuals concerned when such information appears to be impossible or requiring disproportionate efforts (Art. 14, 5, b) GDPR). According to recital 62, this may be the case when the processing is carried out for the purposes of scientific research, insofar as the obligation to provide information is likely to render impossible or compromise seriously the achievement of the scientific objectives of the treatment. To be able to invoke this exception to prior individual information, it is necessary to comply with the conditions scientific research provided for in Article 89 of the GDPR.

 Scientific exception

113.

Given the scientific purpose of processing 1, which is part of a social purpose of "development and promotion of methodologies, technologies and processes around the sourcing of 'Fake news' and disinformation in general", EU DisinfoLab is in principle

eligible to invoke a "scientific research" exception with respect to Treatment 1, in with a view to evading an obligation of individual prior information to persons whose data is processed, and this, insofar as the conditions of application of this exception are met41.

114.

Article 89 of the GDPR requires the implementation of appropriate safeguards for the rights and the persons concerned. In this regard, the Litigation Chamber argues that in the context in which EU DisinfoLab processed data – whether public or not – for profiling purposes policy, and therefore, ultimately, processed sensitive data within the meaning of Article 9 of the GDPR, such guarantees had to include at least internal documentation (register process, prior impact analysis) and external (privacy policy42)

re

the methodology of

data processing and

their degree

anonymization/pseudonymization.

115.

The obligation to keep a record of processing results from a combined reading of Article

89 of the GDPR (obligation of appropriate safeguards as interpreted by the Chambre

Litigation in the absence of legal transposition at the material time) juncto article 30.5 of the

GDPR (obligation to keep a register when the processing relates to categories of

sensitive data) and Article 35 of the GDPR (obligation of prior impact analysis)43.

116.

The obligation to make a privacy policy available to the public arises from

Article 14.5.b of the GDPR, which requires the disclosure of mandatory information

imposed by Articles 13 and 14 of the GDPR, when prior individual information is not

not possible, in particular in the context of processing for scientific purposes. Bedroom

Litigation argues that such public information can take place in the context of the

publication of the privacy policy.

117.

However, in the absence of a processing record and in the absence of any form of measurement

prior information to data subjects about the planned processing (at the

a minimum of a publicly available privacy policy regarding

the

methodology

of

treatment

of the

data

personal

and

their

degree

anonymization/pseudonymization), the Litigation Chamber judges that EU DisinfoLab does not

cannot claim to benefit from the scientific processing exception.

118.

The Litigation Chamber does not follow EU DisinfoLab's argument when it exposes

that partial information has been provided to Twitter users about the processing,

namely, the fact that EU DisinfoLab, in the person of Mr. Alaphilippe, gave 5 interviews

in the French and international press (BFM, Politico, L'opinion, Stop on images, and AFP)

between August 1 and 3, 2018, i.e. before the publication of the Study, to announce that the article

41 Recital 159 GDPR.

42 Inspection Report, p. 11 and 15.

43 On registry and impact assessment requirements, see Titles 1.2.2 and 1.2.3.

of Mr. Vanderbiest would be the subject of a more in-depth study concerning the accounts

hyperactive in the Benalla case.

119.

The Litigation Chamber argues that the first defendant does not demonstrate that

these interviews in the press are sufficient to provide the information required by article 14

or 14.5.b of the GDPR, or would constitute the necessary safeguards required by Article 89

as part of a scientific or statistical study. The interviews given by

press did not refer to

the existence of a complete document

(policy of

confidentiality) containing the information to be provided under Article 14 of the GDPR, and a

such a document was non-existent at the time, according to the Inspection report.

 Journalistic exception

120.

The Litigation Chamber examined whether and to what extent the information disseminated by the

manager of EU DisinfoLab through the press could suffice in the context of treatment

journalistic type under Article 85 of the GDPR, which invites Member States to

reconcile, by their national law, the right to the protection of personal data and

the right to freedom of expression, including processing for journalistic purposes.

121.

In the present case, the Inspection report suggests disregarding this

exception on the grounds that article 24 of the law of July 30, 2018, which entered into force

subsequent to the facts, imposed a condition which the parties did not fulfill, namely

namely, to subscribe to the rules of journalistic ethics. In this regard, the Chamber

Litigation judges that at the time of the facts, EU DisinfoLab was indeed eligible to invoke

this "journalistic" exception without being subject to rules of

journalistic ethics.

122.

At the material time, the journalistic exception was still provided for in Belgian law

transposition of Directive 95/46/EC. The law of 8 December 1992 relating to the protection

of privacy with regard to the processing of personal data had only been

partially repealed by article 109 of the law of December 3, 2017 creating

ODA. According to article 3, § 3, b) of the law of December 8, 1992, the obligation of information in the event

indirect collection as provided for in Article 9, § 2 of the same law, did not apply

to the processing of personal data carried out for the sole purpose of journalism

or artistic or literary expression when its application would compromise the collection

data and/or a planned publication. The Litigation Chamber recalls that

Article 85 of the GDPR must be interpreted in the light of the Charter of Fundamental Rights

of the European Union, which provides in its Article 11 for the right of everyone to

freedom of expression and information.

44 See Article 52 of the Charter; see also Q. VAN ENIS, Freedom of the press in the digital age, CRIDS, 2015.

123.

On this basis, the Litigation Chamber argues that the invocation of the exception

journalistic for treatment 1 is indeed possible, even if EU DisinfoLab does not

does not claim to take into account the rules of journalistic ethics.

124. At the material time, the requirement of “journalistic ethical rules” was not

enshrined in Belgian law. The Litigation Chamber will therefore not endeavor to interpret it.

Moreover, as EU DisinfoLab points out, the Court of Justice, in the “Buivids” judgment

cited above45, retained a broad interpretation of the journalistic derogation, applying it in

a framework of non-professional journalism without requiring submission to the rules of

“journalistic ethics” (in this case the publication on a website

of a video recorded in a police station during the taking of a statement). This

interpretation is consistent with recital 153 of the GDPR according to which "to take into account

the importance of the right to freedom of expression in any democratic society, it is necessary to

retain a broad interpretation of the notions linked to this freedom, such as journalism”46.

Therefore, for the period concerned by the facts, the Litigation Division will retain

also a broad interpretation of the notion of journalism, unrelated to the subscription to

external ethical rules47.

125.

However, it is required that the derogations and limitations of data protection such as

a derogation for journalistic purposes, takes place within the limits of what is strictly necessary 48.

With this in mind, the Litigation Chamber gives concrete expression to the balancing

between the right to data protection and freedom of expression pursuant to Article

85 of the GDPR, with regard to processing 1: the Litigation Chamber admits that EU

DisinfoLab rightly considers itself exempt from prior information to persons

concerned within the meaning of Article 14 of the GDPR in the context of journalistic activities, in the

to the extent that informing the persons concerned could have compromised the performance

of the Draft Study and its subsequent publication.

126.

The journalistic exception applicable at the time of the facts, therefore allows EU DisinfoLab and

to Mr. Vanderbiest to carry out a “Study” with a view to publishing it and participating in the public debate

concerning the Benalla case without disclosing all of its sources or its methodology, and

without first individually providing all of the information provided for in

Article 14 of the GDPR concerning the personal data processed, and this, as

responsible for processing intervening in the journalistic sphere.

45 CJEU, C-345/17.

46 See also CJEU, C-73/07, where the CJEU rejected the requirement of a public interest in the context of the dissemination

information for journalistic purposes.

47 See also the developments above under the heading “Conditions for the application of the journalistic exception

GDPR/Directive 95/46/EC”.

48 ECtHR, 27 June 2017, Satakunnan Markkinaporssi Oy and Satamedia, para. 56; CJEU, C-345/17, para. 64.

127.

However, such reasoning cannot be accepted with regard to the scientific exception.

also

invoked by EU DisinfoLab in order to evade the obligations

prior information. A journalist can indeed cite sources such as Visibrain

or other third-party software without necessarily revealing their operation in terms of

data processing, while the summons of such sources, if it takes place in the

framework of a scientific approach, requires, according to the Litigation Chamber, more than

transparency, in particular on the methodology of data collection and their degree

anonymization/pseudonymization.

1.2.2 Data protection impact assessment – art. 35 GDPR

128.

In its capacity as data controller, EU DisinfoLab is required to comply with Article

35 of the GDPR, according to which certain processing likely to create a risk

high for the rights and freedoms of data subjects must be subject to the

prior completion of a “data protection impact analysis”. A

such an impact analysis must enable the controller to identify the

data processing in question, determine whether the envisaged processing is proportional to

its purposes, identify the risks in terms of personal data and finally, anticipate and

put in place the appropriate remedial measures before the implementation of the

treatment, if the analysis reveals that the treatment can be started.

129.

The Litigation Chamber concludes on the basis of the Inspection Report49 that the processing 1

fulfills the conditions of a “high risk” according to Article 35 of the GDPR: processing of

data of 55,000 users (large-scale processing according to Article 35.2 b) of the GDPR,

processing of special data via policy profiling of Twitter users

concerned within the meaning of Article 4.4 of the GDPR (allegations concerning political affiliation

or the "russophilia" of hyperactive Twitter accounts, in particular through the realization

of the file “Classified Actors”50). In addition, the "raw data" file, in particular the one published

by Mr. Vanderbiest, reveals political opinions, religious beliefs or orientation

publicly posted on Twitter51. Although a sizeable organization

modest, EU DisinfoLab therefore operates high-risk processing within the meaning of Article 35 of the

GDPR.

130.

The Litigation Chamber also specifies that data controllers are not

not exempt from the obligation to carry out a prior impact analysis when dealing with

personal data for journalistic purposes. The Litigation Chamber refers as

best practices to the data protection law applicable today, where it is provided

that the journalistic processing exception exempts the data controller from

49 Inspection Report, p. 17.

50 Exhibit 13.0 of the Inspection Report.

51 Same.

the obligation to communicate its impact analysis beforehand to the supervisory authority,

when such a measure would compromise a planned publication or constitute a

control measure prior to the publication of a press article52. This does not prevent him from

must carry it out and be able to communicate it after the fact, good

practice that EU DisinfoLab has not taken into account. EU DisinfoLab indeed, could not

submit its impact analysis to the Inspection Department, for lack of having carried out the exercise

assessment required prior to the completion of the Study53. The Litigation Chamber

will take into account, when determining

the appropriate penalty,

the absence

implementation of Article 85 of the GDPR in Belgian law at the material time.

1.2.3 Liability and supporting documentation (subcontracts and

register of processing activities) – art. 5.2, 24 and 30 GDPR

131.

Notwithstanding the requests for information sent by the Inspection Service to EU

DisinfoLab, the latter did not provide the supporting documentation requested (register

of processing and subcontracting with third-party service providers)54.

 Obligation to conclude a subcontract (Art. 28 GDPR)

132.

With regard to the collection of personal data via service providers such as

Visibrain and Talkwalker, EU DisinfoLab denies in its conclusions the existence of a

any collaboration between it and these external partners. In his response to the

second request for information from the Inspection Service, EU DisinfoLab confirms

however, having used the services of subcontractors and claims to have adhered to their

general conditions of use without the possibility of modifying or negotiating them. US

DisinfoLab also confirms in its response to the second request for information

that it does not have a copy of the copy of the General Conditions of Use

of the subcontractors mentioned at the time of processing activities 1 and 2, and that it does not have

no contract or usage agreements with these subcontractors55.

133.

As data controllers, it was in principle the responsibility of EU DisinfoLab and Mr.

Vanderbiest to ensure the legal framework for the collection of personal data at the base

of their analysis. This implied in principle the need to conclude a subcontract

processing within the meaning of Article 28 of the GDPR with any subcontracting partner. As

exemption, EU DisinfoLab invokes a processing purpose that is both scientific and

journalistic.

52 Article 24 § 3 of the law of 30 July 2018 on the protection of individuals with regard to the processing of

personal data.

53 On impact analyses, see https://www.autoriteprotectiondonnees.be/publications/guide-analyse-d-impact-relative-

a-la-protection-des-donnees.pdf;

https://www.autoriteprotectiondonnees.be/professionnel/rgpd-/analyse-d-impact-

relating-to-data-protection.

54 Inspection report of April 2, 2020, p. 10-11.

55 Ibid., p. 12-13.

134.

The Belgian law of 30 July 2018 on the protection of natural persons with regard to

processing of personal data, entry into force after the

facts, provides for specific obligations and exemptions with respect to sub-contracts

processing in the context of processing for scientific purposes (Articles 194 et seq.).

In particular, the subsequent processing manager is exempted from the obligation to

enter into an agreement with the initial data controller when the processing takes place

relates to data made public (art. 194 of the law of July 30, 2018 on the

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

personal). No clarification is provided, however, regarding the conclusion

such contracts in the context of journalistic processing with regard to the collection

by journalists of personal data (art. 24 of the same law).

135.

Belgian provisions applicable to journalism at the time of the events

- art. 3 § 3 of the law of 8 December 1992 on the protection of privacy with regard to

processing of personal data — did not otherwise provide for any

exception to the obligation to conclude a subcontracting agreement for the benefit of

processing carried out for journalistic purposes (art. 16 of the same law). GDPR does not

does not provide for such an exemption either. Therefore, in the absence of a legal text

national pursuant to Article 85.2 of the GDPR at the material time, the Chamber

Litigation considers that it is appropriate, on this specific breach, to apply the

GDPR, in this case, its article 28. Therefore, the Litigation Chamber considers that

the absence of conclusion of a subcontract between EU DisinfoLab and its

providers constitutes a breach of Article 28 of the GDPR. The Litigation Chamber

notes that EU DisinfoLab engaged during the procedure in the qualification exercise of

its own role under the empire of the GDPR, in particular for lack of having carried out an analysis

of impact relating to data protection (DPIA) upstream of data processing

considered, in accordance with Article 35 of the GDPR. In doing so, EU DisinfoLab has not identified

the partners for whom a subcontract was required beforehand. For

however, the Litigation Chamber takes into account the temporal proximity between the facts and

the entry into application of the GDPR56.

136.

The Litigation Chamber therefore considers that the data controllers were able to

misunderstand the qualification of “third-party” service providers or “subcontractors” within the meaning of

GDPR. EU DisinfoLab has perceived the extent of its obligations in this area following the

questions from the Inspectorate and was obviously not aware of the fact that

journalists are subject to such obligations when their investigative work involves

processing of personal data by upstream subcontracting, in the absence of

56 These notions have been the subject of subsequent clarifications by the data protection authorities through the lines

EDPB guidelines dedicated to the concepts of “controller and processor under the GDPR”. See EDPB,

Guidelines 07/2020 on the concepts of controller and processor in the GDPR, last revised on July 7, 2021.

implementation of Belgian law at the material time. It is now clear from the article

24 of the law of 30 July 2018 concerning the protection of natural persons with regard to

the processing of personal data, the obligation to conclude a contract

of subcontracting (Art. 28 GDPR) is not subject to any exemption in a context

journalistic, no more than under the former Belgian law of 8 December 1992.

 Obligation to keep a register (Art. 30 GDPR)

137.

In its capacity as data controller, EU DisinfoLab is required to implement

Article 30 of the GDPR, under the terms of which it must constitute a register of the activities of

processing carried out under its responsibility. The GDPR provides an exception to this

obligation for organizations comprising less than 250 people, except, in particular,

when the processing is “likely to entail a risk for the rights and freedoms

data subjects” insofar as “it relates in particular to the categories

specific data referred to in Article 9(1)” (Art. 30.5 GDPR).

138.

In this case, the Litigation Chamber specifies that the exception to the obligation to hold a

register of processing activities is not applicable to EU DisinfoLab despite the size

reduced by this ASBL, for several reasons.

▪ First,

processing activities 1 focused on categories

specific data referred to in Article 9.1 of the GDPR (sensitive data): the

analyzed data tables included elements such as the contents of the

“biography” sections of Twitter accounts – in which it is common for

users provide sensitive data such as their racial origins or

ethnicity, or their sexual orientation;

▪ Secondly, this treatment was likely to entail a risk for the

rights and freedoms of data subjects, in that the very purpose of these

processing activities 1 aimed to generate sensitive data on the basis of a

political profiling of “hyperactive” users.

139. Consequently, the absence of a register of processing activities at the time of the facts in dispute,

prior to carrying out processing 1, constitutes in principle a breach of Article

30 GDPR in conjunction with Articles 5.2 and 24 GDPR.

140.

EU DisinfoLab, a small organization, carries out high-risk processing within the meaning of

GDPR Article 35. Its degree of responsibility within the meaning of Article 24 of the GDPR is therefore

raised.

141.

However, EU DisinfoLab invokes the exception of processing for journalistic purposes as well as

the exception of processing for scientific purposes. In this regard, the Litigation Chamber

refers as good practice to the data protection law applicable today,

Decision on the merits 13/2022 - 36/55

where it is provided that the journalistic processing exception exempts the controller from

processing of the obligation to communicate its record of processing activities

prior to treatment

the supervisory authority,

when such a measure

jeopardize a planned publication or constitute a control measure

prior to the publication of a press article. This does not prevent the person responsible for

processing must have a register and be able to

communicate it

after the journalistic publication at the APD, a good practice that EU DisinfoLab has not

not taken into account.

142.

Therefore, the Litigation Chamber argues that this is a breach of the principle of

liability enshrined in Articles 30, 5.2 and 24 of the GDPR. The Litigation Chamber will hold

account, when determining the appropriate sanction, of the lack of implementation

of article 85 of the GDPR in Belgian law at the material time59. Given the time

necessary to carry out such a processing register according to the level of detail required at

Article 30 of the GDPR, the Litigation Chamber also takes into account the proximity

time between the processing in question (publication of raw data) and the entry into

GDPR comes into force.

1.2.4 Security and notification obligations (pseudonymization and violation of

data) – art. 5, 32 and 33 GDPR

143.

Article 5.1.f) of the GDPR requires the data controller to process the data

personal information in an appropriate manner with regard to their confidentiality. It is his responsibility

in particular to guarantee a level of security adapted to the risks (art. 32 GDPR), and to

notify any personal data breach to the supervisory authority within the

72 hours when the violation is likely to create a risk for the rights and

freedoms of data subjects (Art. 33.1 GDPR).

144.

The Litigation Chamber concurs with the conclusions of the Inspection Report according to which

EU DisinfoLab breached its obligations under Articles 5.1.f) and 32 by not taking

not take the necessary measures to ensure the confidentiality and security of the processing 1,

in particular by not organizing the backup of files in an environment

secure and under his control. EU DisinfoLab was in charge of implementing the measures

adequate security measures adapted to the risks of the data processed (55,000 accounts

Twitter).

145.

EU DisinfoLab has particularly failed in its security obligations by not

not pseudonymizing the data included in the processed data files, by

57 Article 24 § 3 of the law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data.

58 On the limited extent of Mr. Vanderbiest's liability, see para. 59 of this decision.

59 Ibid.

in particular the "Classified Actors" file containing directly identifying data and subsequently released by Mr. Vanderbiest as part of treatment 2.

146.

EU DisinfoLab does not dispute the existence of a breach of Articles 32 and 33 of the GDPR in the context of processing 1. EU DisinfoLab wrongly rejects responsibility for this on the person of Mr. Vanderbiest60.

147.

EU DisinfoLab acknowledges that it did not report the data breach to the authority due to the significant media pressure generated by the case, including the intrusion into the private lives of the members of the non-profit organization targeted by threatening tweets61.

2. Failures relating to processing activities 2

148.

With regard to the description of processing activities 2, namely, the posting of raw data files by EU DisinfoLab and M. Vanderbiest, the Litigation Chamber found the following shortcomings.

2.1. Breaches of articles 5, 6, 9, 12, 14 and 32 of the GDPR on the part of EU DisinfoLab

149.

Any processing of personal data requires in particular:

▪ an adequate legal basis (Art. 6 GDPR),

▪

compliance with the principle of data minimization (i.e. only processing data

data necessary for the purposes pursued in accordance with Article 5 of the

GDPR),

▪

the provision of transparent information to the persons concerned with regard to

concerns any indirect or subsequent processing of their data, with the exception

particular (art. 12 and 14 of the GDPR), and finally,

▪

the implementation of adequate security measures (Art. 32 GDPR).

150.

The case law of the CJEU requires that a recourse to Article 6.1.f) of the GDPR meets three

cumulative conditions. In other words, the controller must demonstrate

that :

1)

the interests he pursues with the processing can be recognized as

legitimate (the “purpose test”);

2)

the envisaged processing is necessary to achieve these interests (the “test of

need") ; and

60 On the limited extent of Mr. Vanderbiest's liability, see para. 59 of this decision.

61 Conclusions of the non-profit organization DisinfoLab, p. 9.

3)

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

fundamentals of the data subjects weighs in favor of the person responsible for the

treatment or a third party (the "weighting test").62

2.1.1 Lack of legitimate interest

151.

EU DisinfoLab invokes its legitimate interest (Art. 6.1.f of the GDPR) to make its sources in order to substantiate the integrity of the published Study, following the criticisms it has made the object.

 Purpose criterion

152.

EU DisinfoLab justifies itself as follows: “We published our raw data with our methodology so that everything is verifiable. We have also received public requests very explicit sharing of research data in order to verify our analyzes (you check for yourself HERE, HERE and HERE)” 63. For example, a tweet invites Mr. Vanderbiest, volunteer at EU DisinfoLab, to "provide the methodology, the sources for whether or not to refute the hypothesis”)64.

153.

The Inspection Service considers in this respect that "the purpose of the processing activities 2 was […] to justify the integrity of the Study that had just been carried out by EU DisinfoLab and Mr. Nicolas Vanderbiest following the criticisms leveled at [his] opposition, through access to his sources (its basic data).65”

154.

The Inspection Service concludes that such a purpose seems legitimate to it, as processing subsequent processing of data whose purposes are compatible with that of the processing of original data related to the completion of the EU DisinfoLab Study” (articles 5.1, b) and 6.4 of the GDPR).

155.

The Litigation Chamber follows this point of view subject to the important reservation of a clarification chronological. On the date on which the disputed files are put online respectively by

Mr. Vanderbiest then by EU DisinfoLab, namely, on August 5 and 7, 2018, the DisinfoLab Study
is not yet published on its site. This publication takes place on August 8, 2018. Only have
been published tweets from Mr. Vanderbiest, announcing the completion of a Study of
more elaborate DisinfoLab, from its Article previously published under its sole
responsibility on July 23, 2018 on the website of his company “Reputatiolab”. Bedroom
Contentious therefore had to examine to what extent EU DisinfoLab would be justified in
62 CJEU, 4 May 2017, C-13/16, Rigas satiksme, ECLI:EU:C:2017:336, and CJEU, 11 December 2019, C-708/18, Asociația de
Proprietari block M5A-ScaraA “M5A-ScaraA”, ECLI:EU:C:2019:1064. See. also House Decision 25/2020
Litigation.
63 Exhibit 5.1, Annex 9.
64 Annex 10 to Exhibit 5.1 of the Inspection Report.
65 Inspection Report, p. 22.

invoke its legitimate interest for the publication of raw data relating to a study
of scientific ambition under development and not published.
156.
The Litigation Chamber understands that EU DisinfoLab had the ambition to spark a debate
public about the sources of its future Study, and wished to invite researchers
interested in participating in the discussion. The Litigation Chamber affirms that such a purpose
is in principle legitimate within the meaning of Article 6.1.f of the GDPR, provided that the other
conditions of legitimate interest are met.
157.
The Litigation Chamber also notes that through the publication of the sources (data
gross) of the future Study, EU DisinfoLab sought to defend its reputation against
attacks published in advance on the Internet. The Litigation Division argues that this
form of digital right of reply was in principle a legitimate purpose, subject to

taking into account the other conditions below, namely the criterion of necessity and
balance of interests.
 Necessity criterion
158.
With regard to the condition of necessity, the Litigation Chamber decides that the
purpose pursued could be achieved in a manner less detrimental to the interests,
rights and freedoms of data subjects, by publishing - and processing - data duly
pseudonymised (in particular with regard to the “Rumeurs & Items” file disseminated by
EU DisinfoLab) and providing access restrictions. As suggested by the Service
of Inspection, the accessibility of this data could have been limited via a measure of access to the
case by case on request, with control of recipients according to categories
determined, and subject to more or less strong identification depending on the hypotheses. There's
there was also reason to require the provision of appropriate guarantees such as a
confidentiality, provided that the processing is carried out in a scientific framework
and subject to legislative clarification in this regard (the law of July 30, 2018, entry
of application after the fact, details the obligations and exemptions within the framework
processing of scientific data).66. In a journalistic context, given the sensitivity
of the data processing, it would have been proportionate to limit access to the data to
accredited journalists as envisaged by EU DisinfoLab itself.
159.
In this case, the files were made publicly available via Twitter by means of
from a simple link, without any restriction control or access condition, as observed
by the Inspection Service. This way of sharing files is also contrary
66 Art. 194 and following of the law of July 30, 2018 on the protection of natural persons with regard to processing
of personal data.

to the principles announced in the Study itself, according to which the raw data would be

made accessible only to interested researchers and accredited journalists67.

160.

The Litigation Chamber therefore judges that the data put online within the framework of the

treatment 2 by EU DisinfoLab did not meet the condition of need for a

processing based on a legitimate interest. Therefore, the publication of these data constitutes

a breach of Article 5.1.c (condition of proportionality of processing) of the GDPR.

161.

Surprisingly, the Litigation Chamber wonders to what extent

the publication of raw data, even under conditions of confidentiality and control

reinforced access, could be sufficient to achieve the aims pursued by EU DisinfoLab, to

namely, justify the methodology of the Study. Indeed, the Litigation Chamber wonders

if the purpose pursued could not have been achieved, at least in part, by offering more

transparency with regard to the methodology and the processing carried out by

third parties responsible for the collection and processing of raw data collected via software

third parties (e.g. Visibrain) whose mode of operation would probably deserve a

clarification.

162.

Indeed, it has not been demonstrated that the simple clarification of the methodology used by

these third-party software would not have been sufficient to remove the doubt on the methodology of the Study, without it

there is a need to resort to the publication of raw data. This point was not raised

by the Inspection Service - which did not extend its report, already very extensive, to the role of third parties

such as Visibrain - the Litigation Chamber is content to express its reservations on this

point, without these considerations having an impact on the assessment of the condition of necessity, in

the negative occurrence.

 Criterion of balance of interests

163.

With regard to the condition of balance of interests, EU DisinfoLab submits that its legitimate interest in publishing the "tweets" data concerned would derive in particular from the following elements:

- Twitter's terms and conditions, which state that the information published on the platform are public and
- Twitter's privacy policy, which states that data posted can be reused for “research” purposes68.

67 Exhibit 5.0 of the Inspection report.

68 Conclusions EU DisinfoLab, 28 August 2020 (non-paginated - p. 11).

164.

Twitter's Terms and Conditions cited by EU DisinfoLab, however, encourage platform users to “think carefully about what [you] decide to post, especially if it is sensitive information”.

165.

In addition, the fact that personal data has been made public by the data subjects does not imply that they can be treated freely on the basis of Article 6.1.f of the GDPR. It is necessary not only to assess the proportionality of the processing, but also to balance the interests involved, taking into account

- the absence of pseudonymization of online data
- the legitimate expectations of the persons concerned as to the purposes for which their data may be processed, and
- the potential harm that the processing in question may cause them.

Absence of pseudonymization of data posted online

166.

The Litigation Chamber notes that in extremis, the first defendant denies having

put personal data online in the context of the processing of personal data

no. 2, considering that they were “Twitter pseudonyms, freely chosen by each

user ". According to EU DisinfoLab, these data do not make it possible to formally identify

the individuals managing these accounts.

167.

The Litigation Chamber refers in this respect to the findings of the Inspection report, according to

which the files disseminated by the first defendant should have been pseudonymized

before dissemination: “the Rumeurs&Items, Excel file) was made available to the public “without

anonymization or even pseudonymization of the data when the "Label" column

(or "screen name") has remained unchanged and directly resumes the data extracted

from Twitter. While a technical measure for this purpose should have been put in place in order to

to avoid exposing Twitter users directly to the data contained in the file,

without necessity, given the publicity given to the file and the content of this

file »69.

168.

It also appears from the Inspection report that at least one of the files put online by EU

DisinfoLab contains a column of identifiers, some of which consist of a name and

firstname70. The Inspection Report also indicates that the inclusion in these files of

“bio” data in the “Databrutes” file put online by DisinfoLab involves

special categories of data within the meaning of Article 9.1 of the GDPR71.

69 Inspection Report, p. 23.

70 Inspection Report, p. 16 and 23.

71 Inspection Report, p. 16.

169.

The Litigation Chamber judges that beyond the factual question posed by EU DisinfoLab,

the very definition of the concept of pseudonymization allows him to dismiss the grievance raised.

The Litigation Chamber recalls that under

GDPR article 4.5,

the

pseudonymisation is a processing of personal data requiring in particular that

the data is subject to technical and organizational measures such as to

guarantee that they cannot be attributed to an identified natural person or

identifiable. In this case, such measures must be assessed taking into account the

new context of publication, implying increased visibility, a fortiori given that

potentially sensitive categories of data (of a political nature) are at stake.

170.

The Litigation Chamber also recalls that the pseudonymization of data is

a security measure, the implementation of which must be adapted to the nature of the processing

and the risk it entails for the persons concerned: data remains personal as long as

that a person remains directly or indirectly identifiable (art. 4.1 of the GDPR).

When sensitive data is associated with people

identifiable

indirectly, it is important to ensure that the degree of pseudonymisation is sufficient in order to

that the persons concerned are not at risk of being subjected to a risk of re-identification and

malicious reuse of their data72. In this regard, it is necessary to take into

consideration all the means reasonably likely to be used by the

controller or by any other person to identify the natural person

directly or indirectly.

171.

However, even if the data put online by EU DisinfoLab basically consisted of

pseudonyms freely chosen by the persons concerned, the risk of re-identification

of these pseudonyms has not been evaluated in advance on a case-by-case basis, given the numerous

personal data put online by EU DisinfoLab and the very short time between the

decision to publish and publication. Therefore, the Litigation Chamber judges that these

data cannot be considered pseudonymised within the meaning of Art. 4.5 of

GDPR in the context of processing 2, because it is up to the defendant to bear the burden of proof

that it has taken the appropriate measures to pseudonymize the data concerned account

taking into account all the relevant circumstances (Art. 24 GDPR), but in this case the defendant

has not taken any prior measures to ensure the confidentiality of the data

personal concerned.

172.

EU DisinfoLab also recognizes that the provision of XL files could have been

with additional measures

(pseudonymization and/or access control),

72 As specified in recital 14 of the GDPR, personal data which has been subject to pseudonymisation

and could be attributed to a natural person "through the use of additional information", should be

considered to relate to an identifiable natural person.

73 Recital 14 GDPR.

however, the association wrongly considers that the legal basis “legitimate interest” of the

treatment is not affected.

173.

In conclusion on this point, the absence of measures to protect the rights of persons

concerned such as pseudonymization of data and/or access controls, weighs

in the assessment of the 2nd and 3rd criteria required to demonstrate a legitimate interest:

▪

the posting of personal data is not necessary if the same result

could be reached with pseudonymised data, on the one hand, and

▪

the balance of interests is not balanced if measures to protect the

confidentiality of data are deficient or lacking, with the consequence

the exposure of the persons concerned to a risk of discrimination because of the

profiling carried out in a non-anonymized manner (e.g. attribution of Russophile profiles

to persons identified by name on Twitter in the file “Rumeurs

& Items”).

 Criterion linked to the expectations of the persons concerned

174.

With specific regard to the impact of Twitter's Terms and Conditions on

the reasonable expectations of the persons concerned, the Litigation Chamber does not follow

the reasoning of EU DisinfoLab. Assuming that the contractual provisions invoked

were indeed applicable at the time of the events (which has not been demonstrated), the information

provided in this document did not justify a republication of this same data

personal, including sensitive (e.g. some tweets display a political affiliation

or sexual), given the context of subsequent political profiling carried out by EU DisinfoLab according to

unpredictable categorizations for tweeters, such as, for example, the

“Russophile” political categorization or even

belonging to movements

political (the Republicans, the sovereignists, the rebellious France, the Republic in

walking). The publication of these tweets therefore did not correspond to a reasonable expectation.

further use by the persons concerned, in particular in the cases

where the authors of the tweets had not (all) explicitly displayed an affiliation

politics.75

175. Certainly, the authors of tweets displaying a political affiliation could have expected

that their political allegations are possibly commented on in a context

Politics. This reasoning does not apply to other authors of tweets posting

74 Conclusions EU DisinfoLab, 28 August 2020 (non-paginated - p. 10).

75 “The fact that personal data is publicly available is a factor that can be taken into account

consideration in the assessment, especially if their publication was accompanied by a reasonable expectation of future use

data for certain purposes (for example, for research work or for the sake of transparency and

liability)” G29, opinion 06/2014 on the notion of legitimate interest pursued by the data controller

within the meaning of Article 7 of Directive 95/46/EC, p. 43-44, cited by the non-profit organization EU DisinfoLab in its conclusio

p. 1.

publicly sensitive data of a non-political nature, for example, their preference

sexual, in their bio: the media coverage of their Twitter profile in connection with a debate related to their

political convictions cannot correspond to their reasonable expectations.

 Criterion related to harm to data subjects

176. From the perspective of the risk of harm to data subjects, and more

particularly with regard to the “Rumeurs&Items” file distributed by EU DisinfoLab,

the Litigation Division agrees with the findings of the Inspection Department according to

which the data present in this file are likely to harm the

Twitter users concerned, because of the allegations it contains, concerning the

political affinities of the persons concerned, or their supposed proximity to the media

Russians, with the corollary risk of discrimination or discredit for their private life

and professional.

 Exceptions to processing for “scientific” or “journalistic” purposes

177.

The Litigation Chamber decides that such publication is not justified either within the framework

processing for journalistic purposes, nor in the context of processing for

scientists.

Processing for scientific purposes

178. In the context of processing for scientific purposes (quod non, in this case), the publication

non-pseudonymised data would not be permitted. The Chamber refers as

good practices in article 206 of the law of July 30, 2018 concerning the dissemination of

personal data for scientific purposes. It is provided that those responsible for

processing of data processed for the purposes of scientific or statistical research or

still in the public interest may disseminate pseudonymised data, with the exception

personal data referred to in Article 9.1 of the GDPR, namely personal data

sensitive nature such as political categorisations. This provision was not

applicable at the time of the facts, but illustrates a posteriori the balance of interests between

scientific work and publication of data of a sensitive nature. The legislation aims

to avoid any form of filing linked to political or sexual affiliation, etc. who could

prove harmful to data subjects insofar as this type of file

carries the risk of misuse on a large scale.

179.

In this case, notwithstanding the moral legitimacy of the purposes pursued by the parties

defendants (fight against disinformation, protection of democracy, etc.), the

publication of

non-pseudonymized raw data lists, in

link with

sensitive categorizations of a political nature, cannot be encouraged outside of a

framework of scientific research and should be accompanied by guarantees of confidentiality. In order to

to benefit from the scientific treatment exception, as suggested by the Inspection, the processing should have been carried out in a less intrusive manner, subject to the deletion irrelevant data such as biographies provided in accounts Twitter, with prior access control and limitation of access to recipients having to know about it, restrictively defined and identified (e.g. at least, communication limited to persons associated with the scientific process) and subject to the conclusion with these persons of a confidentiality agreement with regard to the dissemination of data.

Processing for journalistic purposes

180.

With regard to the balance of interests involved in the context of processing at journalistic purposes, the Litigation Chamber is careful not to unduly restrict the press freedom of the defendants through its assessment of this particular case.

The Litigation Chamber recalls that in order to assess the legitimacy of any publication of personal data, according to the case law of the CJEU, it is necessary to weigh the contribution to a debate of general interest, the notoriety of the persons concerned, the purpose of the report, the previous behavior of the persons concerned, the content, form and the impact of the publication, the mode and the circumstances in which the information was obtained and its veracity76. The Litigation Chamber affirms that in the context of processing for journalistic purposes, such a balance of interests must be able to be made on a case-by-case basis for each person concerned by a publication of press, but in this case this was impossible given the mass of raw data published and given the short delay between the decision to publish and the publication of the files by the defendants. The benefit of the journalistic exception is therefore refused to EU DisinfoLab and to Mr. Vanderbiest.

□ Conclusion on the balance of interests□

181.□

The Litigation Chamber decides that in these circumstances, the right of persons□

concerned not to be discriminated against should prevail (balance of rights). For this□

reason also, the legitimate interest within the meaning of article 6.1.f is lacking.□

182.□

The Litigation Chamber therefore concludes that the conditions of necessity and balance of□

interests are not met, so that the ASLB DisinfoLab cannot invoke article 6.1.f□

of the GDPR to justify the publication of the raw data files.□

2.1.2 Absence of a public interest within the meaning of Article 6.1.e of the GDPR□

183.□

Finally, the Litigation Chamber does not follow EU DisinfoLab when it invokes an interest□

public to carry out processing 2 on the basis of article 6.1.e of the GDPR. EU DisinfoLab is a□

76 CJEU, C-345/17, para. 6; CJEU, C-73/07, para. 165.□

private organization whose social purpose is in the general public interest (i.e. the□

fight against misinformation). EU DisinfoLab cannot, however, claim any interest□

public on the basis of Article 6.1.e GDPR, in the absence of a legal basis provided for this purpose in the□

Union law or Belgian law (art 6.3 GDPR). As a good practice and guide□

interpretation of Article 6.1.e of the GDPR, the Litigation Chamber refers to Article 8□

of the law of 30 July 2018 on the protection of individuals with regard to□

processing of personal data. According to this provision, associations or□

foundations whose statutory purpose is the defense of human rights and freedoms□

fundamental, are only considered to carry out processing for□

reasons of public interest in the event that this processing is authorized by the King, by decree□

deliberated in the Council of Ministers and after consulting the supervisory authority. This is not the case□

in this case.

2.1.3 Violation of the principle of minimization, safety requirements and

prior information, the rules on data processing

sensitive and to the rules on information and transparency

184. For the rest, the Litigation Division endorses the following findings of the

Inspection Service: due to the absence of pseudonymization of the data put in

line, the personal data collected in the context of processing 2 was excessive

with regard to the purpose pursued; treatment 2 is therefore contrary to the requirements of

minimization set out in Article 5.1.c) of the GDPR.

185. This processing was also not accompanied by technical and organizational measures

appropriate (such as data pseudonymization and/or access control) such as

EU DisinfoLab recognizes this, which constitutes a violation of Article 32 of the GDPR.

186. Furthermore, the Inspection Report establishes that the inclusion of biographical data in

the “Databrutes” file posted by EU DisinfoLab involves special categories

data within the meaning of Article 9.1 of the GDPR77. EU DisinfoLab did not bring any element in

response to this grievance such as to demonstrate that this sensitive data would have been processed

for one of the reasons making it possible to lift the prohibition in principle of processing such

personal data according to article 9.2 of the GDPR. This processing of personal data

therefore constitutes an infringement of the prohibition in principle of processing such data as

as expressed in article 9.1 of the R.G.P.D.

187.

Beyond the absence of a legal basis for this data processing, the Litigation Chamber

also notes that it was not the subject of adequate prior information regarding the

persons concerned. Such prior information was in principle required under

of Articles 12 and 14 of the GDPR. EU DisinfoLab does not demonstrate that it would be discharged

77 Inspection Report, p. 16.

of such an obligation to inform on the basis of a journalistic or scientific exception,

only grounds for exemption that can be validly invoked in this case

given the sensitive nature of the processing.

188. In the comments made on the hearing report, EU DisinfoLab refers to

information provided by the press, without however providing any evidence in support of its

assertions. The Litigation Chamber considers that publication in the press, for

as long as it has understood all the information prescribed by Article 14 of the GDPR,

could in this case constitute an appropriate channel of information in the context where all

the affected Twitter users were not reasonably able to anticipate

that they would be the subject of a publication of their personal data in this context. He

EU DisinfoLab was responsible for ensuring that the information provided through the press was

likely to reach the data subjects and allow the exercise of their right

to oppose the processing beforehand, provided that this processing could have been based on

an adequate legal basis.

189.

The Litigation Division further recalls that in order to be exempted from the obligation

prior information under cover of the “scientific” exception, the processing should have

be accomplished in a less intrusive manner, by deleting data not

relevant such as biographies provided in Twitter accounts, with at least

prior access control and limitation of access to recipients having to

know, restrictively defined and identified (e.g. at a minimum, communication limited to

persons associated with the scientific process) and subject to the conclusion of a

confidentiality agreement regarding the distribution of data.

190. As for the exception of processing for journalistic purposes, the Litigation Chamber

also refers to the reasons set out above, for which it concludes that

applicability of the exception, in the context of the publication of massive data of

raw data, as it is not possible to assess on a case-by-case basis, for each person concerned

through publication, the balance of interests between contributing to a debate of general interest

and parameters such as the notoriety of the persons concerned, the subject of the report, the

content, form, repercussions of the publication of personal data, such as

advocated by the aforementioned case law of the CJEU.

191.

Therefore, the absence of prior information to the persons concerned is not likely

exemption in this case, and constitutes a breach of Articles 12 and 14 of the GDPR.

78 See heading 2.1.1 of this decision.

2.2. With regard to the files disseminated by Mr. Vanderbiest: breach of

GDPR articles 5, 6, 9, 12, 14 and 32

192.

The Litigation Chamber recalls that Mr. Vanderbiest admitted having disseminated files

of raw data “Classified Actors.sss Excell” and “Data brutes.cvs Excell” via Twitter by

a Dropbox link from his company SaperVedere, without the consent of the sponsor of

the Study, EU DisinfoLab. Mr. Vanderbiest acknowledges bearing full responsibility for this

publication and refers in this respect to the findings of the Inspection Service.

193.

It appears that Mr. Vanderbiest had no bad intentions with regard to the

its purpose, in particular, to contribute to a public debate; he acted in a context

difficult (challenging the Study he carried out and its scientific integrity), and he

quickly put an end to its own provision of the disputed data files via a

Dropbox link of his company SaperVedere. The above facts bear no less

breach of GDPR.

194.

The processing concerned is not based on any legal basis.

195. In his defence, Mr Vanderbiest relies on his desire to respond to the attacks made on its scientific credibility with regard to the Study being carried out. Mr. Vanderbiest also invokes the public interest of the Study79.

196.

The Litigation Chamber can only allow the publication of disputed files meets an objective of public interest within the meaning of Article 6.1.e of the GDPR, for the same grounds than those set out above for rejecting the public interest invoked by EU DisinfoLab above (see para. 151 et seq.).

197.

The Litigation Chamber also rejects the existence of a legitimate interest (art. 6.1.f GDPR) in respect of Mr. Vanderbiest with regard to the publication of files of raw personal data for the purpose of granting oneself a digital right of reply. The Litigation Chamber refers in this respect to its assessments above concerning the 2 processing carried out by EU DisinfoLab on the basis of similar personal data and for similar purposes. The Litigation Chamber considers that if even the condition of a legitimate purpose was fulfilled on the part of Mr. Vanderbiest, in the context of processing for journalistic purposes and/or for the purpose of reserving a digital right of reply, the analysis of the conditions of necessity and balance of interests would be similarly negative because the processing should have been performed in a less intrusive manner (condition of necessary), subject to measures of pseudonymization or anonymization of the data concerned, the deletion of irrelevant data (such as biographies

79 See in particular the Inspection report, p. 21.

entered in the Twitter accounts), after an access control and a limitation of this

access to recipients who need to know about it, who are exhaustively defined and identified.

198.

Regarding the balance of interests on the point of risks to rights and freedoms

of the persons concerned, the Litigation Chamber judges that this condition is not

fulfilled due to the lack of adequate technical and organizational measures at the

meaning of Articles 5.1.f) and 32 of the GDPR. The Inspectorate also points out that the data

times in

the files disseminated by Mr. Vanderbiest generated risks

particularly important in that they include descriptions/biographies

communicated via Twitter accounts and may include categories

specific data within the meaning of Article 9.1 of the GDPR. The treatment resulted in

persons concerned still significantly higher risks of discrimination

only with regard to the files put online by EU DisinfoLab80. The fact that these fields

directly identifiers would not have been identified by Mr. Vanderbiest before publication,

due to a handling error, does not affect this conclusion.81. Bedroom

Litigation refers to the criteria and the balance of interests developed with regard to

concerns EU DisinfoLab under point 2.1.1 of this decision (see paras. 151 to 183).

199. For the rest, the Litigation Division refers to the arguments developed at

the attention of EU DisinfoLab with regard to the shortcomings held against it

regarding Articles 5, 6, 9, 12, 14 and 32 of the GDPR (see paras. 184 to 192).

2.3. Infringement of articles 5, 6, 12, 14 and 32 of the GDPR

200. The Litigation Division further concludes that data processing 2 consisting of

the posting of raw data by the two defendants without any measure of

pseudonymization and/or prior access control, constitutes an infringement of Article 32

of the GDPR — which requires the implementation of appropriate security measures — as well as

a breach of the data minimization principle (Articles 5.1.f).

201.

The processing should also have been the subject of prior information to the persons

concerned, for lack of being able to benefit from an exemption from information under

scientific research82 or as a journalistic exception for the reasons set out below.

above with regard to the same complaints made against EU DisinfoLab (see para. 187 and

following).

80 Inspection Report, p. 16.

81 See in particular the Inspection report, p. 21.

82 The Inspection report goes in the same direction.

3. Regarding corrective measures and sanctions

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

Decision on the merits 13/2022 - 50/55

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 the requests of 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 compliance of the processing;

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

these to the recipients of the data;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

13° to issue administrative fines;

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

international body;

15° forward the file to the public prosecutor's office in Brussels, which informs it of the

follow-up given to the file;

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

Data protection.

203.

It is important to contextualize the breaches of which each of the defendants complained.

held accountable in order to identify the most appropriate corrective measures and sanctions

adapted.

204. Moreover, it is sovereignly up to the Litigation Chamber, as the competent authority

independent administrative — in compliance with the relevant articles of the GDPR and the

ACL — to determine the appropriate corrective action(s) and sanction(s).

205. The GDPR invites supervisory authorities to impose fines in order to strengthen

the application of the rules, in addition to or instead of appropriate measures, except

when a warning is more proportionate given the circumstances of the

breach, including its gravity, duration, intentional nature, measures taken to

mitigate the damage suffered, the degree of responsibility, the way in which the supervisory authority

became aware of the breach (recital 148 GDPR). In the present case, the

Litigation Chamber considers that a fine is appropriate given the balance

mitigating and aggravating circumstances listed below.

Decision on the merits 13/2022 - 51/55

206. Mitigating circumstances:

▪

the lack of implementation of Articles 85 and 89 of the GDPR in Belgian law at the time

facts (exception for journalistic treatment and exception for treatment

scientific), which may have caused confusion on the part of the defendants about

their GDPR obligations;

▪

the immediate reaction of EU DisinfoLab and Mr. Vanderbiest to put themselves in order

with their GDPR obligations and limit the damage related to disputed files: from August

2018, consultation of a specialist advisor in order to set up a DPIA83 (art.

35 GDPR); in October 2018, creation of a salaried DPO position; destruction of

disputed data under bailiff control in September 2018; between october and

December 2018, creation of a register of processing activities, implementation

an Internet privacy policy, updated by the DPIA taking into account

methodological changes, implementation of an e-mail address in order to

respond to requests from data subjects;

▪

the public apology Mr. Vanderbiest on Twitter and via press release

EU DisinfoLab;

▪ with regard to Mr. Vanderbiest, the fact that the suggestion to publish the data

raw online was made to him by someone connected to the scientific institution at

to which he was then attached, which may tend to show that he carried out the

dissemination of relevant personal data in connection with categorizations

alleged policies, without awareness of infringing principles of law

fundamental to the protection of personal data;

▪

the judgment and analysis faculties of the defendants may have been affected by

the climate of personal attacks maintained by their detractors on the Internet in

time of the events; the defendants referred to facts likely to

constitute serious invasions of their own privacy;

▪

the first defendant wished to be able to explain and clarify its arguments

orally during the Inspection phase (indicated his availability, left his

personal contact information for a telephone or physical interview at

several times), without this interview or hearing taking place;

83 Data Protection Impact Assessment.

Decision on the merits 13/2022 - 52/55

▪ with particular regard to the obligations to conclude a contract of

subcontracting within the meaning of Article 28 of the GDPR and the obligation to have a

processing register according to Article 30 of the GDPR, the temporal proximity between

the entry into application of the GDPR (May 2018) and the facts in question (July 2018);

▪

the fact that the respective data controllers are a small organization

non-governmental non-profit organization, as well as a natural person.

207. Aggravating circumstances:

▪

the nature of the breach — The breached provisions are at the heart of the GDPR,

since they aim to guarantee respect for the fundamental principles of the right to

protection of personal data, by providing data subjects with a

control over their personal data. The Litigation Chamber emphasizes in this

respect that violations of Articles 5 and 6 GDPR, enshrining the basic principles

of processing, as well as breaches of the articles relating to the rights

from which data subjects benefit under Articles 12 to 22 GDPR,

result in the highest fines of Article 83.5 GDPR;

▪

the seriousness of the shortcomings resulting in particular from the number of people

affected by the breaches (the number of complaints received, which amounts to more than

of 240), the sensitive nature of the data processed, namely data relating

political opinions and

sexual orientation, as well as the risk of

discrimination or discredit in the private or professional life of people

concerned;

▪

the lack of cooperation from EU DisinfoLab at the start of the Service's investigation

d'Inspection — According to the Litigation Chamber, the fact of having transmitted to the Service

Inspection of undated DPIA and compliance documents by

of their counsel, only to then admit that these documents did not exist at the time.

time of the events, in response to questions from the Inspection Service, does not demonstrate

not a full and complete collaboration with the APD84.85 The Litigation Chamber

is not convinced by the argument developed by EU DisinfoLab in its

sanction form in this regard, namely, that "what the Litigation Chamber

considers a lack of collaboration was, in fact, only a strategy

response recommended by our advisers" and that at no time EU DisinfoLab

84 Inspection report of April 2, 2020, p. 11.

85 EU DisinfoLab first transmitted the following documents without their creation dates in response to the two

first requests for information from the Inspection Service: "Register of processing activities", "PIA", "Policy of

confidentiality", "Security Policy" and "Privacy by design checklist", then "Decision to implement the

processing subject to the PIA on statistical studies" and "Assessment of proportionality on legitimate interest". This is

in its response to the third request for information that EU DisinfoLab acknowledges that these documents did not exist

at the time of the facts.

did not intend to evade its obligations or responsibilities. The catches of

respective liability of EU DisinfoLab and its advisers does not justify the

communication of undated documents in response to questions from the Inspectorate

as to the existence of such documents;

▪

the manner in which the supervisory authority became aware of the breach, in particular

whether, and to what extent, the controller or processor has notified

violation – The Litigation Chamber notes that it was not notified by the

defendants of the online and public dissemination of files containing the

raw data that enabled the Study to be carried out. The disputed facts have indeed

been brought to the attention of the DPA through complaints and requests

information sent to him on August 8, 2021.

All of the elements set out above justify an effective, proportionate sanction

and dissuasive, as referred to in Article 83 of the GDPR, taking into account the criteria

of appreciation it contains. The Litigation Chamber also points out that the other

criteria set out in Article 83.2 of the GDPR are not such as to lead in this case to a

administrative fine other than that determined by the Litigation Chamber in the

framework of this decision.

208. In its reaction form to the envisaged sanctions, EU DisinfoLab argues that the

procedure carried out by the DPA would have already had a corrective, proportionate and dissuasive effect on

the work of the ASBL, and that a call to order would be proportionate. In this regard, the Chamber

Litigation argues that the corrective effect provided by the procedure conducted by the DPA

(the subsequent remedial actions undertaken by

the defendants)

does not outweigh the nature, gravity of the offense and the marked lack of

cooperation. Taking into account the aggravating circumstances considered,

bedroom

Litigation therefore decides to pronounce a fine and sets the amount in such a way

moderate given the status of the defendants (natural person and ASBL). For the

surplus, given the significant risk that their actions have created for the rights and

freedoms of the persons concerned (risk of discrimination), that the amount of the fine

does not fully reflect, the Litigation Chamber also pronounces a reprimand

to the attention of the two defendants.

As to the first defendant

209. The Litigation Chamber issues a reprimand and a fine of EUR 2,700 in the

Head of the EU DisinfoLab vzw for breaches of the GDPR committed in the context of

treatments 1 and 2 due to the negative balance between attenuating circumstances and

aggravating factors listed above.

210.

The Litigation Chamber dismisses the grievances related to Articles 28 and 30 of the GDPR without further action.

due to the proximity in time between the entry into application of the GDPR (May 2018) and the

Decision on the merits 13/2022 - 54/55

facts at issue (July 2018).

As to the second defendant

211.

The Litigation Chamber issues a reprimand and a fine of EUR 1,200 to

against Mr. Vanderbiest for breaches of the GDPR committed under the

treatment 2, due to the negative balance between attenuating and aggravating circumstances

retained above.

4. Transparency and publication of the decision

212.

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

Litigation, in accordance with Article 100 § 1, 16° of the LCA, this decision is
published on the website of the Data Protection Authority, mentioning the
identification data of the defendants, due to the specificity of their activities
and the general notoriety of the facts of the case, not permitting a rational omission
identification data. The Litigation Chamber also takes into account
the public interest of this decision in order to alleviate the damage suffered by the plaintiffs
due to the publication of their personal data in connection with categorizations
policies in the context of processing 2. Only publication on the DPA website can
make it possible to refer to it and clarify the scope of sensitive categorizations if necessary
to which the defendants gave publicity, without however controlling the distribution
of this data, which still takes place on the Internet, according to the documents in the file.
213.
The Litigation Chamber argues in particular that in this decision, it considers
on a highly publicized case following a multitude of complaints. In such a case, it would not be
neither desirable nor reasonably possible to guarantee the anonymity of the parties given the
uniqueness of the facts recounted and the granularity of the relevant circumstances. The
Litigation Chamber took note of the arguments developed by the defendants
with a view to obtaining the non-publication of this decision on the DPA website, or the
publication of a pseudonymised decision (risk of damage to their reputation). US
DisinfoLab stresses in particular that the publication of the decision, more than three years after the
facts, would constitute an additional sanction and would have
repercussions
disproportionate on their reputation given the efforts undertaken to rebuild their
image. EU DisinfoLab also fears the publicity repercussions of this decision
"on harassment and working conditions of employees" of his association. US
DisinfoLab recalls that their reputation was damaged in 2018 during the

media coverage of the affair and the harassment of its teams. The Litigation Chamber

considers, however, that this risk must be weighed against the interest of the plaintiffs in the

Decision on the merits 13/2022 - 55/55

context in which the defendants acted as journalists at the time of the events

(invoking the journalistic exception). The dissemination of their identity in connection with the facts

of the case does not seem disproportionate taking into account the grounds and circumstances

mentioned above (nature and seriousness of the damage).

214.

The Litigation Chamber cannot therefore respond to the request of the defendants

not to publish the decision or to publish it anonymously.

215.

By sending the sanction form together with a period of 14 working days to

respond, the Litigation Chamber informed the defendants of the imminence of a

decision. The Litigation Division also informed the defendants of

the existence of a relevant and reasoned objection from the CNIL and the date of this objection.

FOR THESE REASONS,

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

-

under article 100 § 1, 1° of the LCA, to dismiss the grievances related to articles 28 and 30

GDPR; and

- as regards the first defendant:

to pronounce a reprimand within the meaning of article 100 § 1, 5° of the LCA and a fine of 2,700

euros under Article 100 § 1, 13° of the LCA, for breaches of the GDPR committed in the

processing activities 1 and 2, as described above.

- as regards the second defendant:

to pronounce a reprimand within the meaning of article 100 § 1, 5° of the LCA and a fine of 1,200

euros under Article 100 § 1, 13° of the LCA, for breaches of the GDPR committed in the

scope of processing activities 2, as set out above.;

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

contracts within thirty days of its notification, with the Protection Authority

data as a defendant.

(Sé). Hielke HIJMANS

President of the Litigation Chamber