Litigation Chamber

Decision on the merits 149/2022 of 18 October 2022

File numbers: DOS-2021-06293 and DOS-2021-06884

Subject: Sharing of personal data concerning tenants of a

social housing as part of a heritage survey

The Litigation Chamber of the Data Protection Authority, composed of Mr.

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

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

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

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

data protection), hereinafter "GDPR";

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

"LCA";

Having regard to the internal regulations as approved by the House of Representatives on

December 20, 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

Made the following decision regarding:

The complainant :

Mr. X1 and Mrs. X1, hereinafter: Complainant 1

Mr. X2 and Mrs. X2, hereinafter: Complainant 2

all represented by Me Rahim Aktepe, whose offices are located in

2000 Antwerp, Americalei 95

hereinafter jointly referred to as “the plaintiff”;

The defendant: Y, represented by Me Myrthe Maes, Me Nele Somers and Me Thomas

Bronselaer, whose offices are located at 2000 Antwerp, Amerikalei 79, bte 201,

hereinafter "the defendant".

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I. Facts and procedure

1.

The subject of the complaint concerns the communication to third parties of personal data

personnel concerning tenants of social housing in the context of an investigation

heritage relating to properties held abroad.

2.

Complainant 1 and Complainant 2 lodged a complaint with the Data Protection Authority

data against

the defendant, respectively

on September 27, 2021 and

THE

October 22, 2021.

3.

Respectively, on October 1, 2021 and January 5, 2022, the complaints are declared

admissible by the Front Line Service under Articles 58 and 60 of the LCA and the

Complaints are forwarded to the Litigation Chamber under Article 62, § 1 of the LCA.

4.

On October 27, 2021 and January 17, 2022 respectively, the Chamber's request

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

as the complaint and the inventory of documents, in accordance with article 96, § 1 of the LCA.

5.

On February 15, 2022, the investigations of the Inspection Service are closed, the two reports

are attached to the file and the files are sent by the Inspector General to the President of the

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

The report which was drawn up with regard to complainant 1 contains findings on

subject matter of the complaint and concludes that:

1.

there is no question of a violation of Article 5, paragraph 1, a) and paragraph 2 of the

GDPR, Article 6, paragraph 1 of the GDPR with regard to the principle of lawfulness;

2.

there is a violation of Art. 5 GDPR, Art.

GDPR and Article 25(1) and (2) GDPR with regard to the principles

fairness and transparency, limitation of purposes, minimization of

data, accuracy,

limitation of

conservation and integrity and

privacy ;

3.

there is a violation of Article 28, paragraphs 2 and 3 of the GDPR; And

4.

there is a violation of Articles 44, 46, 24, paragraph 1 and Article 5,

paragraph 2 of the GDPR with regard to the transfer of personal data

staff to Turkey.

The report that was drawn up with regard to complainant 1 also contains

findings that go beyond the subject matter of the complaint. The Inspection Service finds, in the

outline, that:

1.

there is a violation of Article 30(1) GDPR for

non-compliance with various obligations relating to the register of the activities of

treatment.

6.

The report drawn up with regard to complainant 2 concurs with the findings of the first report. In this decision, reference will therefore be made to the first report as the inspection report.

7.

On February 21, 2022, the Litigation Chamber decides, pursuant to Article 95, § 1, 1° and article 98 of the LCA, that the two files can be treated on the merits. Bedroom Contentious proposes to the parties to join the two cases. Also on February 21, 2022, the Litigation Chamber receives the agreement of the two parties to join the cases.

8.

On February 21, 2022, the parties concerned are informed by registered mail of the provisions referred to in Article 95, § 2 as well as in Article 98 of the LCA. The parties involved are also informed, pursuant to article 99 of the LCA, of the deadlines for transmitting their conclusions.

For findings relating to the subject of the complaint, the deadline for receipt of conclusions in response of the defendant was set for April 4, 2022, that for the conclusions in reply of the complainant on April 25, 2022 and finally that for the conclusions in respondent's reply dated May 16, 2022.

For findings going beyond the subject matter of the complaint, the deadline for receipt of the defendant's submissions in response was set for April 4, 2022.

9.

On February 21, 2022, Complainant accepts all communications relating to the matter by electronic way.

10. On March 8, 2022, the defendant requested a copy of the file (art. 95, § 2, 3° of the LCA), which was transmitted to him on March 23, 2022.

11. On March 8, 2022, the Respondent agrees to receive all communications relating to
the case electronically and expresses its intention to make use of the possibility of being
of course, this in accordance with article 98 of the LCA.
12. On April 4, 2022, the Litigation Chamber receives the submissions in response from the
defendant regarding the findings relating to the subject matter of the complaint, as well as the
findings beyond the subject matter of the complaint. The defendant asserts that the treatment in
its chief is lawful data processing. Second, the defendant argues
that the data processing in question constitutes correct data processing and
authorized and that all fundamental principles of Article 5(1) GDPR are
respected, which she can moreover demonstrate. Third, the defendant does not refute
not the findings of the Inspection Service regarding the subcontract, but
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asserts that it has put an end to these violations. Fourth, the defendant argues that the
transfer of personal data to Turkey has taken place in a lawful manner. Finally,
the defendant argues that the register of processing activities has been updated, giving
following the shortcomings noted by the Inspection Service.
13. On April 22, 2022, the Litigation Chamber receives the complainant's submissions in reply
which contain a record of previous proceedings conducted by the plaintiff with respect to
the defendant before the justice of the peace. The complainant disputes the lawfulness of the processing of
data and asserts that the data processing has not taken place in accordance with the
fundamental principles of Article 5(1) GDPR. Concerning the
findings relating to the subcontracting contract, the transfer of personal data
personal data to Turkey and to the register of processing activities, the complainant agrees with the
findings of the Inspection Service.
14. On May 18, 2022, the Litigation Chamber receives the conclusions in reply of the
defendant regarding the findings relating to the subject-matter of the complaint. In these, the

defendant reiterates its points of view formulated in the pleadings in response.

15. On August 10, 2022, the parties are informed that the hearing will take place on September 22 2022.

16. On September 22, 2022, the parties are heard by the Litigation Chamber.

17. On September 23, 2022, the minutes of the hearing are submitted to the parties.

18. On September 29, 2022, the Litigation Chamber received from the defendant some remarks relating to the minutes which it decides to include in its deliberation.

19. The Litigation Division does not receive any comments from the complainant concerning the minutes.

II. Motivation

II.1. Jurisdiction of the Litigation Chamber

20. In his pleadings, the complainant states in his first three pleas that he is not owner of real estate in Turkey, he disputes the probative value of the reports of investigation which were established by Z within the framework of the patrimonial investigation relating to the properties held abroad, and finally the plaintiff analyzes the doctrine of proof obtained irregularly.

21. However, the Litigation Division is only competent to rule on the fact that the asset survey relating to the properties held abroad was carried out in accordance with the GDPR. The above means do not fall within the jurisdiction of the Chamber

Litigation and have already been assessed by the justice of the peace of Lier (see below). These arguments will therefore not be the subject of the proceedings before the Litigation Chamber.

II.2. Article 5(1)(a) GDPR, Article 6(1) GDPR

22. The Inspection Service finds that the defendant has complied with the obligations imposed by Article 5, paragraph 1 a) and paragraph 2 of the GDPR and by Article 6 of the GDPR with regard to relates to the principle of lawfulness. On the basis of the answers obtained from the defendant during

investigation, the Inspection Service is following up on the defendant's assertion that it invokes the legal basis of Article 6(1)(e) GDPR (the necessity for the performance of a mission of public interest).

23. The basic principle of Article 5(1)(a) GDPR is that personal data personnel can only be processed in a lawful manner. This means that there must be a legal basis for the processing of personal data, as referred to in Article 6, paragraph 1 GDPR. To flesh out this basic principle, Article 6(1) GDPR provides that personal data may only be processed pursuant to one of the legal bases set out in this article.

24. The complainant disputes the findings of the Inspection Service and argues that the defendant wrongly invokes Article 6, paragraph 1, e) of the GDPR. Furthermore, the complainant asserts that the defendant cannot invoke any other basis either legal, such as consent (Article 6(1)(a) GDPR).

25. In order to lawfully invoke the legal basis of Article 6, paragraph 1, e) of the GDPR, the personal data may only be processed if this is necessary for the performance of a task in the public interest or if it is necessary for the exercise of authority public authority vested in the manager. The treatment must in these cases always have a basis in the law of the European Union or in that of the Member State in question, in which the purpose of the processing must also be stated. It is therefore necessary to verify that the conditions provided for in this article are indeed met in this case.

26. Pursuant to Article 6(3) and Recital 45 of the GDPR, processing based on Article 6, paragraph 1, e) of the GDPR must fulfill the following conditions:

To. The data controller must be entrusted with the performance of a mission of interest public or subject to the exercise of official authority by virtue of a legal basis, whether whether under European Union law or the law of the Member State;

b. The purposes of the processing are set out in the legal basis or must be

necessary for the performance of the task in the public interest or the exercise of authority

public.

27. The Litigation Chamber will assess below the conditions of public interest, legal basis and

of necessity.

Mission of public interest

28. The public interest mission in question that the defendant relies on is the control of

conditions of registration and attribution within the framework of the social rental in order to put

rental accommodation to tenants who cannot support themselves

housing needs. As also confirmed by the justice of the peace of the canton

of Lier who has already ruled in this case with regard to the aspects relating to the

end of the lease contract, social housing companies have a legal obligation to check whether their

(candidate) tenants meet the applicable conditions, both at the beginning and during

the entire duration of the lease contract. The rental of social housing is in fact reserved for

vulnerable people who cannot provide for their needs in terms of

housing, without help. Given the limited budgets available to the authorities, housing

social services must go to those people who are most in need in terms of

housing.1

29. For the Litigation Chamber, it is clear that the defendant responds to a public interest of

by its processing within the framework of its legal mission, namely a sensible allocation of

limited public funds by allocating social housing to people who are most

housing need. The defendant therefore rightly argues that

the processing may be based on Article 6, paragraph 1, e) of the GDPR.2 The consent of the

complainant is therefore not required for this processing to be lawful, especially since this

basis of legality is not claimed by the defendant.

A clear, precise and predictable legal basis

30. In accordance with recital 41 of the GDPR, this legal basis or legislative measure
should be clear and precise and its application should be foreseeable for litigants,
in accordance with the case law of the Court of Justice of the European Union and the ECHR.
In the Rotaru judgment3, the ECHR defined more precisely the notion of foreseeability of the basis
legal. This case relating to the surveillance systems of the security apparatus of a
state, its context differs from the present case. In other cases, the ECHR has indeed
indicated that it could draw inspiration from these principles, but it considers that these criteria, established
and monitored in the specific context of this concrete case, are therefore not applicable
as such to all business4.

1 T. VANDROMME, Begripsomschrijving in B. HUBEAU and A. HANSELAER, Sociale Huur, Brugge, die Keuren, 2010, p. 24.

2 See also in this sense T. VANDROMME, Ook beroepsrechter laat bewijs van onroerend buitenlands bezit door
privatefirma toe, De Juristenkrant, January 27, 2021 and in particular

3 ECHR, 4 May 2000, Rotaru v. Romania.

4 ECHR, 2 September 2010, Uzun v. Germany, § 66.

31.
It appears from the defendant's conclusions that it relies on its mission as a company
social housing to execute article 23 of the Constitution which takes up the right to a
decent housing.5 The defendant thus enforces the right to decent housing which is
recognized internationally.

32. On the basis of Article 33 of the decree containing the Flemish Housing Code6 (hereafter: the
"Flemish Housing Code"), social housing companies must in particular
improve the housing conditions of poorly housed households and isolated individuals, particularly those
the most poorly housed households and single persons, ensuring a sufficient supply
rental or purchase social housing. This resulted in the Government
Flemish sets various conditions that (candidate) tenants must meet, in order to

that the people most in need in terms of housing are allocated the

social housing.

33. To qualify for social housing for rent, the potential tenant must therefore in particular

meet the registration conditions of article 3 of the decree of the Flemish Government

regulating the social rental scheme and implementing Title VII of the Flemish Code

du Logement7 (hereafter: the Framework Order), including:

“Article 3 § 1. A natural person may be registered in the register referred to in

Article 7, if it meets the following conditions:

[…]

"3° [she] and the members of the household do not have full ownership or full usufruct

a dwelling or plot intended for the construction of dwellings in Belgium or for

abroad, unless it is a camping residence located in the Flemish Region".

[…].”

34. The investigation of compliance with the conditions and obligations for social rental is governed by

Article 52 of the Framework Order:

“Article 52. § 1. By applying for entry in the register, entry as

prospective tenant or tenant, the reference person authorizes the lessor to obtain

with the authorities, competent bodies and local administrations, the documents

or necessary data relating to the conditions and obligations imposed by this

arrested, with continued application of the provisions of the law of December 8, 1992

on the protection of privacy with regard to the processing of personal data

5 Article 23: “Everyone has the right to lead a life worthy of human dignity. […] These rights include […]

3° the right to decent housing […]".

6 Decree of 15 July 1997 containing the Flemish Housing Code, M.B. of 19 August 1997.

7 Decree of the Flemish Government of 12 October 2007 regulating the social rental scheme and implementing the

title VII of the Flemish Housing Code, M.B. of 7 December 2007.

staff, its implementing decrees and any other privacy protection provisions

fixed by or under a law, a decree or an order.

§ 2. With a view to the execution of the provisions of this decree, the lessor calls upon

the information provided to it electronically by the authorities or bodies

authorities or by other donors.

If no information or insufficient data can be obtained from this

way, the candidate tenant or tenant is asked to provide the data

required. When it emerges from the information obtained from the authorities or bodies

authorities or other lessors that the candidate tenant or tenant does not meet

or no longer meets the conditions and obligations of this decree, this observation is

communicated to the candidate tenant or tenant who can then react within a week

following this communication.

By competent authorities and bodies referred to in §§ 1 and 2, first paragraph, it is necessary between

other include: 1° the National Register of Natural Persons, referred to in the law of

August 8, 1983 organizing a National Register of natural persons; 2° institutions

social security, referred to in Articles 1 and 2, first paragraph, 2°, of the law of

15 January 1990 relating to the establishment and organization of a Crossroads Bank for

social security and the people ensuring the expansion of the social security network in

application of article 18 of the same law; 3° the Federal Public Finance Service;

4° the Crossroads Bank for Civic Integration; 5° the ″Huizen van het Nederlands″

(Dutch Houses); 6° reception desks; 7° the Flemish coordination unit

″E-government″; 8° the organizations and institutions referred to in Article 4, first paragraph,

including the Education and Training policy area of the Flemish Community.

35. According to the analysis of these elements, it is therefore foreseeable that compliance with the conditions

registration can be controlled by

the companies of

social housing as

there

defendant, both from the outset and throughout the duration of the lease contract.

36. The manner in which this control will take place is less foreseeable given that Article 52 of

the aforementioned Framework Decree contains a non-exhaustive list ("among others") so that

the lessor can use several instruments that are not listed in this article.

37. In this regard, the Litigation Chamber has already underlined in its decision 124/2021 of

November 10, 2021 that the tasks of public interest or relating to the exercise of authority

public authority vested in data controllers is often not based on

precisely defined legislative obligations or standards that meet the

requirements mentioned in points 29 e.s., more specifically

the definition of

essential characteristics of data processing. Rather, the treatments take place on

the basis of a more general authorization to act, as is necessary to

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accomplishment of the mission, as is the case here. It follows that in the

In practice, the legal basis in question often does not contain any provision describing

concretely the necessary data processing. The controllers who

wish to invoke Article 6, paragraph 1, e) of the GDPR on the basis of such a legal basis

must then themselves carry out a weighting between the need for the processing to

the mission of public interest and the interests of the persons concerned.

38. In addition, the Litigation Chamber points out that since January 1, 2022, the legislator

Flemish Decree has intervened to provide a new legal basis for the processing of

personal data in the context of a heritage survey relating to

properties held overseas. In the codified decrees relating to the Flemish policy of the

housing (hereafter: Flemish Housing Code)8, articles 6.3/1 and 63/2 have been added,

now explicitly providing that

the companies of

social housing can

transmit personal data to private investigation offices in the

as part of a heritage survey relating to properties held abroad. These articles

are worded as follows:

Article 6/3.1 of the Flemish Housing Code:

§ 1. For the application of this book, personal data are processed at the

following purposes:

1° verify that the conditions and obligations of this book and set by the

Flemish Government in accordance with this book;

[…]

§ 2. The controllers, referred to in Article 4, 7), of the General Data Protection Regulation

data protection, are:

1° the lessor, with regard to the processing for which he is responsible;

[…]

§ 3. Pursuant to paragraph 1, the following categories of personal data

staff can be processed:

1° identification data;

2° the national register number and the Social Security identification numbers;

3° personal characteristics;

4° household composition;

5° the financial particulars;

6° data relating to property rights;

7° data on learners of Dutch as a second language (NT2);

8° the characteristics of the accommodation;

9° profession and employment;

8 Decrees relating to the Flemish housing policy, codified on July 17, 2020, M.B. of November 13, 2020.

10° social survey data;

11° lifestyles;

12° the judicial data relating to the termination of the rental contract for having caused

serious damage or serious negligence of social rental housing;

13° data relating to physical or mental health;

14° education and training;

15° the data relating to the rental contract terminated by the lessor;

16° consumption data.

[…]

§ 6. The data controller, referred to in paragraph 2, 1° and 2°, may send information

data

To

character

staff

to

terms

following

:

1° […];

2° personal data, referred to in paragraph 3, paragraph 1, 1°, 2°, 3°, 8° and 10°,

to private partners appointed by the Flemish Government in accordance with article

6.3/2, paragraph 2, for the search for real estate abroad;

[…]”

Article 6/3.2, first paragraph of the Flemish Housing Code:

“The lessor who verifies whether the conditions relating to the possession of goods are satisfied

real estate, referred to in Article 6.8, paragraph 1, 2°, Articles 6.11 and 6.21, paragraph 1, may call upon

public or private partners for the possession of real estate abroad.

The Flemish Government may designate the entity which concludes a framework contract relating to the

appointment of private partners."

The Litigation Chamber points out in this respect that this new legislation has been

published after the disputed data processing and therefore does not apply to surveys

heritage relating to the properties held abroad in the present case. Being

given that this Flemish Housing Code had not yet entered into force at the time

asset surveys relating to properties held abroad, the Chamber

Contentious did not have recourse to this legislation to make this decision.

Need

39. Pursuant to Article 6(1)(e) of the GDPR, processing is only lawful if and to the extent

insofar as it is necessary for the performance of a task carried out in the public interest or falling within the

the exercise of

the public authority whose

invested

the controller.

As explained above, the legislation often does not contain a definite provision

concretely with regard to the necessary data processing. Those responsible for

processing who wish to invoke Article 6, paragraph 1, e) of the GDPR pursuant to such

legal basis must then themselves carry out a weighting between the need for the

processing for the task of public interest and the interests of data subjects.

40. Respondent asserts that as part of the assessment of necessity, it conducted a
weighing of interests before transmitting the personal data in question
to Z to carry out a heritage survey relating to properties held abroad.
The defendant asserts that this balancing of interests resulted in the proposal
the possibility of spontaneously and previously notifying a property abroad and the
transmission of the personal data then took place on the basis of
reasonable presumptions of property fraud. The justice of the peace of the canton of Lier established
in its judgment of March 8, 2022 (with respect to plaintiff 1) and its judgment of
April 12, 2022 (with respect to Complainant 2) that on July 29, 2020, the Respondent had
sent a letter to all its tenants announcing that they would be checked at the level of
real estate possessions abroad. The mail was delivered personally by courier
to each tenant and in case of absence, the mail was deposited in the mailbox.
In the absence of a response from the plaintiffs to this letter, the defendant asserts that it had no
no other possibility than to carry out such a heritage survey relating to the properties
held abroad.
41. The Litigation Chamber notes on the one hand that Article 52 of the Framework Decree does not contain
no explicit reference to private investigation firms such as Z to collect
data required, but on the other hand also that the aforementioned enumeration is formulated in
non-exhaustive manner, the use of private investigation offices therefore not being excluded
by the aforementioned Article 52 of the Framework Order.
42. In accordance with its previous decision9, the Litigation Chamber recalls that the
asset surveys in Belgium can take place via a simple consultation of the
cadastre. Investigations of real estate abroad and especially in countries that
are not Member States of the European Union, however, are less obvious. THE
social housing companies therefore ask tenants to declare on their honor that they
do not own property abroad. To control these declarations, these

social housing companies, like the defendant, use subcontractors to

specialized firms, as in this case Z, to carry out a heritage survey relating

to properties held at

abroad

when they have

serious clues or

presumptions of possession of real estate abroad.

43. The need for the asset survey relating to properties held abroad emerges

the fact that the complainant has already been asked on several occasions to declare a possible

possession to

abroad, first by

the signing of

the statement on

honor

9 Decision 124/2021 of 10 November 2021, available at:

https://www.autoriteprotectiondonnees.be/citoyen/publications/decisions.

above and then when the defendant informed the plaintiff by letter

warning of its intention to carry out a heritage survey relating to the

properties held overseas. The defendant did not, however, receive an answer

conclusive. Considering its legal mission to allocate the public means limited to the accommodation of

most vulnerable people, given the great lack of social housing and given the

difficulties in searching for such data for real estate located abroad, the

defendant was forced to carry out the asset survey relating to the properties

detained abroad to verify his serious presumptions of possession of a property

real estate abroad.

44. These findings have also already been made by the justice of the peace of the canton of Lier in its judgment of March 8, 2022 (with respect to plaintiff 1) and in its judgment of 12 April 2022 (as regards Complainant 2). The justice of the peace concluded that the defendant could lawfully rely on Article 6, paragraph 1, e) of the GDPR for the realisation of the heritage survey relating to the properties held in the stranger.

The Litigation Chamber sees no reason to adopt a different point of view in this regard.

45. Finally, the Complainant asserts that the Respondent cannot invoke Article 6, paragraph 1, e) of the GDPR as indicated in the privacy policy of its website because that the latter was not served on him. In this regard, the Litigation Chamber refers the guidelines on transparency of the Article 29 Working Party on the protection data that has the following: "Each company with a website should post a privacy statement or notice on its site. A link direct to this privacy statement or notice should be clearly visible on each page of this website under a commonly used term (such as "Privacy", "Privacy Policy" or "Protection of Life Notice private").10 There is therefore no obligation to provide this information personally to the complainant. Moreover, the Article 29 Data Protection Working Party asserts that: "all information sent to a data subject should also be accessible in a single place or in the same document (in paper or electronic) that can be easily consulted by this person if he wishes to consult all the information sent to it."11We can therefore conclude that the publication of a direct link to the data protection declaration at personal character on the website (which was present in this case) is sufficient.

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2016/679,

10 Article 29 Data Protection Working Party, Guidelines on transparency within the meaning of the Regulation

(EU)

:

https://www.cnil.fr/sites/default/files/atoms/files/wp260_guidelines-transparence-fr.pdf), point 11.

11 Article 29 Data Protection Working Party, Guidelines on transparency within the meaning of the Regulation

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https://ec.europa.eu/newsroom/article29/items/622227), point 17.

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46. Given these elements, the Litigation Chamber considers that the defendant did not commit violation of Articles 5(1)(a) and 6(1) GDPR.

II.3. Article 5, Article 24, paragraph 1 and Article 25, paragraph 1 of the GDPR

Article 5, paragraph 2, article 24, paragraph 1 and article 25, paragraphs 1 and 2 of the GDPR

47. The controller must comply with the principles of Article 5 of the GDPR and be able to show that respect. This follows from liability within the meaning of Article 5(2) juncto article 24, paragraph 1 of the GDPR. Under Articles 24 and 25 of the GDPR, each controller must take technical and organizational measures appropriate to ensure and be able to demonstrate that the processing is carried out in accordance with the GDPR.

48. In its inspection report, the Inspection Service notes that Articles 5, 24, paragraph 1 and 25, paragraphs 1 and 2 of the GDPR have been violated. As part of its investigation with regard to liability, the Inspection Service sent the following request to the defendant:

“Please demonstrate, with documents in accordance with Articles 5, 6, 24 and 25 of the GDPR, that your organization has taken technical and organizational measures appropriate to ensure compliance with data protection principles, such as the minimization of data, as part of the heritage survey relating to the properties detained abroad mentioned in the complaint".

49. The defendant formulated a response in which, according to the Inspection Service,

explanations are given about the security measures taken and with regard to which
various annexes are also transmitted. The Inspection Service notes in its
report that security measures relate to integrity and confidentiality, within the meaning of
Article 5, paragraph 1, f) of the GDPR, but that the defendant does not specify how the
other principles of Article 5(1) GDPR are guaranteed. Additionally, the Service
of Inspection concludes that certain elements are not concretely explained by the
defendant. It is a question in particular of knowing if, and if necessary how the level most
high level of the defendant's management follows the conventions on security measures
in reports and team meetings, or where appropriate how the delegate to the
data protection of the defendant is involved in the preparation and follow-up of
security measures, or and if applicable how breaches of the code of ethics
by the members of the Board of Directors are effectively sanctioned by the
defendant, when the analysis of the technical infrastructure of the defendant was
carried out and what concrete measures
the defendant took after taking
knowledge of this analysis and finally how compliance with security measures
aforesaid is generally controlled by the defendant and how the violations

are actually sanctioned. The Inspection Service therefore comes to the conclusion
that there is a violation of Article 5, Article 24, paragraph 1 and Article 25, paragraph 1 of the
GDPR.
50. In its pleadings, the defendant refutes this finding. She argues that she was meant to
have to demonstrate the technical and organizational measures it has taken using the
documents that it had to draw up, such as the register of processing activities,
the subcontracting agreement concluded with the subcontractor who uses the personal data
personnel during the asset survey relating to properties held abroad, and

other documents proving that it has taken technical and organizational measures
appropriate in the context of the heritage survey relating to the properties held in
the stranger. The defendant regrets that the Inspection Service found a violation
of all principles of Article 5(1) GDPR due to improper
understanding of one of the Inspection Service's questions by
the defendant.
The defendant asserts that the findings of the Inspection Service are based on a
erroneous interpretation of the inquiry question on the part of the defendant. In his
conclusions, the defendant therefore provides more explanations as to compliance with the
principles of Article 5(1) GDPR.
51. The Litigation Chamber affirms that the Inspection Service, as an investigative body
of the APD, is responsible for examining complaints and serious indications of violations of the
European and Belgian legislation on personal data, including the GDPR.
One of the ways to carry out the investigation is to have all the information
and useful documents. This possibility allows data controllers and/or
subcontractors to explain and demonstrate what measures have been taken to comply with
the applicable legislation.12
52. As part of the assessment of compliance with fundamental principles and accountability
within the meaning of Article 5 of the GDPR, the Inspection Service asked a general question to the
controller, formulated as follows:
Please demonstrate, with documents in accordance with Articles 5, 6, 24 and 25 of the
GDPR, that your organization has taken technical and organizational measures
appropriate to ensure compliance with data protection principles, such as the
minimization of data, as part of the heritage survey relating to the properties
detained abroad mentioned in the complaint".
53. In this case, the defendant made a detailed response to the Inspection Service,

in which it indeed discusses in detail the security measures taken.

12 Inspection Service Charter, August 2022, available at:

https://www.autoriteprotectiondonnees.be/publications/charte-du-service-d-inspection.pdf.

However, the Litigation Chamber reads in the inspection report that the response formulated

by the defendant was not sufficient in the eyes of the Inspection Service. As exhibited

above, the Inspection Service considers in this case that certain information, essential

to a proper assessment by the Inspection Service, are missing. The service

of Inspection therefore considered that there was a violation of Article 5, Article 24, paragraph 1

and Article 25(1) and (2) GDPR.

54. The Litigation Chamber specifies however that an investigation by the Inspection Service must

do it fairly. If the controller's response is not sufficient for the

Inspection Service, it is the responsibility of the Inspection Service, within the framework of an investigation

loyal, to specify the points on which more information is requested. It can be

do, for example, by asking more specific questions about a given topic

or by requesting specific documents or information. It is indeed not always easy

for the data controller to formulate an overall response to such a question

general and broad. If the Inspection Service has asked more specific questions or has

asked for concrete documents and that the data controller was unable to deliver the

information requested, it is up to the Inspection Service to note the violation of the

liability principle within the meaning of Article 5(2) and Article 24(1)

of the GDPR. The Litigation Chamber points out in this respect that the Inspection Service

did not ask follow-up questions about certain topics or that no

specific document was requested to arrive at a proper assessment of the case. There

Litigation Chamber therefore finds that the inspection investigation was not carried out

fair manner with regard to this finding. Consequently, the Litigation Chamber in

comes to the conclusion that on the basis of the investigation report, it cannot be concluded that violation of article 5, paragraph 2, article 24, paragraph 1 and article 25, paragraphs 1 and 2 of the GDPR.

Article 5(1) GDPR

55. As already set out above, the defendant has explained the way in which it guarantees the compliance with the fundamental principles of the GDPR. The Litigation Chamber finds that, on the basis of the answer provided by the defendant within the framework of the investigation, the Service of Inspection finds a violation of all the fundamental principles relating to the protection of personal data, as established in article 5, paragraph 1 of the GDPR. Although paragraphs 1 and 2 of Article 5 of the GDPR are closely linked, a possible breach of liability according to Art. 5 para. 2 GDPR does not mean automatically a violation of Article 5(1) GDPR. The responsibility is indeed the concrete translation of the demonstration, by means of documents, of the respect of GDPR material fundamentals.

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56. In its pleadings, the defendant explained how the treatments do indeed respect and indeed the fundamental principles of Article 5, paragraph 1 of the GDPR. These are briefly mentioned below.

57. The defendant asserts that it observes the principle of fairness and transparency. It processes the following personal data in the context of the investigation assets: surname and first name of the tenant, date and place of birth, Registry number national (if applicable and available), date and place of marriage (if applicable and available), the file number and elements of the social investigation. The defendant obtains these personal data either because it is legally obliged to request them (article 68 of the Flemish Housing Code), or because it receives this data from Z (file number and elements of the social survey). This was also confirmed by the

jurisprudence13. For the legality of the legal basis, the Litigation Chamber refers to this
which was explained in section II.2. With regard to the principle of transparency, the
defendant affirms that before the beginning of the patrimonial investigation relating to the properties
held abroad, it notified, in clear language adapted to the target group, in this case
residents of social housing, that the data would be used for a survey
heritage relating to properties held abroad. This information was taken
in the privacy statement on the website and then in the letter
of warning. With regard to the principle of transparency, the Litigation Chamber
notes that the relevant passage of the privacy statement is stated as
follows:
"Missions of public interest:
To monitor compliance with the conditions for registration and admission to social housing in
rental, the LMH can instruct private bodies to investigate property possessions
abroad. The processing of personal data by the LMH and these private bodies
during this investigation is lawful and takes place in the performance of a mission of general interest, namely
fight against property fraud. The LMH wants to be sure that the accommodation
rented social units are allocated to the predestined target group of the social rented system.
To be part of this target group, you must meet certain registration conditions and
of admission set out in art. 6.12. at 6.15. included in the Flemish Housing Code of 2021. This
survey of real estate abroad serves to control these registration conditions and
admission.
Attention: if we suspect that the property is outside the economic area
European Union (EEA), during the investigation there may be an international transfer of data to
personal character to that country outside the EEA. This international transfer is legal,
in accordance with art. 49, § 1, d) of the GDPR, namely because of important reasons of interest
13 See in particular Vred. Hamme 6 June 2019, Huur 2020/1, 57.

audience. [Free translation by the General Secretariat of the Data Protection Authority
data, in the absence of an official translation and proper underlining].

The warning letter that was sent by the defendant on July 29, 2020 is
also formulated in clear and intelligible language:

"We have already checked for a long time whether you own1 a property
(apartment, housing or building land) in Belgium. If you own a property, we
we are forced to terminate the lease agreement. You have probably already learned
that some social housing companies also check abroad whether their tenants have
a property. Several tenants have already been sentenced. The contract was terminated
lease and these people had to pay a heavy fine as well as the costs of the investigation.
The Lierse Maatschappij voor de Huisvesting has now concluded a contract with a firm
which can and will carry out such checks abroad. We will transmit the data
certain tenants to this firm for investigation.

Which tenants will it be?

Tenants who we suspect own property overseas. Or of
tenants that we select randomly.

If you own property abroad, you have until August 31, 2020
to declare it spontaneously. In this case, we are prepared to resolve the situation at
the amicable.

If you do not declare it spontaneously, you strongly risk that we discover it at the
means of a survey carried out by the specialized firm. In this case, not only will there be a
termination, but we will also bear all costs and fines. The amount can
reach several thousand euros.

Tenants who do not own real estate abroad should not
have any concerns about the content of this letter."

General Secretariat of the Data Protection Authority, in the absence of an official translation].

58. As already indicated, the privacy statement was accessible via a direct link on the website and written in plain language. The warning letter that was sent to complainants on July 29, 2020 is also written in sufficiently clear language.

Given the foregoing, the Litigation Chamber concludes that there is no violation of Article 5, paragraph 1, a) of the GDPR.

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59. The Litigation Chamber recalls that in accordance with Article 5, paragraph 1, b) of the GDPR, personal data may only be collected and processed for specific, explicit and legitimate purposes. When data is used subsequently for another purpose, this new purpose must be compatible with the initial purpose of the collection. With regard to Article 5, paragraph 1, b) of the GDPR, the defendant argues that the purpose of the processing was established and determined ab initio, since the privacy statement explicitly mentions that personal data of a personal nature may be transmitted to private bodies in order to control the aforementioned registration and admission conditions. The purpose is also defined explicitly in the privacy statement, according to the defendant. For determine the legitimate purpose, this purpose must be related to the activities of the controller, according to the defendant. In this regard, the defendant refers to Article 52 of the Framework Decree, namely the control of compliance with the conditions of registration and admission in the context of social tenancy.

60. On the basis of the defendant's exhibits, the Litigation Chamber finds that the personal data has been collected in order to enable registration administration on the waiting list and the possible allocation of social housing.

The privacy statement (see point 56) clearly states that the defendant is entrusted with a mission of public interest, namely the allocation of meager public resources

to allocate social housing to those who are most vulnerable. In this

effect, the defendant may entrust private bodies with investigations into assets

real estate at

abroad, as is also

indicated in

the declaration of

privacy. This control of compliance with the registration and admission conditions is

inherent in the public interest mission of the defendant, namely the execution of the right to a

decent housing, also in particular for the most needy people. Seen what

above, the Litigation Division concludes that there is no violation of Article 5, paragraph

1, b) GDPR.

61. According to the data minimization principle provided for in Article 5, paragraph 1, c) of the GDPR,

the personal data processed must be adequate, relevant and limited to

what is necessary in relation to the purposes for which they are processed. It results

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

treatment cannot reasonably be achieved by other means. As it concerns

the principle of "data minimization", the defendant argues that both the purpose

that data and processing are proportional.

62. Recital 39 of the GDPR provides that personal data should only be

be processed only if the purpose of the processing cannot reasonably be achieved by

other ways. On the basis of the documents in the file, the Litigation Division finds that

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the defendant processes the following data as part of the asset investigation

relating to properties held abroad: surname and first name, date of birth, place of

birth, national register number (Belgian or of the country of origin, if applicable), date and

place of marriage (if applicable and available) and any elements of the investigation of the

control service which gave rise to the transmission of the file (suspicions of possession real estate abroad). From the documents, the Litigation Chamber understands that the defendant did not immediately carry out an asset investigation relating to the properties held overseas. First of all, the plaintiffs signed a declaration on honor at the beginning of the lease contract, then the plaintiff has the legal obligation to declare to the lessor, in this case the defendant, the possible acquisition of real estate during the current lease contract, then the defendant sent on July 29, 2020 a warning letter to the complainants, announcing on the one hand the asset investigation relating to properties held abroad, and on the other hand the possibility of declaring a possible real estate possession abroad to reach an amicable agreement. Finally, the defendant mentions that an exploratory investigation is first carried out. It's only by case of serious indications or suspicions of real estate possession abroad that one will carry out a heritage survey relating to properties held abroad as this was the case in this case. Since the defendant does not have the means required or the expertise to conduct such investigations, it is not excessive to resort to a specialized firm. Given the foregoing, the Litigation Chamber concludes that there is no violation of Article 5, paragraph 1, c) of the GDPR.

63. Pursuant to Article 5(1)(d) of the GDPR, the controller must take all reasonable measures to ensure that the data is accurate and up to date. Data that is not (no longer) must be erased or rectified. The defendant claims that together with her data protection officer, she has drafted an internal policy with guidelines for its employees who come into contact with data to be personal character. It appears from the agenda of the defendant's team meeting of October 19, 2021 that this internal memo has been addressed, as well as other points relating to the GDPR. The Litigation Chamber concludes that there is no violation of Article 5, paragraph 1, d) of the GDPR.

64. The Litigation Chamber recalls that under the principle of limiting the retention
(Article 5, paragraph 1, e) of the GDPR), personal data cannot be
kept for a period exceeding that necessary for the purpose of the processing.
When the data is no longer needed, it must be destroyed or erased.
The defendant points out that the register of processing activities gives an overview
detailed description of the retention periods for the categories of personal data that it
treaty. Furthermore, Article 10 of the subcontracting agreement with Z provides that the latter
destroy all personal data received and processed in relation to the survey
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heritage relating to properties held abroad when the sub-contract
contract ends, namely May 31, 2022 (unless extended). Contrary to what is claimed
the plaintiff, the defendant therefore does not admit having violated the principle of limitation of the
conservation. Given the foregoing, the Litigation Chamber concludes that there is no violation of
Article 5, paragraph 1, e) of the GDPR.
65. Article 5.1.f) of the GDPR requires that personal data must be "processed
in such a way as to ensure appropriate security of personal data, including the
protection against unauthorized or unlawful processing and against loss, destruction or
accidental damage, using technical or organizational measures
appropriate". In this context, the defendant explains in its pleadings how it
taken various measures independent of the processing activities in the context of
the asset survey relating to properties held abroad, such as information on
its employees about the security measures to be observed (such as the use of words
password, two-factor authentication, internal data processing policy
personal). Furthermore, the defendant explains that the directors
must sign a code of ethics by which they undertake to respect the secrecy of
personal data and confidential company data. Then the

defendant mentions a series of measures which were taken after an analysis of
the technical infrastructure by an independent company. These are in particular:
making offline and online backups of the processed personal data,
the installation of a firewall, antivirus and anti-malware software, a policy of
passwords with regular changing of passwords and disabling of all
standard user accounts. This company
independent carries out checks
periodicals concerning the security of the IT infrastructure. The subcontract defines
also the measures that the subcontractor must take with a view to security, such as the
regular renewal of passwords and access codes, pseudonymization and
encryption of personal data, internal audit procedures assessing the
security measures taken, the confidentiality clause for the workers concerned, etc.
Given the foregoing, the Litigation Chamber concludes that there is no violation of Article 5,
paragraph 1, f) of the GDPR.
66. The Litigation Division again asserts that in this case it is disproportionate
to establish a violation of Articles 5, 24, paragraph 1 and 25, paragraphs 1 and 2 of the GDPR on
the basis of a general question within the framework of responsibility, which was the subject of a
respondent's response, with no further follow-up questions from the Service
of inspection. It is the responsibility of the Inspection Service to demonstrate a possible breach of
Article 5, paragraph 1 of the GDPR by the defendant on the basis of a fair investigation.
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67. Given that the Inspection Service does not demonstrate the manner in which the defendant
violated the fundamental principles of Article 5, including liability, and that the
defendant explains in detail in its pleadings the manner in which it complies with these
principles, the Litigation Chamber concludes that the defendant has not committed a violation
of Articles 5, 24, paragraph 1 and 25, paragraphs 1 and 2 of the GDPR.

II.4. Article 28, paragraphs 2 and 3 GDPR

68. Pursuant to Article 28(2) of the GDPR, the processor does not recruit another subcontractor without the prior written authorization, specific or general, of the person in charge of the treatment. In the case of a general written authorization, the subcontractor informs the responsible for processing any planned changes to adding or THE replacement of other processors, thus giving the controller the opportunity to object to these changes.

69. Article 28(3) of the GDPR provides that processing by a processor is governed by a contract or other legal act under Union law or the law of a Member State, which binds the processor vis-à-vis the controller, defines the purpose and the duration of the processing, the nature and purpose of the processing, the type of personal data personnel and the categories of persons concerned, and the obligations and rights of the controller. This contract or other legal act provides, in particular, that the subcontractor :

• only processes personal data under the written instructions of the responsible for processing, in particular with regard to the transfer of data of a personal nature to a third country or an international organization (unless it is legally required to do so);

• guarantees that access to this data is limited to authorized persons. These persons must be bound to secrecy on the basis of a contract or legal obligation ;

• uses at least the same level of personal data security as

the controller;

•

the data controller offers all possible support for compliance with its

obligations in order to respond to requests regarding the rights of persons

concerned;

•

the controller provides assistance with a view to compliance with its

obligations in terms of the security of personal data and

the obligation to report data leaks;

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• once the contract between the controller and the processor is

expired, it erases the personal data processed at the request of the

controller or return them to him and delete the existing copies;

•

the data controller provides all the necessary information

in order to be able to demonstrate that the obligations on the basis of the regulation concerning the

recourse to a subcontractor are respected, information which is necessary for

enable audits;

• enters into agreements regarding sub-processors.

70. The Inspection Service notes in its investigation that there is question of a violation of

Article 28, paragraphs 2 and 3 of the GDPR since the following elements are missing

in the subcontract between the defendant and the subcontractor:

-

the signature of the director representing the defendant; only the signature of the director of the

subcontractor appears in the subcontract;

-

the date on which the subcontract begins. Page 10 of the contract of

subcontracting mentions "October 14, 2020" but it is not clear whether this is

also the start date;

- a description of the duration of the treatment;

- a description of the type of personal data and the categories of persons

concerned as well as the nature of the processing; And

- a specific prior authorization or a general written authorization from

there

defendant to the subcontractor so that he

uses other subcontractors.

Despite the absence of any provision on this subject, the subcontractor called on a

subcontractor in Türkiye.

71. The defendant does not refute these findings. She says that after receiving the report

inspection, she gave

immediately

the instruction to adapt

the contract of

subcontracting that it uses to carry out asset surveys by companies

private and to develop and add the mentioned elements. The defendant argues

that at this time, the subcontractor no longer carries out asset surveys on behalf of

of the defendant, and that the defendant no longer transmits personal data

personnel to the subcontractor. In its pleadings, the defendant adds an adapted model

subcontract that will be used

in any future investigations

assets relating to properties held abroad.

72. The Litigation Division considers that the subcontract which was transmitted by the

defendant is incomplete, as noted in the inspection report.

In his conclusions,

the defendant asserts that it no longer carries out investigations

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assets relating to properties held abroad, but that it transmits the

modified model of subcontract, following the inspection report. Bedroom

Litigation finds that the defendant has made efforts to put the contract of

subcontracting in accordance with the requirements of Article 28, paragraphs 2 and 3 of the GDPR.

73.

Despite the corrective measures, the Litigation Division finds that the sub-contract

contracting on the basis of which the heritage survey relating to the properties held in

the foreigner was carried out did not meet the requirements of article 28, paragraphs 2 and 3

GDPR, so that there was a violation of Article 28 (2) and (3) of the GDPR.

GDPR, but that the problem has since been resolved.

II.5. Articles 44, 46, 24, paragraph 1 and article 5, paragraph 2 of the GDPR

74. From the moment that personal data is transmitted to countries in

outside the European Union, it is a question of a transfer of personal data

staff. To transfer personal data to countries outside of

European Union, the GDPR states that this is only allowed if the level of protection

offered by the GDPR is not affected. This is the case when the country outside the Union

European Union has an adequate level of data protection or offers guarantees

add-ons for data transfer. If the European Commission has not taken

adequacy decision, appropriate safeguards should be adopted in another way

to provide a sufficiently high level of protection.

75. With regard to the transfer of personal data to Turkey, the Service

of Inspection finds that the defendant has committed a violation of articles 44, 46, 24,

paragraph 1 and article 5, paragraph 2 of the GDPR since the defendant

would not have demonstrated the measures that she and Z took to comply with the articles

44 and 46 GDPR and the judgment Schrems II when transferring personal data

to Turkey. The Inspection Service concludes that the Turkish law on protection

personal data provides an exemption for the processing of personal data

personal character in

as part of prevention, protection and

information carried out by public authorities and organizations which are duly

authorized and designated by law to ensure national defense, national security,

public security, public order or economic security. The subcontract

between Z and its Turkish partner would not offer sufficient additional guarantees

to ensure an adequate level of protection for personal data

transferred.

76. First of all, the defendant asserts that it is not the exporter of this data to

personal character to Turkey as part of the heritage survey. It's Z who

receives the data from the defendant, but which in turn transmits them to its partner in

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Türkiye, which then uses this data to carry out the necessary research in the

public records.

77. The Litigation Chamber does not follow this reasoning. Article 4.7) of the GDPR defines the

"controller" as "the natural or legal person, authority

public authority, service or other body which, alone or jointly with others,

determined

the purposes and

means of processing personal data".

It is also the defendant, as a social housing company, which determines the

purposes and means, given that it has transmitted the personal data to Z

as a subcontractor for the purpose of carrying out a heritage survey relating to the

foreign owned properties in Türkiye. In other words, the Litigation Chamber

comes to the conclusion that the defendant must be qualified as responsible for the

treatment, also with regard to the transfer to Turkey. Inasmuch as

responsible for the processing, it is his responsibility to check beforehand whether this transfer will take place

in a manner that complies with the relevant GDPR obligations. This obligation also applies

when it does not carry out the transfer itself, but via a designated subcontractor, such as

this is the case in this case. If the controller finds that this

transfer by the processor cannot be done in accordance with the GDPR, it cannot

transmit this personal data to the processor.

78. If the defendant was nevertheless qualified as controller, it argues

in the alternative that for the transfer of personal data, it invokes

Article 49, paragraph 1, d) of the GDPR.

As part of the assessment of the transfer of personal data to Turkey,

the Litigation Chamber refers to Recommendations 01/2020 of the European Committee for

data protection (hereinafter: "EDPB"). To help exporters in the task

complex to assess the protection of data from third countries and establish measures if necessary

complementary, the EDPB has provided a step-by-step plan.14

Step 1: know the transfers

79. Above all, it is important for the exporter to be aware of the personal data

personnel that are transferred, for example by using its processing register.

The defendant acknowledges in its submissions that the processing register was not

still on point at this level. However, the EDPB does not explain how the exporter must

make this step a reality, but is content to make suggestions. The defendant

affirms in its conclusions that the categories of personal data which

14 EDPB, Recommendations 01/2020 on measures that complement the transfer instruments intended to guarantee the compliance with the level of protection of personal data of the EU of June 18, 2021, available at the address: https://edpb.europa.eu/system/files/2022-04/edpb_recommendations_202001vo.2.0_supplementarymeasurestransferstools_fr.pdf.

were transferred were included in the subcontract, so that there was a good overview of the relevant personal data being transferred.

Step 2: Identify the relevant transfer instrument

80. Second, the exporter must determine which transfer instrument from Chapter V of the GDPR it uses.

81. The Litigation Division recalls that the transfer of personal data to a third country, in the absence of an adequacy decision by the European Commission pursuant to Article 45 of the GDPR, is only possible if the controller or processor has offered appropriate guarantees, and provided that for the persons concerned, enforceable rights and effective legal remedies are available (Article 46 GDPR).

In the absence of a decision declaring the adequate level of protection in accordance with Article 45, paragraph 3 of the GDPR, or appropriate safeguards in accordance with Article 46 of the GDPR, a transfer or class of transfers of personal data to a third country takes place, in specific circumstances, only under one of the conditions of Article 49 of the GDPR ("Derogations for special situations").

82. As mentioned above, the defendant relies on the derogation of Article 49, paragraph 1, d) of the GDPR. Under this article, transfers to third countries may take place when the transfer is necessary "for important reasons of public interest".

This is very similar to the provision included in Article 26(1)(d) of the Directive 95/46/EC15, which provides that a transfer can only take place when it is necessary or legally required due to an important public interest.

83. Pursuant to Article 49(4) GDPR, only interests may be taken into account

public authorities recognized in Union law or in the law of the Member State to which the

the controller. The provision that defines such a public interest cannot be

abstract. The transfer is, for example, allowed in the event of an important public interest recognized in

international agreements to which Member States are parties.16

84. In the present case, the transfer takes place within the framework of the public interest and more

specifically the right to housing. The right to housing is recognized in several

international human rights instruments. Article 25 of the Universal Declaration

of human rights recognizes the right to housing as an element of the right at a level

sufficient life.17 Article 11, paragraph 1 of the International Covenant on Human Rights

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

with regard to the processing of personal data and on the free movement of such data.

16 EDPB, Guidelines 2/2018 on the derogations provided for in Article 49 of Regulation (EU) 2016/679 of 25 May

2018, available at:

https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_2_2018_derogations_en.pdf.

17 Article 25: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family,

in particular for food, clothing, housing, medical care and social services

economic, social and cultural (ICESCR), which has been ratified by both Belgium and the

Turkey, guarantees the right to housing as part of the right to an adequate standard of living.18

For the determination of the right to housing as a public interest in national law

Belgian, reference is made to section II.2 of this decision.

85. Based on Article 49(1)(d) GDPR, the necessity test should be applied

to assess its applicability. This necessity test requires an evaluation by

the data exporter of whether the transfer of personal data

personal may be considered necessary for the specific purpose of Article 49,

paragraph 1, d) of the GDPR. With regard to the necessity of the transfer, the Chamber

Litigation refers to section II.2. of this decision.

86. Given these elements, the Litigation Chamber concludes that the transfer of personal data

personnel to Turkey, as part of the heritage survey relating to the properties

held abroad, took place legally valid on the basis of Article 49,

paragraph 1, d) of the GDPR so that there is no violation of Article 44, Article 46,

of Article 24(1) and Article 5(2) GDPR.

II.6. Article 30(1) GDPR

87. Under Article 30 of the GDPR, any controller must keep a register

processing activities carried out under its responsibility. Article 30, paragraph 1, a)

to g) inclusive of the GDPR provides that with regard to processing carried out in the capacity of

controller, the following information must be available:

a) the name and contact details of the controller and, where applicable, of the

joint controller, the representative of the controller and the

data protection officer;

b) the purposes of the processing;

c) a description of the categories of data subjects and the categories of data to be

personal character;

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

will be communicated, including

recipients in third countries or

International organisations ;

required ; she is entitled to security in the event of unemployment, sickness, invalidity, widowhood, old age or in other

loss of his means of subsistence as a result of circumstances beyond his control."

18 Article 11, paragraph 1: “The States Parties to the present Covenant recognize the right of everyone to a standard of living

sufficient for herself and her family, including adequate food, clothing and shelter, and a

constant improvement of its living conditions. States Parties shall take appropriate measures to ensure the realization of this right and to this end they recognize the essential importance of international co-operation freely consented".

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e) where applicable, transfers of personal data to a third country or to a international organisation, including the identification of this third country or this international organization and, in the case of transfers referred to in Article 49(1), second paragraph, the documents attesting to the existence of appropriate guarantees;

f) as far as possible, the deadlines for erasing the different categories of data;

g) where possible, a general description of the technical security measures and organizational measures referred to in Article 32(1).

88. With respect to the record of the defendant's processing activities, the Service Inspection makes the following findings, as summarized below:

•

A description of the categories of data subjects is missing in the tab "Lists" (cf. Article 30, paragraph 1, c) of the GDPR). It is therefore not clear what what do terms such as "members of staff" mean in practice? "administrators", "volunteers", "(candidates) tenants and (candidates) buyers".

•

The description of the categories of personal data is incomplete, since the "Lists" tab repeatedly contains unlisted enumerations restrictive (cf. article 30, paragraph 1, c) of the GDPR). It is therefore not clear what terms such as "personal identification data" mean in practice electronic", "electronic location data", "identification data financial", "images" and "sound recordings".

89. The Litigation Chamber notes that the defendant provides in its register of

processing activities a listing for:

-

the categories of data subjects (Article 30, paragraph 1, c) of the GDPR), namely the

"members of staff", "administrators", "volunteers", "(candidate) tenants and

(candidate) buyers"; and

-

the categories of personal data (Article 30, paragraph 1, c) of the GDPR), to

know

"electronic identification data",

the "data of

location

electronic",

THE

"identification data

financial",

THE

"pictures" and

THE

"sound recordings".

90. The Litigation Chamber must rule on the question of whether Article 30,

paragraph 1, c) of the GDPR requires to give a description of the categories of data to be

personal character and the categories of persons concerned in the register of

processing activities, or whether a listing may suffice.

91. The Litigation Chamber notes that Article 30, paragraph 1, c) of the GDPR requires

a description of the categories of data subjects and the categories of data

of a personal nature is included in the register of processing activities. The people concerned are the identified or identifiable natural persons whose data are processed (Article 4.1) of the GDPR). As far as categories of data are concerned, it must be understood to be personal data as defined in Article 4(1) of the GDPR.

92. The Litigation Chamber recalls the purpose of the register of processing activities. In order to be able to effectively apply the obligations contained in the GDPR, it is essential that the controller (and processors) have an overview of the processing of personal data that they carry out. This register constitutes from first and foremost an instrument to help the controller to comply with the GDPR for the various data processing that it carries out because the register makes visible the main characteristics of these treatments. The Litigation Chamber considers that this register of processing activities is an essential instrument in the context of the responsibility already mentioned (Article 5, paragraph 2 and Article 24 of the GDPR) and that this register is the basis of all the obligations imposed by the GDPR on the person responsible for the treatment.

93. The Litigation Chamber notes that neither the text of the GDPR nor the objectives of the GDPR only prevent a listing of the categories of personal data and the categories of data subjects is included in the register of processing activities or that a more detailed description is necessary.

94. With regard to the categories of recipients, the Litigation Chamber refers to a recommendation of the CPP19 and to the doctrine20 which explain that it is certainly not necessary to mention the individual recipients of the data, but that they can however, be grouped by category of recipients. Mutatis mutandis, this statement can also be applied to categories of personal data and persons concerned.

95. The Litigation Chamber nevertheless emphasizes that the content of the register of the activities of processing should always be assessed on a case-by-case basis to verify whether the description or the list given there is sufficiently clear and concrete.

96. In the present case, the Litigation Chamber finds that the enumerations included in the register of processing activities were sufficiently concrete. According to the Chamber Litigation, there is little doubt as to the meaning of the items listed above in the context of social tenancy. Therefore, the Litigation Chamber concludes that it there is no question of a violation of Article 30, paragraph 1, c) of the GDPR. Bedroom Litigation also recalls that the register of processing activities is now

19 Available via this link: https://www.autoriteprotectiondonnees.be/publications/recommandation-n-06-2017.pdf.

20 W. Kotschy, "Article 30: records of processing activities", in Ch. Kuner The EU General Data Protection Regulation (GDPR), a commentary, 2020, p. 621.

developed with regard to international transfers, as recognized by the defendant, so that there is no violation of Article 30, paragraph 1 of the GDPR.

III. Penalties

97. On the basis of the documents in the file, the Litigation Division finds that there is a violation of Article 28, paragraphs 2 and 3 of the GDPR. Although the defendant has remedied these violations, it is established that violations of the right to data protection have taken place.

As already explained, the subcontract is an important instrument in the GDPR compliance. With the processor contract, the data controller can make use of subcontractors offering sufficient guarantees, particularly in terms of specialist knowledge, reliability and resources, for the implementation of measures technical and organizational that will meet the requirements of the GDPR, including regarding the security of the processing.

98. When determining the sanction, the Litigation Chamber takes into account the fact that the

defendant has already rectified the situation and submitted evidence thereof. Bedroom Litigation therefore decides that, given the concrete factual circumstances of this case, a reprimand is sufficient for the above violations. The seriousness of the violation is not such as to impose an administrative fine.

99. The Litigation Division classifies the other grievances without follow-up and findings of the Inspection Service because, on the basis of the facts and the documents in the file, it cannot conclude that there is a violation of the GDPR. These grievances and findings of the Inspection Service are therefore considered to be manifestly unfounded within the meaning of article 57, paragraph 4 of the GDPR.21

IV. Publication of the decision

100. Given the importance of transparency regarding the decision-making process of the Chamber Litigation, this decision is published on the website of the Protection Authority Datas. However, it is not necessary for this purpose that the identification data of the parties are communicated directly.

21 See point 3.A.2 of the Dispute Resolution Policy of the Litigation Chamber, of June 18, 2021, available at the address : https://www.autoriteprotectiondonnees.be/publications/politique-de-classement-sans-suite-de-la-chambre-litigation.pdf.

FOR THESE REASONS,

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

- to formulate a reprimand with regard to the defendant, pursuant to Article 100, § 1, 5° of the LCA, following the violation of Article 28, paragraphs 2 and 3 of the GDPR;
- to dismiss all the other grievances of the complaint, pursuant to Article 100, § 1, 1° of the ACL.

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

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

notification, with the Data Protection Authority as defendant.

This recourse can be introduced by means of a contradictory request which must repeat the

particulars listed in article 1034ter of the Judicial Code22. The contradictory request must be

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

judicial 23, or via the e-Deposit computer system of Justice (article 32ter of the Judicial Code).

(Sr.) Hielke HIJMANS

President of the Litigation Chamber

22 The request contains on pain of nullity:

the indication of the day, month and year;

1°

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

number or

Business Number ;

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

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

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

6° the signature of the applicant or his lawyer.

23 The request, accompanied by its appendix, is sent, in as many copies as there are parties involved, by letter

recommended to the court clerk or filed with the court office.