Dispute room

Decision on the merits 57/2021 of 06 May 2021

File number : DOS-2019-02902

Regarding:

Lack

transparency

in the privacy statement of a

insurance company (reconsideration decision 24-2020)

The Dispute Chamber of the Data Protection Authority, composed of Mr Hielke

Hijmans, chairman and Messrs Dirk Van Der Kelen and Jelle Stassijns, members;

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

on the protection of natural persons with regard to the processing of

personal data and on the free movement of such data and repealing Directive

95/46/EC (General Data Protection Regulation), hereinafter GDPR;

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

WOG;

In view of the

rules of

internal order, as approved by the Chamber of

Members of Parliament on 20 December 2018 and published in the Belgian Official Gazette on

January 15, 2019;

Having regard to the documents in the file;

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has made the following decision regarding:□

- Mr X, hereinafter referred to as “the complainant”;□

-□

Y, represented by Meesters Benoit Van Asbroeck and Simon Mortier, hereinafter referred to as “de□

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defendant".□

1. Facts and procedure□

1. This decision is a reconsideration of decision 24/2020 of the Disputes Chamber of 14□

May 2020, and implements the judgment of the Market Court of 18 November 2020, with□

roll number 2020/AR/813.□

2. This decision must be read in conjunction with decision 24/2020 and contains a□

reconsideration aimed at giving the defendant the opportunity to defend himself□

on all infringements of the GDPR for which a sanction was imposed in the initial decision,□

insofar as these infringements are contested by Y. With this reconsideration, the□

Disputes Chamber thus within the framework of the initial decision, also with regard to the□

administrative fine that cannot exceed the amount of the fine initially determined.□

With regard to the allegations about which the Disputes Chamber in the initial decision□

ruled that there was no breach of the GDPR, that judgment is maintained. The□

infringements identified in the initial decision and not contested by Y remain□

equally preserved.□

3. On 14 June 2019, the complainant lodged a complaint with the Data Protection Authority against□

defendant.□

The subject of the complaint concerns the use of health data that□

insurance company has obtained from the person concerned in the context of a

hospitalization insurance for other purposes without the express consent of the

insured person concerned. The complainant states that he has no problem with his

health data is processed for the fulfillment of obligations under

the hospitalization insurance that was taken out with the defendant, but there is a problem

when the same health data is processed for the purposes listed

in point 4.3. of the privacy statement and for the transfer to third parties as stated in point 9

of the same privacy statement (it concerns point 6, but the reference to point 9 is a

material error) as stated in the defendant's privacy statement. He asks that

specifically for those purposes, as well as for the transfer, the defendant gives the choice to the

data subject to consent or not to the processing of their health data.

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Finally, the complainant expresses his wish to receive a data protection impact assessment

of the defendant as the processing involves the processing of data with a high risk for

The involved.

4. On 26 June 2019, the complaint will be declared admissible on the basis of Articles 58 and 60 of

the WOG, the complainant is informed of this on the basis of art. 61 WOG and becomes the complaint

pursuant to art. 62, §1 WOG transferred to the Disputes Chamber.

5. On July 23, 2019, the Disputes Chamber will decide on the basis of art. 95, §1, 1° and art. 98 WOG that it

file is ready for processing on the merits.

6. On 24 July 2019, the concerned parties will be notified by registered letter of

the provisions as stated in article 95, §2 and in art. 98 WOG. Also, the concerned

parties pursuant to art. 99 WOG of the time limits to submit their defences

to submit. The deadline for receipt of the complainant's reply was

laid down on October 7, 2019 and for the defendant on November 7, 2019.

7. On July 29, 2019, the defendant reported to the Disputes Chamber that it had taken cognizance of

the complaint, requests a copy of the file (art. 95, §2, 3° WOG) and accepts electronically

all communication regarding the case (art. 98, 1° WOG).

8. A copy of the file will be sent to the defendant on July 30, 2019.

9. On August 2, 2019, the Disputes Chamber receives a letter in which the defendant states:

that he wishes to be heard by the Disputes Chamber (art. 98, 2° WOG).

10. On September 6, 2019, the Disputes Chamber receives the statement of defense from the

defendant. Defendant argues, first, that the processing of special categories of

personal data, in this case health data by health insurer Y in a lawful manner

happens. The processing of these special categories of personal data (Art. 9 GDPR)

is in principle prohibited. The defendant invokes the exception ground for the processing

of Article 9(2)(a) GDPR, the explicit consent of the data subject. Second, argues

defendant that no separate consent is required for each transfer of

personal data. Third, according to the defendant, there is no question of asking

consent to the processing of data other than health data. Finally was

according to the defendant, a data protection impact assessment is not necessary in this case

as it concerns existing processing operations and not new processing operations that

commenced after May 25, 2018.

11. The complainant has not exercised the right to submit a statement of defense.

12. The defendant does not submit a new claim and only provides exhibits on November 7, 2019

in support of the statement of defense submitted on 6 September 2019.

13. On 9 January 2020, the parties will be notified that the hearing will take place

on January 28, 2020.

14. On January 28, 2020, the defendant will be heard by the Disputes Chamber. The complainant, although

duly summoned, did not appear. Among other things, the defendant answers questions from

the Disputes Chamber on the legal basis for the processing of personal data, not

being health data. After this, the debates are closed.

15. The minutes of the hearing will be submitted to the parties on 29 January 2019.

16. On January 31, 2020, as requested at the hearing, the Defendant submits the annual turnover

of the last three financial years. Over the years 2016-2018, these amounts always represent a turnover between

the 500 and 600 million Euros.

17. On February 6, 2020, the Disputes Chamber receives some comments from the defendant

with regard to the official report, which it decides to include in its deliberations.

18. On 25 March 2020, the Disputes Chamber will notify the defendant of its intention to

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

in order to give the defendant an opportunity to defend himself before the sanction takes effect

is imposed.

19. On May 8, 2020, the Disputes Chamber will receive the defendant's response to the intention

to the imposition of an administrative fine, as well as the amount thereof.

The defendant argues that the alleged infringements contained in the intention of

the Disputes Chamber would be completely new and he has not been able to

to defend. The Disputes Chamber must, however, establish that from the documents in the file

it is indisputable that the defendant does have full rights of defence

can exercise.

The defendant also argues that it disagrees with the imposition of a fine, or the

intended amount of the fine. However, he does not put forward any (new) arguments

substantiation of this statement. The response of the defendant gives for the Disputes Chamber

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therefore no reason to adjust the intention to impose a

administrative fine, nor to change the amount of the fine as

intended.

20. On 14 May 2020, the Disputes Chamber will rule as follows in its Decision on the merits of 24/2020:

- pursuant to art. 100, §1, 9° WOG, order the defendant that the processing in

is brought into conformity with article 5.1 a), article 5.2, article 6.1, article 12.1, article

13.1 c) and d) and 13.2 b) GDPR.

- pursuant to art. 100, §1, 13° WOG and art. 101 WOG to impose an administrative fine

to impose EUR 50,000 as a result of the infringements of Article 5.1 a), Article 5.2, Article 6.1, Article

12.1, article 13.1 c) and d) and article 13.2 b) GDPR.

21. On June 17, 2020, the Disputes Chamber will receive the

notification of an application against the GBA lodged at the Registry of the Court.

22. The introductory session before the Marktenhof will take place on 24 June 2020, at which the

deadlines for the parties are set, as well as the case is adjudicated before

oral arguments at the hearing on October 21, 2020.

On November 18, 2020, the Marktenhof will pass judgment.

The judgment1 broadly contains the following points for attention with regard to the assessment of

the subject of the petition:

• Annulment of decision on the merits no. 24/2020 of 14 May 2020 of the Disputes Chamber.

• The Marktenhof argues that the defendant should be given the opportunity – after the ground of appeal has been

and has been clearly formulated in writing – in order to draw a written conclusion

to take. The fact that the defendant was asked at the hearing

(which was stated in the record of the hearing) to take a position

on the general question of the legitimate interest in which the defendant

invokes the processing of non-health data and that the defendant

only formulated a succinct answer to this without reservations or objections

does not adequately justify the decision no. 24/2020 of 14 May 2020.

23. Following the judgment, the Disputes Chamber decides on November 27, 2020 to proceed

to retake the file with a view to making a new decision. The

The consideration underlying this is that the Disputes Chamber, notwithstanding the

1 The judgment

https://www.dataprotectionauthority.be/publications/ Tussenarrest-van-02-september-2020-van-het-marketshof.pdf

is available on the website of the Data Protection Authority at the following

link:

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annulment of the above-mentioned decision by the judgment of the Marktenhof, is still in force

by the initial complaint filed on June 14, 2019 as declared admissible by the

Frontline service on June 26, 2019. Debates will therefore be reopened

and new deadlines for claims are determined, so that the parties can take a position

regarding the legitimate interest on which the defendant invokes other than

processing health data.

The parties are notified of the following notice periods:

• the final date for the complainant's response is set at 8

January 2021;

• the final date for the defendant's reply is set at 19

February 2021;

The date of the hearing is also being set, which will take place on March 22, 2021.

24. On November 27, 2020, the Disputes Chamber receives a notification from the complainant that the

because of the clear arguments, it does not seem necessary to him to provide additional argumentation.

On the same day, the Disputes Chamber informs the defendant that the complainant

has indicated that it will not submit a conclusion. At the request of the defendant, the

The Disputes Chamber also further states that the initially determined date for the statement of reply of the

defendant, as well as the date of the hearing.

25. On February 19, 2021, the Disputes Chamber will receive the conclusion with accompanying documents from

the defendant. In it, the defendant puts forward the following pleas:

• Defendant can rely on its legitimate interests for the processing

of personal data for purposes in accordance with article 4.3 of its old

privacy statement (no violation of articles 5.1 a); 5.2, 6.1 f) and 13.1 c) and d)

GDPR.

• Defendant can rely on an applicable legal ground for transfers to

third parties in accordance with article 6 of the old privacy statement (no

violation of Articles 5.1 a), 5.2, 6.1 and 13.1 c) and d) GDPR.

•

If the defendant cannot invoke all legal grounds under Article

6.1 GDPR for the processing purposes in accordance with Article 4.3 of the old

privacy statement and transfers to third parties in accordance with article 6 of the old

privacy statement, does this constitute an infringement of the freedom of entrepreneurship of the

defendant.

• Defendant argues that a reprimand is sufficient and the administrative fine of

€50,000.00 is disproportionate.

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26. On March 22, 2020, the parties will be heard by the Disputes Chamber. The complainant, although

duly summoned, did not appear. During the hearing, the defendant explains his defence

to. No elements other than those that are already part of

File. After this, the debates are closed.

27. The minutes of the hearing will be submitted to the parties on 25 March 2021

in accordance with Article 54 of the internal rules of procedure. The defendant delivers on April 5

2021 the Disputes Chamber some comments with regard to the official report, which

she decides to include it in her deliberations.

28. On April 6, 2021, the Disputes Chamber notified the defendant of its intention

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

thereof in order to give the defendant an opportunity to defend himself before the sanction

is effectively imposed.

29. On April 27, 2021, the Disputes Chamber will receive the defendant's response to the intention

to the imposition of an administrative fine, as well as the amount thereof.

In summary, the defendant in its response to the intention to impose a

administrative fine the following:

- Regarding the lack of a demonstrated legitimate interest as a legal basis for the

purposes of “training personnel” and “storage of video surveillance recordings”

during the legal period”, the defendant argues that no

questions were asked as to the legality, necessity, or

proportionality of these processing purposes.

In this regard, the Disputes Chamber notes that the defendant has already

extensively discussed the legality, necessity and proportionality of all

processing purposes, including those for “staff training” and “storage”

of video surveillance recordings during the legal period”, so that no

additional explanations were requested during the hearing. During a hearing,

only punctual questions asked about any remaining ambiguities in order to clarify them

and allow the Disputes Chamber to form an opinion.

At present, the Disputes Chamber can only determine that the defendant's response to the

intention to impose an administrative fine as a result of the infringement of

Article 6.1 GDPR with regard to the purposes of “staff training” and “storage”

of video surveillance recordings during the legal period” in the absence of a

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demonstrated legitimate interest as a legal basis, does not contain any new elements that

nature to change the judgment of the Disputes Chamber.

- With regard to the amount of the fine, the defendant is of the opinion that no fine can be imposed

be imposed on the charge that personal data would have been processed without

to have a legitimate interest. At the very least, the defendant believes that a

amount of EUR 30,000 is disproportionately high. The defendant cites that from the

written conclusions and during the hearing it was found that general training material

is in principle always anonymized and there is virtually no personal data of customers

are processed through CCTV. It would also not appear from the documents in the file that

any personal data

of the

complainant

would

are

incorporated

for this

processing purposes. Therefore, the complainant (and by extension the other customers of

defendant), in principle have not suffered any personal disadvantage from any lack of

legitimate interests for the processing activities “staff training” and

“the storage of video surveillance recordings during the legal period”.

The Disputes Chamber emphasizes that whether or not experiencing any personal disadvantage

does not constitute a criterion for imposing an administrative fine, as this is not

included in article 83.2 GDPR. It therefore motivates this sanction in its decision

without taking into account whether or not the complainant suffers any personal disadvantage

past. The criteria for imposing an administrative fine are clearly defined

in Article 83.2 of the GDPR, on which the Disputes Chamber makes its decision regarding the administrative

fine.

To the extent necessary, the Disputes Chamber adds that the complainants are

has provided personal data to the defendant for processing in the context of a

hospitalization insurance and the defendant then on the basis of the then

privacy statement also stated that it would also process the complainant's personal data for all
purposes stated in the privacy statement. Based on the then privacy statement
did the defendant process the complainant's data for each of the purposes included
in the privacy statement. This is also apparent from the conclusion underlying the current
decision, in which the defendant himself defines the allegations arising from the complaint
(see marginal 33) and the allegations under points f), g) and h) are the subject of
his defence. The allegations arising from the complaint and as stated by the defendant itself
described in his conclusion, concern defects in the privacy statement that the complainant
as well as ipso facto any other customer of the defendant who
hospitalization insurance. After all, the privacy statement is not exclusively for the complainant
drawn up, but for each customer of the defendant who takes out hospitalization insurance.
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This also explains why the defendant in his claim the legality, necessity
and proportionality of all processing purposes, without distinction whether or not
concerns a processing purpose for which the complainant's personal data is collected
processed, tries to demonstrate. The defendant checks whether for all processing purposes
has a legitimate interest, because for each of those processing purposes, the
personal data of the complainant were processed in accordance with the then
privacy declaration.
- In addition, the defendant believes that an amount of EUR 30,000 is disproportionate to
the infringement.
More specifically, with regard to the seriousness of the infringement, the defendant disagrees with the
statement of the Disputes Chamber that, purely because of the fact that an infringement of Articles 5
and 6 of the GDPR, the infringements are therefore automatically “serious” and
would be "serious". The defendant argues that, on the one hand, these articles are based on
are related to just about the entire GDPR and therefore virtually every breach of the other GDPR

Articles can be reduced to an infringement of Articles 5 and 6 GDPR.

On the other hand, a classification of these infringements as "serious" and "serious"

prevented a differentiation from being made with infringements that actually

be heavy and serious, such as, for example, the complete absence of a

privacy declaration. However, this is not the case here at all.

The defendant argues that it has indeed stated these processing purposes in its

privacy statement and has carried out extensive weighing of interests with the necessary rigor

drawn up to verify whether it can rely on its legitimate interests.

As to the defendant's contention that a breach of the basic principles of the GDPR

included in Articles 5 and 6 GDPR would not automatically be considered weighty and serious

can be considered, the Disputes Chamber notes that Article 83.5 GDPR itself provides for

a more severe penalty for this infringement for which the highest maximum fine is

determined precisely because they are basic principles that lie at the heart of a

concerning data processing. Defendant's allegation that any breach of the GDPR

can be traced to a breach of the Basic Principles, does not stand as the

The Disputes Chamber is covered by the complaint and within those limits carries out the review against the GDPR

and therefore by no means, contrary to what the defendant maintains, any infringement could be

are “reduced” to breaches of basic principles. Since the complaint is exactly the

basic principles, the Disputes Chamber rules in this case on the

application of those principles. Where the defendant cites as an example that the

total absence of a privacy statement would be serious and weighty, the

Litigation Chamber that the total lack of a privacy statement is not only a serious and

would be a serious breach, but a total misunderstanding of the GDPR. However, this takes

does not mean that a defective privacy statement, as in the present case, which

does not respect the basic principles of the GDPR, if it is to become serious and weighty

marked.

With regard to the duration of the infringement, the defendant points out that it has already

during the initial procedure at the beginning of 2020 and it has amended its privacy statement to

following the initial decision of the Disputes Chamber at the beginning of 2021

and this should be taken into account as a mitigating circumstance.

With regard to the deterrent effect, the defendant again refers to its

willingness to always adjust its privacy statement, which it does

twice in a very radical way, so that the purpose of these proceedings

according to the defendant, this has been achieved.

The Disputes Chamber has already indicated its intention to impose an administrative

fine, as well as the amount thereof, indicate that they have already incurred the . already incurred by the defendant

efforts to align the new privacy statement with the GDPR,

demonstrating his willingness. In contrast, it should be

noted that while the changes made to the new privacy statement have a beneficial

form an element in the assessment of the administrative fine, it does not serve to

that the infringements found would be rectified (see paragraph 120).

The Disputes Chamber motivates the imposition of the administrative fine in more detail

in section 3 of this decision.

It follows from the foregoing that the response of the defendant before the Disputes Chamber is not

gives rise to an adjustment of the intention to impose an administrative

fine, nor to change the amount of the fine as intended.

2. Reasons

1. Legitimate interest

a) Preliminary remark

30. It follows from the judgment of the Marktenhof that the Disputes Chamber in its decision 24/2020 of

14 May 2020 would have ruled without the defendant being able to fully

defend because the decision of the Disputes Chamber would not have been limited to the

allegations that are the subject of the complaint.

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31. However, the complainant expressly states in the complaint that the customer must be given the choice of whether to

agrees to the processing operations listed in points 4.3 and 6 and does not receive them. After all, as soon as

he has given his consent to the processing of his personal data in the context of

hospitalization insurance, according to the complainant, the data processing should be limited to

the performance of the obligations arising from that insurance. The complainant maintains

that the defendant does not use his data for any other purpose, more specifically the

purposes stated in points 4.3 and 6 of the old privacy statement, can process without being

permission. In the complaint, the legal basis of the processing for the purposes

listed in point 4.3. The complainant believes that for those purposes mentioned in point 4.3 are

consent is required and the defendant therefore does not automatically obtain the data on the basis of

of permission under a hospitalization insurance can also be used for other

purposes, for which the defendant relies on its legitimate interest.

32. The complaint thus essentially concerns the legal basis on which the defendant may rely

to process the personal data obtained from the complainant for the purposes

listed in points 4.3 and 6 of the defendant's old privacy statement.

33. The defendant's present submission lists the allegations in paragraphs

a) to h):

“a) Y would consent to the processing of medical data in the context of closing

and execution of insurance contracts under duress, whereby these

consent would be invalid (violation of Article 5(1)(a))

(principle of legality); 6(1)(a) and 9(2)(a) GDPR)

b) Y must grant the Complainant access to the data protection impact assessment

(“GBEB”) which it allegedly carried out for the processing of medical data in connection

with the execution of insurance contracts with its customers (violation of articles

35 and 36 GDPR)

c) Y should, in Articles 4.3 and 6 of the old Privacy Statement, make a better distinction

between the processing of medical data on the one hand and the processing of other "ordinary"

personal data on the other hand (violation of Article 13(1)(c) GDPR);

d) Y must take additional measures to inform the data subjects of their

right to object pursuant to Article 21(2) of the GDPR (violation of Article 12(1)

and 13(2)(b) GDPR)

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e) Y must use the legal grounds referred to in Article 6 of the Y old Privacy Statement for the

transfer of personal data to third parties, to be further clarified (violation of Article 13,

para. 1 lit. c) GDPR)

f) Y would process personal data without a proven legal basis (including its

legitimate interest within the meaning of Article 6 (1) of the GDPR) for a number of Article 4.3 of the

old Y Privacy Statement and in Article 6 of the old Y Privacy Statement

aforementioned transfers to third parties (violation of Article 5(1)(a))

(principle of lawfulness) and 6 (1) GDPR)

g) Y allegedly provided insufficient information about her in her old Privacy Statement

legitimate interests, where Y invokes this legal ground (violation of

Articles 5(1)(a) (principle of transparency) and 13(1)(c) and d) GDPR)

h) Y would, where Y invokes this legal ground, have insufficiently demonstrated from which

its legitimate interests existed and failed to demonstrate in

to what extent its interests would outweigh the interests and fundamental rights of the Complainant

(violation of Art. 5 (2) GDPR).”

34. The defendant also confirms that the allegations set out in points a) to h)

arising from the complaint by stating the following in the conclusion:

“Should the Disputes Chamber find that the above allegations and alleged infringements
on the GDPR by Y (points a to h) do not arise from the complaint […], the Disputes Chamber
invited to inform Y of this […].”

35. The Disputes Chamber notes in this regard that already in the complaint the allegations as at present
described by the defendant in points a) to h) were brought forward and
about which the defendant now indicates that these do in fact arise from the complaint,
but about which he nevertheless made no defense as regards f), g) and h) in the
procedure prior to decision 24/2020 of 14 May 2020.
As regards the allegations under a) to e) of its Opinion, the defendant
indicates that he has either been able to defend himself and has been found in the right by the
Litigation Chamber (this concerns allegations a) and b)), or has not contested the allegations
and has corrected in the new privacy statement (this concerns the allegations under c), d) and
e)). With regard to the established infringement of Article 13.1 c) GDPR concerning the allegation under
c) the breach of Article 12.1 and Article 13.2 b) GDPR concerning allegation under d) and the
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infringement of Article 13.1 c) GDPR regarding the allegation under e) the Dispute Chamber refers
to the reasons for this in decision 24/2020 of 14 May 2020.
The defense in the present Opinion is solely aimed at the allegations under points f), g)
and H).

36. To the extent that there is still some ambiguity about the subject matter of the complaint
been on behalf of the defendant prior to the decision 24/2020, the
Disputes Chamber nevertheless offered the defendant the opportunity to
defend and the Disputes Chamber then determines whether, and if so to what extent, the
defendant has infringed the GDPR with regard to the allegations as
described in points f), g) and h) of his opinion and whether the administrative fine should be
are maintained.

b) Legal basis for purposes mentioned under 4.3 of the privacy statement

37. The defendant argues that it can rely on its legitimate interests for the

processing of non-sensitive personal data for the following purposes included

under point 4.3 of the old privacy statement:

• performing computer tests;

• monitoring the quality of the service;

• training staff;

• monitoring and reporting;

• the storage of video surveillance recordings during the legal period; and

• compiling statistics on coded data, including big data.

38. For each of these purposes, the defendant has carried out a balancing of interests. The

The Disputes Chamber then assesses the weighing of interests made for each of these purposes

in accordance with the established decision-making process2 that it uses for the assessment of the

legitimate interest.

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

Union serves

to three

cumulative

requirements

at

are

satisfied that

a

2 See inter alia: Decision on the merits 03/2021 of 13 January 2021; Decision on the merits 71/2020 of 30 October 2020;

Decision on the merits 36/2020 of 9 July 2020; Decision on the merits 35/2020 of 30 June 2020.

controller can validly invoke this ground of lawfulness, “to

know, in the first place, the representation of a legitimate interest of the

controller or of the third party(s) to whom the data is provided, in the

secondly, the necessity of processing the personal data for the purpose of

of the legitimate interest and, thirdly, the condition that the fundamental

rights and freedoms of the data subject do not prevail”

(judgment “Rigas”3).

40. In order to be able to rely on the legality ground of . in accordance with Article 6.1 f) GDPR

the "legitimate interest", in other words, the controller submits

to show that:

1) the interests pursued by the processing can be recognized as legitimate

(the “target key”);

2) the intended processing is necessary for the realization of these interests (the

“necessity test”); and

3) balancing these interests against the interests, fundamental freedoms and

fundamental rights

by

involved

weighs in

in

the

benefit

by

the

controller (the “balancing test”).

41. With regard to the purpose of “carrying out computer tests”, the defendant argues that

next one:

“Context of the processing purpose

This processing purpose includes the tests performed by IT testers and developers:

• related to "changes", which are minor adjustments or related to purely functional

aspects; and

• in the context of possible automation projects.

These tests are carried out in the context of:

• IT and network security;

• the maintenance, improvement and development of (the quality of) Y products and services;

or

• improving the customer experience (eg to make internal processes and systems more efficient

for back-office operations, to enhance the user experience in Y's digital channels

improve, etc.).

3 CJEU, 4 May 2017, C-13/16, Valsts policijas Rīgas reģiona pārvaldes Kārtības policijas pārvalde v Rīgas pašvaldības SIA

‘Rīgas satiksme’, Recital 28. See also CJEU, 11 December 2019, C-708/18, TK t/ Asociația de Proprietari bloc M5A-ScaraA,

recital 40.

This process does not include the adoption and emulation phase, which is only performed by the "specialized" team

activities" can be performed before the changes can actually be made

implemented and put into production.”

42. With regard to the first condition (the so-called “target test”), the Disputes Chamber of

believes that the processing purpose as described by the defendant should be

considered to have been carried out with a view to a legitimate interest. The importance that the

defendant as a controller may, in accordance with recital 47

GDPR in itself are considered justified. The first

condition contained in Article 6.1, f) GDPR.

43. In order to satisfy the second condition, it must be demonstrated that the processing

necessary for the achievement of the objectives pursued. This means more

stipulates that the question must be asked whether the same result can be obtained by other means

be achieved without the processing of personal data or without an unnecessarily intrusive

processing for the data subjects.

44. Based on the purpose of conducting computer tests, the Disputes Chamber must

to establish that the defendant asserts that where possible dummy data or

anonymized data is used (e.g. for changes involving different

systems or applications are involved and that require a unique reference, such as e.g. the

policy number). Only when there is no other option, personal data will be used to

to achieve the intended change or development. Possible possibilities for (a

further) data processing restrictions are under constant investigation and progressive

introduced in the context of the project 'data anonymization in non-production environments'. Furthermore

strict access controls are implemented on the IT environments where the IT tests are performed

executed. Procedures are also established for how these IT tests should be

implemented, which must be taken into account by all concerned.

45. The Disputes Chamber notes that the defendant cites only using personal data

when there is no other way. During the hearing, Y declares that the tests always take place

on the basis of dummy data, but that the test phase determines the extent to which with

such data can be tested. Indeed, in some cases the limits of the

opportunities to do data masking. This has to do with the life cycle of

the tests, namely gradually dummy data can be used in IT testing, but

sometimes the processing of personal data is required in order to facilitate the interaction between

to ensure applications. The Disputes Chamber is of the opinion that the defendant thus

reasonably demonstrates that the computer systems are not always based on

anonymized or pseudonymised data can be tested. to the second

condition is thus satisfied, by demonstrating that the principle of minimum

data processing (Article 5.1. c) GDPR) has been complied with. Nevertheless, the Disputes Chamber notes

Note that for the purpose of clarification with regard to the customers concerned, the defendant could

consider providing some brief explanation of the case in the privacy statement

in which the defendant has no choice but to perform computer tests with personal data.

46. In order to check whether the third condition of Article 6.1, f) GDPR - the so-called

“balancing test” between the interests of the controller, on the one hand, and the

fundamental freedoms and rights of the data subject, on the other hand - can be fulfilled, should

in accordance with Recital 47 GDPR to take into account the reasonable

expectations of the person concerned. In particular, it should be evaluated whether “data subject”

reasonably allowed at the time and in the context of the collection of the personal data

expect that processing can take place for that purpose”4.

47. The Disputes Chamber is of the opinion that when collecting personal data in the context of

of taking out an insurance policy it can be assumed that the policyholder

can reasonably expect at that time that his data will be

used for performing computer tests. After all, customers expect a correct

execution of their insurance contracts, which is accompanied by a safe and correct

management of the IT systems. The interest of the customers thus requires that the functionalities of

the IT environment are tested for this.

48. Consequently, the Disputes Chamber decides that the defendant is committed to processing before the

for the purpose of “carrying out computer tests” can rely on the legal basis included in

Article 6.1 f) GDPR.

49. With regard to the purpose of “monitoring the quality of the service” and “the

compiling statistics of encrypted data, including big data” states the

defendant that this consists of three parts and determines as follows:

- For the part “Statistics and quality testing”

“Context of the processing purpose

4 Recital 47 GDPR.

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Y, as an insurer, is subject to prudential supervision. This means, among other things, that they

is under an overall control of its business and its performance, including,

but not limited to, the control of the sales performance, performance and fees of

certain hospital networks and the coverages/reimbursements. This relates to the

general control of the quality of the services and the performance of the

insurance company to ensure its continuity. This processing purpose

includes both one-time and recurring reports that may or may not be used

made of big data methodologies. This mainly involves aggregated or

anonymized reports, unless specific statistics are needed (by category

such as e.g. by age group).”

50. With regard to the first condition (the so-called “target test”), the Disputes Chamber of

believes that the context of the processing purpose as described by the defendant should be

shall be regarded as carried out with a view to a legitimate interest. The importance that the

defendant as a controller may, in accordance with recital 47

GDPR in itself are considered justified. The first

condition contained in Article 6.1, f) GDPR.

51. In order to satisfy the second condition, it must be demonstrated that the processing

necessary for the achievement of the objectives pursued. This means more

stipulates that the question must be asked whether the same result can be obtained by other means

be achieved without the processing of personal data or without an unnecessarily intrusive

processing for the data subjects.

52. The Disputes Chamber notes that the defendant only justifies that it

necessary to compile statistics and perform quality tests, as the

financial viability, service quality, premium setting and

performance cannot be determined without actively measuring it. The Disputes Chamber misunderstands

by no means the need for the defendant to have statistics and

quality tests, but the defendant confines itself to stating that mainly

aggregated or anonymized reports are prepared, unless specific statistics

are needed (per category such as per age group). In addition, the defendant argues that

the preparation of those reports whether or not use is made of big data methodologies.

53. To what extent the statistics still contain personal data or allow to proceed to

re-identification of a data subject, will be further explained during the hearing. The

Defendant argues that there are still very few statistics that contain personal data. The

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Statistics do not contain names under any circumstances and certainly no health data. The statistics

do contain codes, but they are mass-aggregated segmented data.

Also, Directive (EU) 2016/97 on insurance distribution5 and the Belgian

implementing legislation of this

guideline that for specific

reporting certain

personal data are processed. Sometimes policy details are processed in the reporting,

but this does not mean any further processing in the statistics. Each report has a

purpose and the processing may not go beyond that. A record is kept of

those reports and their purpose, which are strictly regulated via the data warehouse and

which require 'approvals' to deviate from it.

54. The Disputes Chamber decides that the defendant has made the necessary efforts to

limit data processing for this purpose to what is strictly necessary. to the second

condition is thus satisfied by demonstrating that the principle of minimum

data processing (Article 5.1. c) GDPR) has been complied with.

55. In order to check whether the third condition of Article 6.1, f) GDPR - the so-called

“balancing test” between the interests of the controller, on the one hand, and the

fundamental freedoms and rights of the data subject, on the other hand - can be fulfilled, should

in accordance with Recital 47 GDPR to take into account the reasonable

expectations of the person concerned. In particular, it should be evaluated whether “data subject”

reasonably allowed at the time and in the context of the collection of the personal data

expect that processing can take place for that purpose”.

56. The Disputes Chamber follows the defendant's position that if a person

enters into an insurance contract with Y, the latter can reasonably expect that Y will have internal

performs checks and compiles statistics to ensure that Y is fulfilling its contractual

can fulfill its obligations.

57. Consequently, the Disputes Chamber decides that the defendant is committed to processing before the

purpose “Statistics and quality requirements” can rely on the legal basis included in

Article 6.1 f) GDPR.

- For the “Satisfaction Surveys” section

5 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution

(recast), OJ L 26/19.

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“Context of the processing purpose

This processing purpose includes determining the NPS ("Net Promoter Score"), the

customer satisfaction factor based on an external survey by a third party to determine the

to maintain the anonymity of the survey. This factor is calculated with regard to the follow-up

by the Y Contact Center and the claims department (claims handling)

58. With regard to the first condition (the so-called “target test”), the Disputes Chamber of

believes that the processing purpose as described by the defendant should be

considered to have been carried out with a view to a legitimate interest. The importance that the□
defendant as a controller may, in accordance with recital 47□
GDPR in itself are considered justified. The first□
condition contained in Article 6.1, f) GDPR.□
59. In order to satisfy the second condition, it must be demonstrated that the processing□
necessary for the achievement of the objectives pursued. This means more□
stipulates that the question must be asked whether the same result can be obtained by other means□
be achieved without the processing of personal data or without an unnecessarily intrusive□
processing for the data subjects.□
60. Based on the purpose of conducting satisfaction surveys, the□
Disputes Chamber to determine that the defendant asserts that the customer through this inquiry□
can give an opinion in an anonymous way and thus assert its interests. The results□
are aggregated and processed by an outside company so that the anonymity of the□
those involved can be safeguarded. At the hearing, it is added that the□
customers always have the choice of whether or not to participate in the survey, as they always□
have the right to object. The Disputes Chamber has established that customers are thus□
have the necessary freedom of choice, as well as that the results of those who participate in the□
survey in anonymous form are made available to the defendant.□
The second condition is thus satisfied by demonstrating that the principle of□
minimum data processing (Article 5.1. c) GDPR) has been complied with.□
61. In order to check whether the third condition of Article 6.1, f) GDPR - the so-called□
“balancing test” between the interests of the controller, on the one hand, and the□
fundamental freedoms and rights of the data subject, on the other hand - can be fulfilled, should□
in accordance with Recital 47 GDPR to take into account the reasonable□
expectations of the person concerned. In particular, it should be evaluated whether “data subject”□

reasonably allowed at the time and in the context of the collection of the personal data

expect that processing can take place for that purpose”6.

62. The Disputes Chamber is of the opinion that when collecting personal data in the context of

of taking out an insurance policy it can be assumed that the policyholder

can reasonably expect at that time that his data will be provided by the defendant

will be used to gauge his satisfaction with the service provided by the

defendant.

63. Consequently, the Disputes Chamber decides that the defendant is committed to processing before the

purpose of “conducting satisfaction surveys” can invoke the legal basis

included in Article 6.1 f) GDPR.

- For the part “Quality testing operations”

“Context of the processing purpose

This processing purpose relates to the general control of the quality of

the operational services and performance of Y . This is about quality checks where

each employee involved must carry out 2 random checks per week with regard to

the correct underwriting or performance of the insurance contract and applicable

instructions and procedures for this.”

64. With regard to the first condition (the so-called “target test”), the Disputes Chamber of

believes that the processing purpose as described by the defendant should be

considered to have been carried out with a view to a legitimate interest. The importance that the

defendant as a controller may, in accordance with recital 47

GDPR in itself are considered justified. The first

condition contained in Article 6.1, f) GDPR.

65. In order to satisfy the second condition, it must be demonstrated that the processing

necessary for the achievement of the objectives pursued. This means more

stipulates that the question must be asked whether the same result can be obtained by other means

be achieved without the processing of personal data or without an unnecessarily intrusive
processing for the data subjects.
6 Recital 47 GDPR.

66. Based on the purpose, which is the general control of the quality of the operational
services and the performance of Y, the Disputes Chamber must determine that the defendant does not
apply that Y is subject to Directive (EU) 2016/97 on insurance distribution
and to the Belgian implementing legislation that obliges insurance companies to
services to the desires and needs of their customers. As indicated
during the hearing, the defendant does not invoke his legal obligation (Article 6.1
c) GDPR) as the legal basis for the processing, as the nature and scope of the reporting
not explicitly required as such by law. Hence, the defendant for that
processing uses its 'legitimate interest in the context of that legislation' as the legal basis.
The second condition is thus satisfied by demonstrating that the principle of
minimum data processing (Article 5.1. c) GDPR) has been complied with. The processing of
personal data is necessary in order to actively measure the quality of the service.
67. In order to check whether the third condition of Article 6.1, f) GDPR - the so-called
“balancing test” between the interests of the controller, on the one hand, and the
fundamental freedoms and rights of the data subject, on the other hand - can be fulfilled, should
in accordance with Recital 47 GDPR to take into account the reasonable
expectations of the person concerned. In particular, it should be evaluated whether “data subject”
reasonably allowed at the time and in the context of the collection of the personal data
expect that processing for that purpose can take place”7.
68. The Disputes Chamber is of the opinion that when collecting personal data in the context of
of taking out an insurance policy it can be assumed that the policyholder
can reasonably expect at that time that his data will be

used to perform internal quality checks to ensure Y hair

can comply with legal and contractual obligations.

69. Consequently, the Disputes Chamber decides that the defendant is committed to processing before the

purpose of “quality testing operations” can invoke the legal basis included in Article

6.1 f) GDPR.

70. With regard to the purpose of “training personnel”, the defendant states the following:

“Context of the processing purpose

7 Recital 47 GDPR.

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This includes the organization and follow-up of training courses, awareness sessions and

training courses for Y employees who come into contact with (personal data of) customers.

Workouts include:

• insurance technical aspects (eg with regard to Y products);

• technical aspects (eg the use of Office 365 applications, training regarding

information security, etc.);

• "on the job" training (training for new employees as well as training with the aim of

continuously improve service quality); and

• more general aspects such as compliance topics (eg the AVG, IDD, etc.).”

71. With regard to the first condition (the so-called “target test”), the Disputes Chamber of

believes that the processing purpose as described by the defendant should be

considered to have been carried out with a view to a legitimate interest. The importance that the

defendant as a controller may, in accordance with recital 47

GDPR in itself are considered justified. The first

condition contained in Article 6.1, f) GDPR.

72. In order to satisfy the second condition, it must be demonstrated that the processing

necessary for the achievement of the objectives pursued. This means more

stipulates that the question must be asked whether the same result can be obtained by other means

be achieved without the processing of personal data or without an unnecessarily intrusive

processing for the data subjects.

73. Based on the purpose of training personnel, the Disputes Chamber must

to state that the defendant argues that in exceptional cases the cases used

are or will be contain personal data of customers for the training

personal data of customers used for the preparation of the training material. The

Defendant argues that, however, the underlying material (cases) is generally complete

is anonymized.

74. The Disputes Chamber notes that the defendant cites that in the context of training the

cases only contain personal data of customers in exceptional cases or

personal data of customers are used for the preparation of the training material.

The defendant, however, fails to clarify in which cases he would be obliged

to offer training to staff based on the personal data of customers.

The defendant does not reasonably make it plausible that personnel training is not always

based on anonymized data. to the second

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condition is thus not met because it was not demonstrated that the principle of minimum

data processing (Article 5.1. c) GDPR) has been complied with.

75. In order to check whether the third condition of Article 6.1, f) GDPR - the so-called

“balancing test” between the interests of the controller, on the one hand, and the

fundamental freedoms and rights of the data subject, on the other hand - can be fulfilled, should

in accordance with Recital 47 GDPR to take into account the reasonable

expectations of the person concerned. In particular, it should be evaluated whether “data subject”

reasonably allowed at the time and in the context of the collection of the personal data

expect that processing for that purpose can take place”8.

76. The Disputes Chamber is of the opinion that when collecting personal data in the context of

of taking out an insurance policy it cannot be assumed that the policyholder

can reasonably expect at that time that his data will be

used for staff training. A policyholder can only expect to:

normal management of its customer file, which only requires access to the information contained therein

information by the personnel who have to perform tasks therein for the benefit of the concerned

customer. When information from concrete files is shared in the context of a training course,

the processing of that information is not limited to those who have to perform tasks in

the relevant file.

77. Consequently, the Disputes Chamber decides that the defendant is committed to processing before the

for the purpose of “training personnel” cannot rely on the legal basis “justified”

interest” and there is therefore an infringement of Article 6.1 f) GDPR. The Disputes Chamber notices

in addition to the fact that if the defendant nevertheless wishes to receive personal data of customers

for training staff, he can rely on another legal basis

being the consent (Article 6.1 a) GDPR).

78. With regard to the purpose of “monitoring and reporting”, the defendant states the following:

“Context of the processing purpose

This processing purpose includes, among other things, the preparation of reports to

can carry out in the context of:

• IFRS 17 accounting standards for insurance contracts and the Belgian, general

accepted accounting policies ("Belgian GAAP");

8 Recital 47 GDPR.

• calculating the reserves (in the context of, for example, the law of 13 March 2016 on

the statute and supervision of insurance or reinsurance undertakings (Solvency

II law), etc.); or

• profitability monitoring or reporting in the context of major damage claims.□

These reports are created for both internal control and reporting purposes□

to the Y1 Re group (of which Y is a part). This keeps recurring reports as well as□

one-off ad hoc reports. Only fully aggregated,□

anonymised, or if not otherwise possible pseudonymised reports prepared in□

in the context of major claims or ad hoc reports regarding specific cases or outliers."□

79. With regard to the first condition (the so-called "target test"), the Disputes Chamber of□

believes that the context of the processing purpose as described by the defendant should be□

shall be regarded as carried out with a view to a legitimate interest. The importance that the□

defendant as a controller may, in accordance with recital 47□

GDPR in itself are considered justified. The first□

condition contained in Article 6.1, f) GDPR.□

80. In order to satisfy the second condition, it must be demonstrated that the processing□

necessary for the achievement of the objectives pursued. This means more□

stipulates that the question must be asked whether the same result can be obtained by other means□

be achieved without the processing of personal data or without an unnecessarily intrusive□

processing for the data subjects.□

81. Based on the purpose, which is monitoring and reporting, the Disputes Chamber must determine□

maintain that the defendant□

states that the various general□

financial and□

insurance law regulations (in the context of, for example, the law of 13 March 2016□

on the legal status and supervision of insurance or reinsurance undertakings□

(Solvency II Act)) cannot be complied with without preparing the necessary reports□

setting or monitoring. As indicated at the hearing, the□

here too the defendant does not rely on its legal obligation (Article 6.1 c) GDPR) as a legal basis□

for the processing, as the nature and extent of the reporting is not explicitly stated as

so required by law. That is why the defendant for those processing operations

'legitimate interest under that legislation' as the legal basis. to the second

condition is thus satisfied by demonstrating that the principle of minimum

data processing (Article 5.1. c) GDPR) has been complied with. The processing of personal data

is necessary since the legislation cannot be complied with without the

necessary reports are drawn up or monitored.

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82. The defendant adds that only fully aggregated, anonymized, or if

not otherwise possible pseudonymised reports are prepared in the context of large

claims or ad hoc reports related to specific cases or outliers. To the

second condition is thus satisfied by demonstrating that the principle of minimum

data processing (Article 5.1. c) GDPR) has been complied with.

83. In order to check whether the third condition of Article 6.1, f) GDPR - the so-called

“balancing test” between the interests of the controller, on the one hand, and the

fundamental freedoms and rights of the data subject, on the other hand - can be fulfilled, should

in accordance with Recital 47 GDPR to take into account the reasonable

expectations of the person concerned. In particular, it should be evaluated whether “data subject”

reasonably allowed at the time and in the context of the collection of the personal data

expect that processing for that purpose can take place”9.

84. The Disputes Chamber is of the opinion that when collecting personal data in the context of

of taking out an insurance policy it can be assumed that the policyholder

can reasonably expect at that time that his data will be

used for the fulfillment of the legal and contractual obligations of the defendant.

85. Consequently, the Disputes Chamber decides that the defendant is committed to processing before the

for the purpose of “monitoring and reporting” can invoke the legal basis included in Article 6.1

f) GDPR.

86. With regard to the purpose of “the storage of video surveillance recordings during the

legal period” the defendant states as follows:

“Context of the processing purpose

It concerns the processing of personal data by means of the cameras that are located

within Y premises for the purpose of customer safety, data security and

protection of the company's property.”

87. With regard to the first condition (the so-called “target test”), the Disputes Chamber of

believes that the processing purpose as described by the defendant should be

considered to have been carried out with a view to a legitimate interest. The importance that the

9 Recital 47 GDPR.

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defendant as a controller may, in accordance with recital 47

GDPR in itself are considered justified. The first

condition contained in Article 6.1, f) GDPR.

88. In order to satisfy the second condition, it must be demonstrated that the processing

necessary for the achievement of the objectives pursued. This means more

stipulates that the question must be asked whether the same result can be obtained by other means

be achieved without the processing of personal data or without an unnecessarily intrusive

processing for the data subjects.

89. Based on the purpose of providing video surveillance, the Disputes Chamber must

establish that the defendant asserts that the images are stored in a secure

surroundings. Both the space and the IT servers involved are subject to strict

access protections. Access to the images is done according to strict procedures. The

storage of the images is also limited to the legal retention period (in principle 30 days).

90. The second condition is thus satisfied by showing that the principle of

minimum data processing (Article 5.1. c) GDPR) has been complied with.

91. In order to check whether the third condition of Article 6.1, f) GDPR - the so-called

“balancing test” between the interests of the controller, on the one hand, and the

fundamental freedoms and rights of the data subject, on the other hand - can be fulfilled, should

in accordance with Recital 47 GDPR to take into account the reasonable

expectations of the person concerned. In particular, it should be evaluated whether “data subject”

reasonably allowed at the time and in the context of the collection of the personal data

expect that processing for that purpose can take place”10.

92. The Disputes Chamber is of the opinion that when collecting personal data in the context of

of taking out an insurance policy it cannot be assumed that the policyholder

can reasonably expect at that time that his data will be

used for video surveillance. The purpose of video surveillance is not related to the

concluding an insurance contract, so that the policyholder does not adhere to it either

can expect

are personal data provided as a result of a

insurance contract will be used in the context of video surveillance. Only at

physically entering the defendant's premises, there is video surveillance and then it is sufficient

10 Recital 47 GDPR.

that the camera law is complied with, including the obligation to apply a

icon with information to notify the data subject.

93. Consequently, the Disputes Chamber decides that the defendant is committed to processing before the

purpose “the storage of video surveillance recordings during the legal period” is not

can invoke the legal ground of 'legitimate interest' and there is thus an infringement

on Article 6.1 f) GDPR.

94. For the sake of completeness, the Disputes Chamber adds that if a controller

wish to use surveillance cameras, these are then legal obligations

arising from the law of 21 March 2007 regulating the placement and use of

surveillance cameras must comply. Once a controller uses

of surveillance cameras, obligations arise from the aforementioned law

regarding

data processing, so that the controller can invoke article 6.1 c)

GDPR. In that regard, the defendant

stated at the hearing that

in

the necessary pictograms have been affixed in accordance with this law.

c) Balancing interests model

95. For each of the foregoing purposes, the defendant argues that the

processing purpose is admissible because the quantitative score calculated by the model

balancing of interests that Y uses is less than 30. The defendant argues that based on that

model the processing purposes can be based on the legitimate interests

of the controller insofar as this score does not exceed 30.

96. In this regard, the Disputes Chamber must point out that the model used by Y is a

constitutes a purely internal instrument that can serve at most as a guideline within the company,

but from which no legal arguments can be drawn to support the assessment against the

legal basis of Article 6.1 f) GDPR. To the scores calculated on the basis of that model

therefore no legal value can be attached.

d) All legal grounds included in Article 6.1 GDPR

97. The defendant believes that the Disputes Chamber would have stated in its decision 24/2020 that

he can only rely on consent as a legal basis (Article 6.1 a) GDPR) for the

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processing purposes included under point 4.3. of the old privacy statement and not on

the other legal grounds of Article 6.1 GDPR.

98. The Disputes Chamber explains that the following was stated in the decision 24/2020 in this regard

mention:

“The Disputes Chamber is therefore of the opinion that the infringement of art. 6.1. GDPR is proven,

since the data processing for the purposes stated in parts 1, 2, 3 4, 6 and

7 of point 4.3. of the privacy statement, without any demonstrated legitimate interest,

should be based on the complainant's consent in the absence of any other possibility

applicable legal basis in art. 6.1. GDPR.”

99. The defendant deduces, albeit incorrectly, from this that the Disputes Chamber is the only

legal basis for the purposes specified therein presupposes consent. The defendant

however, ignores the fact that the Disputes Chamber comes to that decision, precisely because the

the defendant fails to demonstrate that it has any legitimate interest and thus in

fails to demonstrate that the applicable conditions have been met to act on this

legal basis in Article 6.1 f) GDPR. The Disputes Chamber stated in its decision:

after all expressly that the defendant did not demonstrate in any way from which his

legitimate interest or would exist and also failed to demonstrate to what extent his interest

would outweigh the interests and fundamental rights of the complainant, although the defendant

is obliged to do so on the basis of its accountability obligation (Article 5.2 GDPR). The

The Disputes Chamber could thus not retain Article 6.1 f) GDPR as a valid legal basis. On base

of the factual elements leading to the decision 24/2020, the only remaining

legal basis for the consent.

100. The Disputes Chamber emphasizes that every controller, including the

defendant, can invoke any possible legal basis of Article 6.1 GDPR, but that the

applicable conditions for the legal basis relied on must be met.

2. Legal basis for transfers to third parties

101. First, the defendant alleges that a transfer to third parties does not serve a processing purpose

itself, but is merely a form of processing of personal data within the meaning of Article

4.2 GDPR. The defendant argues that he only draws up weighing of interests per

processing purpose, but not per processing.

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102. The Disputes Chamber states that it follows from Article 5.1 a) of the GDPR that personal data must be

processed for a specific purpose and that such processing must be lawful in the sense

of Article 6.1 GDPR. So it is clear that any processing must be done within the framework

of a specified, explicit and legitimate purpose and that that

processing must be based on a legal ground to be considered lawful

considered. It is of course possible to have multiple processing operations within the meaning of Article 4.2 GDPR

for the same purpose, but this does not alter the fact that the

data processing for a particular purpose can only be considered lawful

if there is a legal basis to do so.

103. The Disputes Chamber notes that for any transfer to third parties, it must be determined with the

in view of the purpose for which the transfer takes place. In order to verify whether the transfer to

third parties can be regarded as lawful, it must thus be determined for what purpose

that is passed on to third parties.

104. As the defendant correctly states, the legal basis for the transfer to processors (which

however, no third parties within the meaning of Art. 4, 10) GDPR) are the same as for the

data processing by the defendant itself. After all, the processing purpose remains

unchanged, since the processor only processes the personal data for the benefit of the

defendant as controller.

105. If the personal data is passed on to a third party within the meaning of Article 4. 10)

GDPR with a view to enabling that third party to collect the relevant personal data

processing for its own purposes, then that transfer for that specific purpose must

themselves and requires a separate legal basis. With a view to

transparency should be the processing basis for all transfers in the privacy statement

stated so that the defendant fulfills his obligation under Art. 13.1 c) would comply with GDPR. This is

However, this is not the case, so that the Disputes Chamber is of the opinion that there is a

infringement of art. 13.1. c) GDPR in conjunction with article 5.1 a) GDPR and article 5.2 GDPR.

3. Transparency principle

106. Notwithstanding Article 13.1 d) GDPR requires the controller to

the data subject provides information about his legitimate interests, if the processing

is based on Article 6(1)(f), the defendant maintains that it will suffice

for the purposes stated in point 4.3 of the privacy statement, as well as for the purposes in 6 of the

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data transfers that are based on Article 6(1)(f) GDPR only to

state that personal data is processed on the basis of the legitimate interest of

the defendant without specifying what exactly that legitimate interest would consist of.

107. The defendant argues that the balancing of interests concerns internal documents that have not been

have been made public or included

in its Privacy Statement, having regard to the

business-sensitive information they contain. Moreover, this concerns bulky, rather privacy-

technical documents that are typically not included in a privacy statement.

108. For transmission to “the companies of the group Y1 Re to which Y belongs, for monitoring”

and reporting” the defendant confirms that it is a transfer to another

controller, states the defendant from which his legitimate interest

consists in its conclusion under the processing purpose “monitoring and reporting”, but let

after clarifying its legitimate interest in the privacy statement.

109. Furthermore, the defendant also refers to recital 48 GDPR which states that

controllers that are part of a group of companies or a group of institutions

affiliated to a central body may have a legitimate interest in the

transfer of personal data within the group for internal administrative purposes,

including the processing of personal data of customers or employees.

110. The Disputes Chamber acknowledges that recital 48 applies to the defendant, but this

does not prevent the defendant from being transparent about this in its privacy statement and

also in such a case must indicate the legal basis and must make clear from which

legitimate interest exists, which is not the case in the old privacy statement.

111. For transfers to “subcontractors in the European Union or beyond, responsible”

for processing activities defined by Y” the defendant argues that it concerns

processors of Y .

112. The Disputes Chamber therefore reiterates the reasoning in that regard from its decision

24/2020 to decide in violation of Article 13.1 d) GDPR in conjunction with Article 5.1 a) GDPR

and Article 5.2 GDPR. The privacy statement only states that for the in 4.3. stated

purposes personal data are processed on the basis of the legitimate interest of the

defendant without specifying what exactly that legitimate interest would consist of,

while art. 13.1. d) GDPR does require the controller to commit

obliged to provide the data subject with information about his legitimate interests,

if the processing is based on Article 6(1)(f).

113. The Disputes Chamber also refers to the Guidelines of the European Committee for the

data protection (EDPB)

regarding

transparency in accordance with Regulation (EU)

2016/67911, emphasizing the need to identify the specific interest in question

for the benefit of the data subject.

114. Also with regard to point 6. of the privacy statement, the defendant does not indicate from what his

legitimate interest, on which he invokes, would exist to collect personal data of the

to process the complainant for the purpose of transferring it to “The companies of the Y1 RE group”

to which Y belongs, for monitoring and reporting” and “Subcontractors in the European Union

or beyond, responsible for processing activities defined by Y”. However

required art. 13.1. d) GDPR it is true that the controller informs the data subject

must provide information about its legitimate interests, if the processing

is based on Article 6(1)(f). The Disputes Chamber refers again to the

Guidelines on transparency in accordance with Regulation (EU) 2016/679 and the

stated above in this regard.

115. The Disputes Chamber stated

in its decision 24/2020 that as best practice the

controller also, before personal data of the data subject is processed

collected, the data subject can provide information about the trade-off to be made

created in order to be able to use Article 6(1)(f) as the legal basis for the processing.

To avoid information fatigue, this information can be included in a layered

privacy statement/ notice.12 The information provided to data subjects must make clear

that these data subjects can receive information about the assessment upon request. This is

essential for effective transparency when data subjects have doubts about the

fairness of the assessment made whether to submit a complaint to a supervisory authority

authority.

116. As the defendant points out, it is not prepared to apply the above-mentioned best practice,

because, according to him, it concerns internal privacy-technical documents with business-sensitive

information.

11 EDPB, Guidelines of the Article 29 Data Protection Working Party on transparency under Regulation (EU)

2016/679, approved November 29, 2017, last revised and approved April 11, 2018, p. 42.

12 See paragraph 35 of the guidelines referred to in footnote 6.

117. The Disputes Chamber argues that even if the defendant refuses to follow this best practice,

he is at least obliged, pursuant to Article 12.1 of the GDPR, to inform the data subject in a

concise, transparent, comprehensible and easily accessible form and in clear and

provide information in plain language about its legitimate interest for each of the

purposes for which he relies on that legal basis. To comply with this, it is by no means

requires privacy technical documents to be made public, but is it

requires information about the legitimate interest to be provided in clear

wording that is easy to understand by a (potential) customer of the defendant

118. The Disputes Chamber establishes that the information required by Article 13.1 d) GDPR is in no way

manner made available by the defendant, so that the infringement of Article 13.1 d)

AVG in conjunction with Article 5.1 a) AVG and Article 5.2 AVG.

4. Administrative fine

119. The fact that the defendant has indeed committed the infringements of Articles 5.1 a), 5.2, 6.1, 12.1, 13.1

c) and d) and 13.2 b) GDPR, the Disputes Chamber leads the administrative

maintain a fine. This sanction does not serve to prevent a violation

terminate, but with a view to strong enforcement of the rules of the GDPR. Like

is clear from recital 148 of the GDPR, after all, the GDPR presupposes that in any serious infringement

– including in the event of an initial finding of an infringement – penalties, including administrative

fines, in addition to or instead of appropriate measures, are imposed.13 Following this, the

The Litigation Chamber states that the infringements committed by the defendant of Articles 5.1 a),

5.2, 6.1, 12.1, 13.1 c) and d) and 13.2 b) GDPR in no way concern minor infringements, nor that the

fine would cause a disproportionate burden to a natural person as referred to in

Recital 148 GDPR, in which case a fine can be waived in either case.

The fact that it constitutes a preliminary finding of an infringement of the law committed by the defendant

13 Recital 148 states: “In order to strengthen the enforcement of the rules of this Regulation, penalties,

including administrative fines, to be imposed for any infringement of the Regulation, in addition to or in lieu of

appropriate measures imposed by the supervisory authorities pursuant to this Regulation. if it goes

for a minor infringement or if the foreseeable fine would impose a disproportionate burden on a natural person,

may opt for a reprimand instead of a fine. However, account should be taken of the

nature, seriousness and duration of the infringement, with the intentional nature of the infringement, with damage-limiting measu

with the degree of responsibility, or with previous relevant breaches, with the manner in which the breach was brought to the atte

supervisory authority has come, with compliance with the measures taken against the

controller or processor, with adherence to a code of conduct and with any other aggravating or

mitigating factors. The imposition of penalties, including administrative fines, should be subject to

appropriate procedural safeguards in accordance with the general principles of Union law and the Charter, including a

effective remedy and fair administration of justice. [own underlining]

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GDPR, does not in any way affect the possibility for the Disputes Chamber

to impose an administrative fine. The Disputes Chamber explains the administrative

fine pursuant to Article 58.2 i) GDPR.

120. The Disputes Chamber emphasizes once again that the instrument of administrative fine

is in no way intended to end infringements. To this end, the AVG and the WOG provide for a

number of corrective measures, including the orders referred to in Article 100, §1, 8° and 9°

WOG. It also emphasizes that the administrative fine is one of the sanctions provided for

in article 58.2 GDPR and article 100 WOG. Neither EU law nor national Belgian law

has a hierarchy with regard to the sanctions to be imposed. It stands the Dispute Chamber as

body of an independent data protection authority as referred to in Article 51

AVG is free to choose the most appropriate sanction. The Disputes Chamber is of the opinion that, in view of the

accountability of the controller, the imposition of a

administrative fine for violation of the GDPR could be expected.14

121. Taking into account Article 83 AVG and the case law15 of the Marktenhof, the motivation

Dispute chamber imposing an administrative sanction in concrete terms:

- The seriousness of the infringement: the motivation below shows the seriousness of the infringement.

- The duration of the infringement: the infringements are assessed with regard to this aspect in

in light of the date on which the GDPR became applicable, i.e. 25 May

2018. The defendant's privacy statement appears to have remained unchanged since

the application of the GDPR until such time as, following the

complaint, a new privacy statement was drawn up. The new privacy statement constitutes

however, not the subject of assessment by the Disputes Chamber, so that they

also does not comment on the extent to which the new privacy statement is in accordance

is with the GDPR.

- The necessary deterrent effect to prevent further infringements.

122. With regard to the nature and seriousness of the infringement (Art. 83.2 a) GDPR), the Disputes Chamber emphasizes

that compliance with the principles laid down in art. 5 GDPR – in this case in particular the

transparency principle with

including

by

the

accountability,

just as

the

principle of legality – essential

is, because it

fundamental principles of

data protection. The Disputes Chamber considers the defendant's infringement of

14 On the jurisdiction of the Disputes Chamber with regard to the imposition of an administrative fine, see also decision no

55/2021 of 26 April 2021, available in French on the GBA website.

15 Brussels Court of Appeal (Market Court section), Judgment 2020/1471 of 19 February 2020.

the principle of legality specified in art. 6 GDPR and the principle of transparency

specifically laid down in Articles 12 and 13 GDPR, therefore as a serious violation.

123. An important element in determining the amount of the fine is the fact that the defendant

following infringements as motivated in decision 24/2020 not contested and as a result thereof

has already made efforts to update the new privacy statement on those points

to comply with the GDPR:

-

Infringement of Article 13.1 c) GDPR due to lack of clear distinction between the

processing of health data on the one hand, and the processing of the other 'normal'

personal data on the other hand and this for each of the purposes of 4.3. of the

privacy statement, as for each of the transfers of 6. of the privacy statement.

-

Infringement of Articles 12.1 and 13.2 b) GDPR in the absence of mention in the privacy statement

the possibility for the data subject to exercise his right of retention.

-

Infringement of Article 13.1 c) GDPR due to lack of indication of the legal basis for the

transfer to each of the different categories of third parties in point 6. of the

privacy declaration.

124. While the changes made to the new privacy statement are beneficial

when assessing the administrative fine, the Disputes Chamber emphasizes that it is

do not seek to rectify the infringements found. The

violations have been established and cannot be retroactively reversed by the

controller who still – but too late – in

complies with the requirements of the GDPR.

125. In addition, the current decision also finds infringements:

-

Infringement of Article 6.1 GDPR with regard to the purposes of “training staff” and

“the storage of video surveillance recordings during the legal period”.

-

-

Infringement of art. 13.1. c) GDPR in conjunction with article 5.1 a) GDPR and article 5.2 GDPR.

Infringement of Article 13.1 d) AVG in conjunction with Article 5.1 a) AVG and Article 5.2 AVG.

Furthermore, the Disputes Chamber also takes into account the finding that the infringement of Article 6.1

GDPR is limited to two processing purposes “staff training” and “storage of

recordings of video surveillance during the legal period” and is therefore of a nature to

to justify a reduction in the amount of the fine. In addition, the established

breaches of the principle of transparency, as well as accountability so serious

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that a substantial fine will be imposed. This is all the more true in view of the large scale

of the processing of non-health data by the defendant with

decisive impact on all insured persons who have taken out hospitalization insurance

affiliated with Y, which concerns a significant number of stakeholders. A decisive element

the fact that Y is a major player in the insurance market from which it may be

expects it to properly and scrupulously align its privacy policy with the

GDPR.

126. With regard to the lack of transparency, the Disputes Chamber also points out that the GDPR is precisely

has provided for a transition period of 2 years16 to allow each controller

give the necessary time to prepare and adapt to the requirements set by the

GDPR. The defendant's argument at the hearing that the changes

which the GDPR has implemented in relation to the previous Directive 95/46/EC of the European

Parliament and the Council on the protection of individuals with regard to the

processing of personal data and on the free movement of such data to the

based on the lack of transparency cannot therefore be accepted. The

The defendant argues that Articles 13 and 14 of the GDPR, in conjunction with Article 12 of the GDPR, and the precise manner

interpretation has caused the difficulty. The Guidelines on Transparency of

the Group 29 (now EDPB) were an aid tool. Here too, the Disputes Chamber must

to state that those guidelines already dated 29 November 2017, have been revised and approved

on April 11, 2018 and have remained unchanged since then. The defendant thus had

sufficient time, as required by his accountability (Article 5.2 GDPR), to be

align privacy statement with the GDPR.

127. This leads the Disputes Chamber to reconsider the fine and reduce it to €30,000.

128. The whole of the elements set out above justifies an effective,

proportionate and dissuasive sanction as referred to in art. 83 GDPR, taking into account the

certain assessment criteria. The Disputes Chamber points out that the other criteria of art. 83.2.

GDPR in this case are not of a nature that they lead to an administrative fine other than

those established by the Disputes Chamber in the context of this decision.

5. Publication of the decision

16 Article 99 GDPR

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129. In view of the importance of transparency with regard to the decision-making of the

Disputes Chamber, this decision is published on the website of the GBA. However, it is

it is not necessary for that purpose that the identification data of the parties be directly

announced.

FOR THESE REASONS,

the Disputes Chamber of the Data Protection Authority decides, after deliberation, to

to review decision 24/2020 of 14 May 2020 and the defendant pursuant to Art. 100, §1, 13° WOG

and art. 101 WOG to impose an administrative fine of € 30,000.00 as a result of the infringements

on Articles 5.1 a), 5.2, 6.1, 12.1, 13.1 c) and d) and 13.2 b) GDPR.

Under Article 108, §1 WOG, an appeal can be lodged against this decision within

a

period of thirty days, from the notification, to the Marktenhof, with the

Data Protection Authority as Defendant.

(Get).Hielke Hijmans

Chairman of the Disputes Chamber