

Litigation Chamber□

Decision on the merits 61/2020 of September 8□

2020□

File number: DOS-2019-04058□

Subject: Complaint for unlawful processing of personal data after□

consultation in the National Registry by a public interest body□

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

Hijmans, chairman, and Messrs Jelle Stassijns and Christophe Boeraeve, 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 the□

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

data protection, hereinafter the "GDPR");□

Having regard to the law of 3 December 2017 establishing the Data Protection Authority, hereinafter the□

ACL;□

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

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

Considering the documents in the file;□

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made the following decision regarding:□

1. Ms. X1, hereinafter "the first complainant", Mr. X2, hereinafter "the second complainant" and□

Mr. X3, hereinafter "the third complainant", or hereinafter jointly "the complainants", and□

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2. Y□

1. Facts and procedure□

Facts

1. On July 23, 2019, the Data Protection Authority receives a complaint from the three complainants.

2. The complaint can be summarized as follows. Following an infringement, noted by the defendant

– as a public authority responsible for enforcing the rules –, to the regulation

regional¹ concerning a clandestine deposit by the first plaintiff, the defendant consulted

the personal data of the National Register relating to the first complainant and the

then used. In the decision of the Director General of the defendant following

breaches of the Orders [...] (hereinafter: "the Decision"), it is mentioned that the first

plaintiff cohabits with the second plaintiff, and that the third plaintiff is the father of the

second plaintiff. According to the complainants, personal data is not

necessary for the performance of the legal missions of the defendant, and therefore their use is

contrary to the legislation relating to the protection of personal data.

More specifically, questions are raised about the consultation (or

consultations) of the complainants' personal data in the National Register.

Procedure

3. On August 8, 2019, the Front Line Service declared the complaint admissible on the basis of

Article 62, § 1 of the LCA.

4. On August 23, 2019, the Litigation Division decides, pursuant to Article 95, § 1, 1° and

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

¹ This is the Ordinance of 14 June 2012 (Brussels-Capital Region) relating to waste, M.B. 27 June 2012, hereinafter

‘the first Ordinance’ and the Ordinance of 25 March 1999 (Brussels-Capital Region) containing the Code of

the inspection, prevention, observation and repression of environmental offenses and liability

Environmental, M.B. 24 June 1999, hereinafter ‘the second Order’; the first Ordinance and the second

Order are collectively hereinafter referred to as “the Orders”.

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5. By registered letter of August 23, 2019, the plaintiffs and the defendant are informed of

this decision of the Litigation Chamber. In this letter, the parties are also
informed of the deadlines for transmitting their conclusions, in accordance with Articles 98 and 99
of the ACL. In this regard, the Litigation Chamber requests in particular the point
views of the parties on the following two points:

- whether or not the personal data have been requested from the National Register and on the
basis of which authorization this possible access, and the complaint of personal data
ensuing personnel, took place;
- the principle of data minimization (article 5, paragraph 1, point c) of the GDPR) confronted
to the processing of personal data that has been carried out in the context of the
Defendant's decision.

The defendant's submissions

6. On September 27, 2019, the defendant submitted its conclusions to the Litigation Chamber.

A copy is provided by the defendant to the plaintiffs by registered letter.

7. The defendant indicates that on September 14, 2018, several breaches of the first

Ordinances were noted, after which a report was drawn up. In accordance with

the second Order, a letter was sent to the first plaintiff (who, according to the

findings of the defendant, committed the breaches of the first Order) with

a copy of the report noting the aforementioned offenses and "an invitation to pay the

waste removal costs, in accordance with applicable regulations."

passages quoted in this decision have been freely translated by the General Secretariat

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

8. This letter was sent to the first complainant by registered mail after a search

in the National Register by the defendant, in order to be able to identify it completely and

correctly and in order to be able to address correspondence to the correct address.

9. On November 12, 2018, according to the defendant, the minutes were again sent to the

first complainant, given the lack of response to the registered letter from the

defendant.□

10. The first complainant did not reply to either the registered letter or the ordinary letter from the□

November 12, 2018. At the same time, the defendant decided to impose a fine□

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administrative procedure to the first complainant, in accordance with the provisions of the second□

Order.□

11. On March 5, 2019, the defendant carried out a second search in the National Registry,□

which revealed that the name of the first complainant had been changed and that he no longer resided in□

the address to which the defendant had sent the first letters to the first complainant.□

12. The defendant then sent a registered letter to the first complainant, inviting him to□

transmit to the defendant conclusions in the proceedings. The defendant received a□

reply to this letter signed by the third complainant. According to the defendant, this response□

was transmitted to him "without justifying a mandate of representation, and specified that [the third□

plaintiff] undertook, by virtue of his title of retired [police] commissioner, to formulate□

a substantive challenge on the basis of the use of languages in administrative matters of a□

part, and the refutation of the facts on the other hand."□

13. The Respondent then contacted the third Complainant, who responded on behalf of the□

first complainant, without having submitted a representation mandate. It is after□

this correspondence that the Decision was taken by the defendant, in which one□

referred to the second and third plaintiffs, with a potential family connection between these two□

last.□

14. The defendant stresses that it is important – within the framework of its sanctioning powers□

– that its employees have access to certain personal data contained in□

the National Register. The defendant also points out that this access is in this case limited□

information "such as surname, first name, date of birth, nationality, address□

of legal residence and the composition of the household [...]".□

15. The defendant also asserts that it is "not in a position to carry out a search less□
intrusive [in the National Register]". In the event of a search within the framework of□
mentioned above in the fight against clandestine deposits, the composition of the household is□
always mentioned in research. The defendant confirms that the personal data□
staff of the first complainant were consulted in the National Register at two times□
distinct, namely September 17, 2018 and March 5, 2019.□

16. The mention of the surnames and first names of the second and third plaintiffs by the defendant□
results from the intervention of the third plaintiff, according to the defendant. The defendant□
asserts that the personal data of the third complainant "were provided to the□
defendant by the person concerned himself". As a result, the mention of the name and□

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first name of the third plaintiff in the Decision was "necessary". Furthermore, the mention of□
surname and first name of the second complainant in the Decision resulted from the consultation of the□
personal data of the first complainant in the National Register. The collection of□
these data is described by the defendant in its submissions as "consequence□
unfortunate but necessary investigation of [the first complainant]. It does not constitute□
therefore not a breach of the principle of data minimization as imposed in Article 5 [of the□
GDPR]".□

17. The defendant affirms that the evocation of a probable family link between the second and the□
third plaintiff, because they have the same name, does not arise "from a collection of□
specific data". The mention of this potential family link in the Decision is, according to the□
defendant, "that an assumption in a motivation which is certainly diligent, but does not□
does not constitute a de facto violation of [complainants'] privacy."□

18. The defendant asserts that it follows from its defense "that the processing of personal data□
personnel by the defendant is legally legitimate, proportional and compatible with the□
principle of data minimization as established in article 5, first paragraph 1, c) of the□

[GDPR]. The complaint is therefore unfounded."□

The plaintiffs' submissions in reply□

19. The Complainants' Reply submissions first mention that both the□

communication from the Data Protection Authority that that (of the representatives) of the□

defendant do not bear the mention 'PERSONNEL – CONFIDENTIEL', which, according to the□

complainants, is "inherent in the confidential content of personal data□

staff." In addition, the envelopes that the defendant used to send his□

initial conclusions would be "of inferior quality". In their submissions, the plaintiffs□

do not attach any visual or other evidence of this. The plaintiffs also issue□

reservations as to the request by counsel for the defendant to send by e-mail a□

confirmation of receipt of his documents, "without however indicating whether he has a connection□

secure enough."□

20. Next, the Complainants question the appropriate security of their data at□

personal character and compliance with the basic principles of data processing□

of a personal nature by counsel for the defendant.□

21. The complainants also point to the potential further dissemination of personal data□

personnel in the Decision, in particular in appeal procedures, as well as the absence□

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reasoned purpose for which the processing of said personal data takes place.□

The inaccuracy of the personal data processed also constitutes for the□

complainants a violation of the provisions of the GDPR. This is particularly the case with regard to□

the inaccurate address of the first complainant "at the time of the facts and findings by the□

defendant", as well as the family link put forward between the second and third plaintiffs.□

According to the plaintiffs, the research on the first plaintiff carried out by the defendant in□

the National Register has not been able to establish this link with certainty.□

22. Finally, the complainants mention that the documents attached to the pleadings in response of the□

defendant contain personal data, namely those of the first

plaintiff, which are not strictly necessary for the defense conducted.

23. The Litigation Chamber considers that a whole series of other elements put forward by the

complainants in their rebuttal submissions are not relevant to the treatment of the

this file by the Data Protection Authority, to which the facts mentioned in the

complaint relate. This concerns, for example, respect for the principle of meticulousness by the

defendant and the missions and identification of its agents and other members of the

personnel in the exercise of the Defendant's jurisdiction under the Orders.

24. In particular, the Litigation Chamber does not take into account all the new elements

in the plaintiffs' reply submissions:

- o given that in this case, the complainants' complaint was formulated in a manner

- sufficiently clear and formal;

- o given that the Litigation Chamber was seized in accordance with article 92, 1° of the LCA

- and decided, under article 94, 3° of the LCA, to deal with the complaint without seizing the

- Inspection Service;

- o given that the intention of the legislator, in accordance with Article 98 of the LCA, is that the

- parties can properly defend themselves as to the elements of the file – the scope

- intrinsic to it is by definition limited to the content of the complaint;

- o given that on the basis of the foregoing considerations, on the one hand it is not

- desirable, from a practical point of view, to deal with new elements in the

- rebuttal submissions – due to the significant number of new elements,

- the burden of proof which is prima facie limited due to the absence of documents

- additional data and the involvement of other data controllers – and that other

- hand, in the current circumstances, it is not desirable at the level of the

- procedure to expand the scope of the file to this extent;

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o given that complainants are free to introduce a new complaint or new

complaints to the Data Protection Authority if they believe they are being harmed

prejudice to the rights that the Data Protection Authority has the task of

control.

25. In this regard, the Litigation Division recalls its previous decision no. 17/20202, in

which it explains that it is in principle not bound by the content of the complaint, given

that certain conditions have been met. These conditions are not met in the present case.

The defendant's reply submissions

26. The defendant's submissions in reply largely repeat the elements of the

findings in response. As a principal order, the defendant admittedly asserts that the GDPR does not

does not apply to the facts complained of:

"As your Authority will have noted on the basis of the aforementioned presentation of the framework

legal, the defendant acted in this litigation with a view to enforcing a

penal regulations.

In accordance with Article 2, § 2, d) of the GDPR, the Regulation does not apply to

processing of personal data carried out by the competent authorities

for the purposes of prevention and detection of criminal offences, investigation and

prosecution in this regard or the execution of criminal penalties, including the protection

against threats to public security and the prevention of such threats."

27. Furthermore, the defendant reacts to what the appellants assert in the pleadings in

replies on intrinsic and procedural aspects that do not concern the elements

mentioned in the complaint. With regard to these elements, the defendant disputes a

any violation of data protection legislation

staff.

2 Litigation Chamber of the Data Protection Authority, substantive decision 17/2020 of 28 April 2020, paragraphs

20-35 decision.

2. Motivation

2.1

Procedural elements in this case and jurisdiction of the

Litigation Chamber (article 100 of the LCA)

28. Although the Litigation Chamber has already indicated that several elements of the conclusions in

complainants' reply were not relevant to the handling of this complaint, the

Chambre Litigation wishes to explain several aspects in order to guarantee the correct

course of the procedure. The Litigation Chamber also gives some

explanations below about the alleged incompetence of the Litigation Chamber,

put forward by the defendant.

2.1.1. Language of the proceedings and course of the proceedings

29. The language of the proceedings used in this case by the Data Protection Authority

data – including the Litigation Chamber – is the Dutch language, in accordance with

section 57 of the LCA. This does not prevent evidence from being filed with

the Litigation Chamber by one or more parties in another national language or in

English.

30. Without finding *hic et nunc* whether or not the defendant committed violations of the GDPR or

other relevant legislation relating to the protection of personal data

on the basis of this file resulting from a complaint, the Litigation Chamber underlines that

the defendant has the right to a fair conduct of the proceedings (including for acts committed

by its representatives, in this case a lawyer); under section 98 of the LCA, the

defendant has the right to submit conclusions to the Litigation Chamber.³

31. In this sense, reference can be made to the documents which were transmitted by the defendant to the

Litigation Chamber and which have been attached to the file. These parts were used as

as evidence to make the Decision that is the subject of this complaint. Rooms

do contain several personal data, such as name,□

first name, address and financial data. The transmission of said documents constitutes□

also a processing of personal data within the meaning of Article 4, point 2) of the□

GDPR.□

3 Article 98, 2° of the LCA.□

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32. In this context, the Litigation Chamber cannot however find any abuse,□

much less a flagrant abuse, of the rights of complainants when dealing with the merits□

in this procedure, in the sense that unlawful processing of personal data□

staff of complainants or third parties would have taken place. Personal data processing□

personnel that take place during – and as part of – substantive processing of a case□

with the Litigation Chamber of the Data Protection Authority do not□

definition not part of the complaint that originated this record or the contents of the record.□

Within the framework of the integrity of the procedure, the Litigation Chamber will not rule as soon as□

nor, therefore, with regard to the complainants' allegations on this subject in their conclusions in□

replica, as explained above.□

33. For the sake of completeness, the Litigation Chamber wishes to specify that the contribution of□

conclusions by the defendant involves a certain discretionary assessment for this□

party, in the sense that the defending party can determine itself which parts it□

wishes to add to the file, as long as it is considered necessary in the context of a□

fair process⁴. This is equally true for other parties involved in the□

procedure.□

2.1.2. The scope of the GDPR and the jurisdiction of the Litigation Chamber□

34. In main order, the defendant argues that the GDPR would not apply to the present□

file, given that the defendant would have acted in this dispute "with a view to enforcing□

criminal regulations." The defendant refers to Article 2(2)(d) of the□

GDPR.□

35. For the sake of completeness, it may be noted that according to Article 55, paragraph□

3 GDPR and Article 4, § 2, first paragraph of the LCA, the Data Protection Authority□

is not competent to control the processing carried out by the courts in the exercise□

of their judicial duties. This does not mean that the GDPR does not apply to activities□

courts and judicial authorities.5□

36. Next, one can react to what the defendant puts forward in concreto, namely the applicability of□

Article 2, paragraph 2, point d) of the GDPR, which is stated as follows:□

4 Article 98, 3° of the LCA – the parties are informed of the possibility "of adding to the file all the documents which they consider

helpful."□

5 Recital 20 GDPR.□

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"2. This Regulation does not apply to the processing of personal data□

staff performed:□

(...).□

d) by the competent authorities for the purposes of prevention and detection of infringements□

criminal proceedings, investigations and prosecutions in this area or the execution of criminal sanctions,□

including protecting against threats to public safety and preventing□

such threats."□

37. Recital 19 of the GDPR specifies that in this context, specific regulations are□

applicable in the form of a European directive6. This directive was implemented in□

Belgian national law by the law of 30 July 2018 on the protection of natural persons□

with regard to the processing of personal data.7□

38. Article 26, 7° of the law on data protection sets out the authorities□

competent in this context. The defendant, including its collaborators, are not part□

of those authorities which are competent in this respect within the meaning of Article 2, paragraph 2, point□

d) GDPR. The fact that certain agents of the defendant are appointed under Article

5, § 2 of the second Ordinance to be granted the status of judicial police officer

does not in fact mean that the aforementioned officers are part of the police services.⁸

39. Finally, it can be seen that the defendant was authorized to consult the National Register

in specific circumstances⁹. This authorization is included in a royal decree which

also details the conditions for access to the National Register¹⁰. It is therefore granted to the

defendant as a public authority¹¹. The provisions of the GDPR as well as those of the

law on the National Register that the Litigation Chamber deems relevant in the assessment

of this file therefore apply in full to the defendant.

40. Under Article 4 of the LCA, the Data Protection Authority is competent to

monitor compliance with "laws containing provisions relating to the protection of the processing

personal data." Given that in the present case, no other authority of

6 Directive (EU) 2016/680 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 by competent authorities for the purposes of prevention and detection

criminal offences, investigation and prosecution thereof or the execution of criminal penalties, and on the free movement

of such data and repealing Council Framework Decision 2008/977/JHA.

7 M.B. September 5, 2018, hereinafter: Data Protection Act.

8 Police services within the meaning of article 2 of the law of 7 December 1998 organizing an integrated police service, structure

two levels (M.B. 5 January 1999).

9 "National Register" means in this Decision: the information processing system within the meaning of Article 1

of the law of 8 August 1983 organizing a national register of natural persons, M.B. 21 April 1984 (hereinafter: the law on the

national registry).

10 Royal decree authorizing Y to access information from the National Register of natural persons, hereinafter: the royal decree

Y).

11 The defendant is a public interest body in accordance with Article 3 of the Ordinance establishing Y.

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control is competent under the legislation in force, and that no competence has
been withdrawn from the Data Protection Authority in this specific context, it is
the competent supervisory authority.¹²

2.2

The lawfulness of the processing of personal data obtained
after consultation of the National Register (Article 6, paragraph 1 of the
GDPR)

2.2.1. Access to personal data from the National Register and their use

41. The Litigation Chamber has already expressed its views in a case relating to a
consultation of the National Register¹³. However, the complaint concerned the legality of the consultation
of the National Register itself. In this case, the complaint relates to a
processing of personal data while the initial consultation of the data of the
first complainant in the National Register was authorized under the regulations and
authorizations in force.

42. The Litigation Division wishes to comment on this situation in order to remove any possible
confusion about this.

43. Article 5, § 1 of the law on the National Register provides that the Minister of the Interior is
competent to authorize, among other things, public bodies governed by Belgian law such as the
defendant to access the "information" of the National Register, which is relevant for the
information which such bodies are entitled to know by virtue of a document
legislation such as an ordinance. At the time the authorization was granted to the
defendant, the law on the National Register provided that it was the King who granted this
authorization.¹⁵

44. Article 1 of Royal Decree Y provides that it is the Director General of the defendant who
access to the National Register, as well as all the defendant's personnel who,

¹² Article 4, § 2, second paragraph of the LCA.

13 Litigation Chamber of the Data Protection Authority, Decision on the merits 19/2020 of 19 April 2020.□

14 Article 5, § 1, 2° of the law on the National Register – for the legal basis, reference can be made both to the first□
Ordinance only to the second Ordinance.□

15 Royal Decree Y.□

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taking into account their functions and within the limits of their respective attributions, have been□

designated by name and in writing for this purpose by the Director General.□

45. According to Article 3 of Royal Decree Y, the defendant must provide annually to "the Commission□
of the protection of privacy" a list of the persons designated for the consultation of the□

National Registry. The defendant appended to its submissions a document containing a list which□

was forwarded to the Commission for the Protection of Privacy (hereinafter: CPVP) and which dates□
from February 1, 2018.□

46. The Data Protection Authority no longer has powers concerning the□

authorizations or deliberations granting access to the National Register. We can emphasize□

in this regard that Royal Decree Y has not been brought into line with either the GDPR - which gives the□
controller a central role - nor with the National Register Act. For concern□

completeness, we can also mention that the Information Security Committee is not□

not competent where other regulatory standards govern access to data at□

personal data in public databases and applications¹⁶. This is the case in□

the case, given that Article 5 of the Law on the National Register specifically assigns□

to the Minister of the Interior the power to grant access to the National Register. 17□

2.2.2. The two extractions of the first complainant's personal data in the□

National register by the defendant□

47. The question of whether the consultation of personal data is lawful and whether the□

further processing of these personal data after this consultation are all□

lawful processing must be examined in particular in the light of Article 6 of the GDPR.□

48. The Litigation Chamber repeats and clarifies that what the plaintiffs have advanced about the progress of the procedure on the part of the defendant (in particular respect for the legislation in force on the use of languages by the defendant) is not within the power discretion of the Data Protection Authority. This does not prevent the House Litigation to decide on the aspects concerning the protection of data to be personal character of the complainants.

16 Article 35/1, second paragraph of the Federal Services Integrator Act concerns the Act of 15 August 2012 on the creation and Federal Service Integrator Organization, M.B. August 29, 2012.

17 And therefore not in the Chamber Federal authority of the Information Security Committee, in accordance with article 86 of the September 2018 establishing the Information Security Committee and amending various laws concerning the implementation of Regulation (EU) 2016/679 of the European Parliament and of the Council of 2016 April 2016 on the protection of persons with regard to the processing of personal data and on the free movement of such data, and repealing the Directive 95/46/EC, M.B. September 10, 2019.

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49. The defendant consulted the personal data of the National Register concerning of the first complainant at two separate times, namely September 17, 2018 and March 5, 2019.

50. The first consultation of the National Register on 17 September 2018 followed the findings made by the defendant in accordance with the first Order and the second

Order18. The defendant, according to its own statements in the summary of its conclusions, "sent a report noting the infringements of the legislation relating to waste [...]".

51. By "waste legislation", the defendant refers more specifically to the skills available to one or more of its staff members within the framework of findings of breaches of the first Ordinance – these are breaches of

Article 18, § 1 and Article 19, § 4 – on the basis of Article 5, § 2 of the second Ordinance.

52. As explained at the beginning of point 2.2., the defendant has the possibility of consulting the

National Registry, more specifically for the following reasons:□

“(…) for the accomplishment of the tasks that are devolved [to the defendant] in□

prevention and management of waste, namely research, observation,□

prosecution and repression of environmental offences.”¹⁹□

53. The second consultation resulted from the first complainant's failure to respond to letters□

of□

the defendant of September 25, 2018 (by registered mail) and of□

November 12, 2018 (by regular mail). The second consultation on March 5, 2019 revealed□

that the first complainant's name and mailing address had changed. This has□

necessitated the sending of a new letter by the defendant to the first plaintiff on March 15□

2019 (by registered mail).□

54. Consultation of the National Register by the Director General or a staff member□

appointed in writing by the Chief Executive Officer, following observations made by the members of the□

defendant's staff regarding clandestine deposits, falls within the framework of□

the exercise of official authority vested in the defendant. Legality must therefore be□

analyzed in particular in the light of Article 6, paragraph 1, point e) of the GDPR.□

55. The Litigation Division finds that the powers and related public authority of which□

is vested in the defendant are concretely entrusted to the defendant by virtue of the□

18 An excerpt from the first consultation was provided in the defendant's pleadings in response, exhibit 2.□

19 Article 1, first paragraph of Royal Decree Y.□

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first Ordinance and the second Ordinance. The determination of authority tasks□

public in these two legal texts is necessary in accordance with Article 6, paragraph□

2 GDPR in order to fall under the basis of lawfulness within the meaning of Article 6(1),□

point e) of the GDPR.²⁰□

56. The question also arises as to whether the consultation of personal data□

in the National Registry was ‘necessary’ in the exercise of authority²⁰

public. In this sense, only the processing of personal data containing

information necessary for the purpose of exercising official authority is relevant.²¹

57. The Litigation Chamber considers that the two consultations of data of a

personal of the first complainant in the National Register, and the subsequent processing of its

personal data, in particular his surname, first name and contact details are

indeed necessary for the exercise of tasks of public authority. Consulting is

necessary for a correct and complete identification of the first complainant, including his

contact details. This can only be done lawfully and sufficiently by means of a

consultation of his personal data in the National Register.

58. The second consultation was more specifically necessary due to the lack of

response of the first plaintiff to the first letters of the defendant, and of the fact that there was

therefore in good faith a suspicion on the part of the defendant that the contact details of the

first complainant had changed. This has indeed been confirmed, and is illustrated by the fact

that after the sending of letters by the defendant following the second consultation of the Register

national (to another postal address), a response has been received from the first complainant,

although this communication was transmitted on behalf of the latter by the third

plaintiff, without a representation mandate. Also, it turned out that the name of the first

complainant had changed between the first and the second consultation of the National Registry, which

that the defendant could only have formally noted by consulting the Register

national.

59. For the sake of completeness, it can be mentioned that the personal data of the

second complainant were visible when consulting the personal data

of the first complainant in the National Registry, since it is not possible for the

defendant to correctly consult the personal data of the first

²⁰ In this sense: W. KOTSCHY, “Lawfulness of processing” in C. KUNER, L.A. BYGRAVE and C. DOCKSEY, The EU General

Protection Regulation (GDPR): A Commentary, Oxford, 2020, (321)335.□

21 Cf. analogous reasoning in the CJEU judgment, *Heinz Huber c. Bundesrepublik Deutschland*, C-524/06, ECLI:EU:C:2008:72 through. 59: "However, it should be noted that such a register may not contain any information other than that which is necessary to this end."□

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complainant without displaying certain personal data of the second□
plaintiff, since the second plaintiff cohabits legally with the first plaintiff.□

60. However, the mention of the link between the first and the second complainant requires an analysis□
distinct from the basis of the processing, which also concerns the rights of the first complainant, being□
given that the mere link with another natural person constitutes in itself data to be□
personal character. This question will be examined further in section 2.2.3.□

61. Based on all the aforementioned elements, the Litigation Chamber concludes that the two□
extractions of the personal data of the first complainant in the National Registry□
as well as the further processing of this personal data is lawful,□
pursuant to Art. 6(1)(e) GDPR, as there is a□
need to know the personal data in an accurate, complete and□
of this first complainant and that this is part of the proportionate enforcement□
powers entrusted to the defendant by the Orders.□

2.2.3. The extraction of personal data relating to the second complainant during the□
consultation of the personal data of the first complainant in the Register□
national and the family link assumed by the defendant between the second plaintiff and the□
third plaintiff□

62. The question of whether the mention of the personal data of the second and the□
third plaintiff in Respondent's Decision was 'necessary' in connection with□
the exercise of official authority pursuant to Article 6(1)(e) GDPR□
must be analyzed separately by the Litigation Chamber.□

63. It may be noted that the Complainants and the Respondent indicate that the third complainant submitted submissions in his own name but on behalf of the first plaintiff in the procedure which the defendant conducted by virtue of its powers arising from the Ordinances. There is therefore a real interest for the defendant to mention the name of the third plaintiff in the Decision, in order to clearly explain the defense of the first complainant (actually conducted by the third complainant without a representation mandate).

64. On the other hand, the Litigation Chamber finds that the second plaintiff, as a legal cohabiting spouse of the first plaintiff, was not involved at any time during the defendant's proceedings, and that the mention of his personal data in the Decision is therefore in no way relevant to the purpose of the Decision – namely the sanction of the first complainant. The first plaintiff suffers a violation of his rights here too, being Decision on the merits 61/2020 - 16 given that the mention of his family or legal ties does not constitute any treatment necessary personal data within the meaning of Article 6, paragraph 1, point e) of the GDPR.

65. Furthermore, it can be noted that the observation of a potential family link between the second complainant and the third complainant, on the one hand is not relevant for the purpose of the Decision, and on the other hand has not been formally established by the defendant. For this last aspect, the Litigation Chamber finds that the family relationship as personal data is assumed by the defendant, which means that this personal data is likely to be wrong. This is not in the spirit of the legislation relating to the protection of personal data. This provides in particular in Article 5(1) point d) GDPR that the personal data processed must be accurate.

66. The Litigation Division considers firstly that there is no lawful processing within the meaning of Article 6, paragraph 1, point e) of the GDPR when the defendant mentions in the Decision the personal data of the second complainant – which she obtained in

consulting the personal data of the first complainant in the National Registry□

–, when it is not necessary for the purpose of exercising his official authority. That□

also prejudices the rights of the first plaintiff, since the mention of the link□

legal and familial relationship between him and the second plaintiff does not constitute lawful treatment at the□

meaning of Article 6, paragraph 1, point e) of the GDPR. Nor does the defendant cite□

any other possible basis and the Litigation Chamber cannot establish any other basis□

of lawfulness of Article 6, paragraph 1 of the GDPR on the basis of what has been submitted to it.□

67. The Litigation Division considers secondly that the indication of a probable family link□

between the second complainant and the third complainant does not constitute lawful treatment□

pursuant to Art. 6(1)(e) GDPR, as this does not constitute□

not information necessary for the purpose of the exercise of official authority by the□

defendant through the Decision. Furthermore, the family connection is an assumption, which□

does not correspond to the spirit of Article 5, paragraph 1, point d) of the GDPR, which specifies that the□

personal data that is processed must be accurate. Finally, the mention of a□

potential family connection is not limited to what is necessary for the purposes of the Decision, which□

is contrary to the principle of data minimization within the meaning of Article 5(1),□

point c) of the GDPR.□

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3. GDPR Violations and Complainant's Claims□

68. The Litigation Chamber considers that the violations of the following provisions by the□

defendant are proven:□

at.□

Article 6(1)(e) GDPR, since the statement in the□

Decision of the personal data of the second complainant, as well as the link□

between the first and the second complainant and between the second and the third□

complainant, was not necessary for the exercise of the public authority tasks of the□

defendant, which were entrusted to it by the provisions of the Orders;□

b.□

Article 5, paragraph 1, point d) and point c) of the GDPR, since the□

defendant did not take sufficient steps to ensure that the assertion□

of the existence of a family relationship between the second and the third plaintiffs is correct,□

and given that the establishment of such a family link is not necessary for the□

purposes for which the personal data is processed.□

69. Given the importance of transparency with regard to the decision-making process□

of the Litigation Chamber, this decision is published on the Authority's website□

of data protection by deleting the direct identification data of the□

parties and natural persons named.□

FOR THESE REASONS,□

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

□ to reprimand the defendant, in accordance with article 100, § 1, 5° of the LCA and□

Article 58 (2) (b) of the GDPR, due to the takeover and thus the processing□

wrongful use of the second complainant's personal data from the Registry□

national, and the subsequent use of this personal data to establish certain□

unnecessary links respectively between the first and the second complainant, and between the□

second and third complainant, which constitutes a violation of article 6, paragraph 1□

GDPR; moreover, the defendant did not take all appropriate measures to□

ensure that these links, as personal data, are accurate,□

in accordance□

at□

the article□

5,□

paragraph□

1,□

point□

d)□

from□

GDPR□

;□

□ to notify the defendant, in accordance with article 100, § 1, 5° of the LCA and□

article 58, paragraph 2, point a) of the GDPR, because the consultation and use□

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subsequent release of personal data from the National Register must always be lawful,□

fair and necessary, and this in the spirit of the GDPR – and more particularly of the principles□

relating to the processing of personal data of Article 5 of the GDPR – and□

in accordance with the legislation in force concerning the National Register, more particularly□

the National Register Act.□

Under article 108, § 1 of the LCA, this decision may be appealed within a period of□

thirty days, from the notification, to the Court of Markets, with the Authority for the Protection of□

given as defendant.□

(Sr.) Hielke Hijmans□

President of the Litigation Chamber□