

Litigation Chamber

Decision on the merits 33/2020 of 19 June 2020

File number: DOS-2019-05200

Subject: Complaint for unlawful and inaccurate processing of personal data as well as
as violations in the exercise of the data subject's rights

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

Hijmans, chairman, and Messrs. Jelle Stassijns and Christophe Boeraeve;

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:

- Mr. X, hereinafter "the complainant", and

-

Y, hereinafter "the defendant".

1. Facts and procedure

Facts

2. On August 19, 2019, the complainant contacted the Data Protection Officer of the
defendant in an e-mail. He writes the following:

"Dear, □

Although I am not myself a client of [the defendant], I nevertheless received this □
update an email from you regarding a workshop you are offering. Therefore, I □
asks the following questions: □

- Where did you get my email address and what party did you get it from? □
- On what legal basis do you rely to send me this e-mail? □
- What information do you still have about me? □

Please accept, Madam, Sir, the expression of my best feelings. □

[the plaintiff]" [Editor's note: all the passages from the file are free translations □
carried out by the Secretariat of the Data Protection Authority, in the absence of □
official translation] □

3. On August 26, 2019, the Respondent (...) replied as follows: □

"Dear (the Complainant), □

In order to respond to your request, we kindly ask you to □
provide us with your address and date of birth. We have in □
effect noted that several people with the same name appear in our database □
of data. □

We also ask you to send us the e-mail of which you speak in □
your message so that we have an idea of the email it is about. □

We thank you in advance [...]" □

4. Following this, the plaintiff provided the defendant by e-mail on the same date with his address □
current postal address and former address as well as date of birth. The complainant □
mentions, however, in this context that he is considering the defendant's request that he □
provide this data as contrary to the rules of the GDPR. □

5. On the same day, i.e. August 26, 2019, the Respondent responds (...) as follows: □

"Sir, □

In order to be sure that the right information is [transmitted] to the right person□

concerned, it is permitted to request additional parameters. These elements□

additional information is requested exclusively in order to be able to deal with the said question□

but are not kept in an internal system.□

Unfortunately, this information does not make it possible to establish a link with a□

person in our database.□

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As a last resort, the e-mail itself can be checked to see if it is□

an e-mail from [the defendant] and not a phishing message. Could you□

therefore send us the e-mail in question?□

We thank you in advance [...]"□

6. On the same day, i.e. August 26, 2019, the Complainant forwarded to the Respondent the e-mail which□

gave rise to the complaint, as the latter had requested. This forwarded email is titled□

"W" and was sent on August 19, 2019 by the defendant to the plaintiff. The message includes□

non-personalized content for commercial purposes, targeting businesses□

independent.□

7. On September 12, 2019, the plaintiff received a new commercial email from the defendant□

titled "W".□

8. On September 13, 2019, the Complainant again sends an e-mail to the Respondent. In this□

frame, the complainant forwards the email containing direct marketing content.□

prospecting within the meaning of the GDPR] from the defendant to the complainant of September 12, 2019. As□

supplement, the plaintiff writes the following:□

"Dear,□

On August 19, I already sent you an e-mail regarding the advertisement I received from□

your services. So far, I still haven't received any clear answer on this.□

In summary, here are my questions:□

What legal basis under the [GDPR] are you using to send me these

emails?

Direct marketing (what those emails are) is permitted under the [GDPR] with

legitimate interest as a legal basis. (opinion of the Data Protection Authority).

[In case of] legitimate interest, a balancing of interests must always be carried out.

It seems to me that this did not [happen]. I am indeed not an SME or a

independent and therefore have no interest in receiving these emails.

Another track could be informed consent. This track also seems to me

very hard to believe given that I am not in your system (but I

receive e-mails from your services). You have thus almost confirmed that I do not

never gave my consent for the sending of these e-mails.

Where did you get my data?

Under GDPR legislation, obtain personal data

(my email address) and using them is not so simple. Therefore, I would like to be informed

how you obtained my personal data and how

how these are secured, etc.

What data do you hold about me?

As part of my right to information, I would like to know what data you

still hold about me. In addition, I would also like to receive a copy of

my data.

After receiving this e-mail, I hope to receive a clear and transparent response from

your part [...]."

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9. On September 20, 2019, the complainant sent another e-mail to the Data Protection Officer

data of the defendant:

"Dear,

A little over 30 days ago, I asked you for further information by

e-mail regarding the processing of my personal data.

Unfortunately, so far I have not yet received a response to my

Questions.

I think I remember that the data controller has 30 days to

accede to a request, extension period of 30 days if the person concerned is

informed and that there is a valid reason. This is currently not the case.

If no response is provided within a reasonable time, I plan to undertake

other steps [...]."

10. On October 10, 2019, the complainant filed a complaint with the Authority for the Protection of data.

His complaint mentions the facts described above as well as the following: "Then the

communications have completely ceased on [the defendant's] side. In the meantime we are

almost 2 months later, including more than a month without communication."

11. The Complainant attached to this complaint several pieces of evidence attesting to the communication between the plaintiff and the defendant.

Procedure

12. On October 29, 2019, the Front Line Service of the Data Protection Authority

declares the complaint admissible and forwards it to the Litigation Chamber.

13. On November 7, 2019, the Litigation Chamber sent a request to the complainant concerning

the transmission of additional evidence that he mentions in his complaint. The complainant

send this additional evidence on 22 November 2019.

14. On November 28, 2019, the plaintiff and the defendant were informed that a case was pending,

for which the Litigation Chamber decided that it could be dealt with on the merits,

in accordance with article 98 juncto article 95, § 2 of the LCA. The plaintiff and the defendant

are invited to submit their arguments and conclusions within the deadlines set by the

Litigation Chamber.□

15. On January 6, 2020, the defendant files its conclusions.□

16. The defendant specifies first of all that the e-mails were not actually intended for the□

complainant but to another person with the same first and last name. The person is□

described by the defendant as "Targeted Recipient".□

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17. The defendant goes on to say that it claimed the personal data□

additional information, namely the complainant's postal address and date of birth, by e-mail□

with the complainant on August 26, 2019 for identification, "given the existence of homonyms□

and in order to be able to identify the e-mail in question".□

18. Regarding the communication of August 26, 2019, the Respondent writes the following:□

"After verification, it turned out that the Complainant did not appear in the database□

of [the defendant] and was therefore unknown to [the defendant]. This was confirmed at□

Complainant by e-mail on August 26, 2019.□

Following this, [the defendant] began an investigation regarding the email itself.□

On September 13, the Complainant sent a new list of questions [...] and [the□

respondent] adapted the scope of its investigation in order to also be able to provide□

answers to these questions."□

19. The defendant asserts in its submissions that it has in the meantime been able to complete the "analysis" of□

the situation. It formulates the findings of this analysis as follows:□

“i) The e-mail that the Complainant received is the e-mail V which was intended for the Intended Recipient;□

ii) In the file of the Intended Recipient there was an e-mail address [...] which, on the basis of the□

exchanges by e-mail with the Complainant, turns out to be that of the Complainant (and not that of the□

Intended Recipient);□

iii) Human error was the cause of this error;□

iv) This error had not yet been discovered at the time of sending the email V.□

In order to prevent the Complainant's e-mail address from being used again in the future,□

[the defendant] has adapted the form of the Intended Recipient."□

20. The defendant asserts that it complied with Articles 12 and 14 of the GDPR in its□

communications with the complainant, given that it checked the complainant's identity within the time limit□

a week and confirmed to the complainant that he was not in the database of the□

defendant. As to the lack of response to the complainant's other questions and to the□

information and communications relating to other actions, the defendant advances the□

following defence:□

"The further investigation into the origin of the presence of the Complainant's e-mail address□

in the Intended Recipient file turned out to be a more complex analysis.□

Consequently, the investigation was not closed at the time the Complainant submitted his□

complaint. However, [the defendant] now considers that it has provided the information□

necessary and have taken the appropriate measures to prevent this e-mail address from being□

again processed in error."□

21. The Respondent requests the dismissal, since "the processing of the Complainant's e-mail address□

resulted from a manual error" and that the processing of personal data was□

"purely accidental". The defendant further points out that it removed the e-mail address of□

its systems "after an investigation". The defendant does not specify when it□

took this action. In the alternative, the defendant asks for the judgment to be suspended.□

According to her, other measures or sanctions would be "disproportionate".□

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22. If the Litigation Chamber decides to proceed with the publication of its decision, the□

defendant requests that it be anonymized.□

23. The Complainant does not submit any submissions in reply.□

24. On February 4, 2020, the defendant confirms the content of its first conclusions.□

25. In order to allow the defendant to defend itself concerning the amount of the fine□

administrative set by the Litigation Chamber, the latter decided to list the violations in question in its standard form "reaction form against a envisaged fine". This "fine form" was sent to the defendant by e-mail on May 12, 2020, mentioning that the defendant could react regarding the circumstances particulars of the case, the envisaged amount of the fine and the annual figures which have been submitted¹.

26. The defendant replies to the fine form by e-mail of May 29, 2020, with its arguments relating to the amount of the fine [...]. The defendant also draws the attention on the importance of the decision being anonymized in case of possible publication and that the elements that could lead to the identification of the defendant be deleted. The defendant asserts that the identification of the defendant in the press could lead to reputational damage.

2. Motivation

2.1.

The principles relating to the processing of personal data and the lawfulness of the processing (Articles 5 and 6 GDPR)

27. Article 5, paragraph 1, point a) of the GDPR provides in particular that personal data personnel must be processed lawfully, fairly, transparently and accurately. Article 6 of GDPR establishes how lawful processing takes place.

a) The lawfulness of the processing and the responsibility of the controller

28. On August 19, 2019, the complainant received an email to promote a workshop for freelancers and small businesses; this is a message that may be considered marketing direct². The e-mail has the subject "W". The e-mail is sent to the personal e-mail address of the complainant. According to Article 4(1) of the GDPR, an e-mail address is a data of a personal nature. The plaintiff mentions that he is not a client of the defendant.

29. The Litigation Chamber considers that the processing of the complainant's e-mail address by the

defendant is not lawful within the meaning of Article 6 of the GDPR and is based in particular on the

1 The invitation to limited conclusions was sent by e-mail in the context where the Litigation Chamber was in

the impossibility of sending this invitation to limited conclusions by registered mail, in accordance with article 95 of the LCA, in

mentioning that the Litigation Division was prepared to grant, if necessary, longer deadlines for the submission of

conclusions for the defendant in the context of the spread of the Coronavirus. The defendant did receive this e-mail and

responded to it within 3 weeks.

2 In accordance with what is set out on this subject in Recommendation no. 01/2020 of 17 January 2020 of the Autorité de la

data protection relating to the processing of personal data for direct marketing purposes and more

particularly

:

https://www.autoriteprotectiondonnees.be/sites/privacycommission/files/documents/Recommendation_01-

2020_marketing_direct.pdf.pdf, point 14.

available

definition,

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statements by the defendant itself in this regard. This is the use of an address

erroneous email that does not belong to the person the defendant wishes to contact.

None of the conditions listed in Article 6, paragraph 1 of the GDPR are met. According to

defendant, the processing is due to human error. The defendant's own analysis

results in the following technical statement:

"In the card of the Targeted Recipient appeared an e-mail address [...] which, on the basis of the exchanges by e-mail with the Complainant, turns out to be that of the Complainant (and not that of the Intended Recipient)"

30. The Litigation Division understands the defendant's argument that this is a

manual error and never intended to process the personal data

or to contact the plaintiff, especially since the defendant had no interest in

contact the complainant with a message directed to independent contractors.

The complainant is not part of the target audience. Furthermore, in this case, it turns out that it is

unlawful isolated processing, due, according to the defendant, to a manual error due to

the existence of a person bearing the same surname and first name as that of which the defendant

said to process personal data lawfully.

31. The Litigation Division nevertheless draws attention to the fact that the "manual error" in

the origin of the problem in no way cancels the responsibility of the data controller³.

This is also the case when the controller has already become aware of the fact

that processing does not comply with the legal provisions on the protection of

personal data and that he still continues the processing - after having

found that the complainant is not in its systems - as illustrated by the message from

direct marketing of September 12, 2019.

32. In this context, the Litigation Division finds that such processing has adverse effects

negative for the person concerned. The mere receipt of an e-mail which, moreover, is not

intended for the addressee, may be perceived as disturbing and, therefore, considered as

detrimental to a data subject.

b) The accuracy of the processing of personal data

33. When the defendant asserts on August 26, 2019 that on the basis of the plaintiff's identifiers⁵

which have been provided, "no link" can be established with a person who is known to the

defendant and that the plaintiff received again, more than two weeks later, a

similar message from the defendant, this indicates that the defendant not only deals

(again) the complainant's personal data unlawfully but also infringes

the principle relating to the accuracy of personal data, in accordance with Article 5,

paragraph 1, point d) of the GDPR.

3 In accordance with Article 24 of the GDPR, attention can be drawn to the appropriate technical and organizational measures

that the controller must take to bring its processing into compliance with the provisions of the GDPR.

4 See recital 75 of the GDPR: "Risks to the rights and freedoms of natural persons, the degree of likelihood of which

and of varying severity, may result from the processing of personal data which is likely to result in

physical or material damage or moral prejudice, in particular: when the processing may give rise to a

discrimination, identity theft or theft, financial loss, damage to reputation, loss of

confidentiality of data protected by professional secrecy, to an unauthorized reversal of the process of

pseudonymization or any other significant economic or social damage.[...]"

5 These are certain data that can lead to the identification of a person, a company, ...

2.2.

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34. Already on August 16, 2019, the day of receipt of the first e-mail from the defendant by the

complainant, the latter makes it clear that the processing of the e-mail address may be a

unlawful processing. This is clear from the message and the questions that the Complainant

addressed to the defendant:

"Although I am not a client of [the defendant], I still received an e-mail

this day [...]"

- Where did you get my email address and what party did you get it from?

- On what legal basis do you rely to send me this e-mail?

- What information do you still have about me?

35. In addition, attention can also be drawn to Article 5(1)(d)

GDPR:

“Personal data must be accurate and, where necessary, kept

day ; all reasonable steps must be taken to ensure that the data to be

personal character which are inaccurate, having regard to the purposes for which they

are processed, erased or rectified without delay (accuracy)”

36. The defendant’s continued use of the inaccurate personal data

with the e-mail of September 12, 2019 indicates that she did not rectify or erase "without delay" the

incorrect link in its systems to the complainant's email address. The fact that the defendant

does not stop using the email address for direct marketing purposes, more than three weeks

after the complainant's first request and more than two weeks after the own confirmation

plaintiff that it is not known to the defendant indicates the failure to take "measures

reasonable" in order to ensure the accuracy of the processing of personal data at the

meaning of Article 5, paragraph 1, point d) of the GDPR.

Transparency of information and communications and procedures for exercising rights

of the data subject and the exercise of the right of access by the data subject in

connection with the liability of the defendant (article 12 juncto article 15 of the GDPR), read

in conjunction with the controller's liability (Article 24 GDPR)

a) Article 12 GDPR

37. The Complainant sends the Respondent a request for the exercise of the right of access (Article 15

GDPR). This had already taken place in the complainant's first email of August 19, 2019.

According to Article 12, paragraph 3 of the GDPR, the defendant must "[provide] to the person

concerned information on the measures taken following a request made in

application of Articles 15 to 22, as soon as possible and in any case within a

period of 1 month from receipt of the request".

38. In the e-mail of August 26, 2019, the complainant learns from the defendant that he does not appear

in the database" of the defendant. The defendant then asks the plaintiff

to forward the e-mail itself so that it can examine whether it is indeed one of

his emails and not a phishing message. The complainant responded to this request on

same day, i.e. August 26, 2019, and forwards the defendant's e-mail from

August 19, 2019.

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39. Over the next 17 days, no communication took place between the Complainant and the defendant.

40. On September 13, 2019, the complainant sends a reminder clearly referring to the email of August 19, 2019 and attaching a new direct marketing email from the defendant dated September 12, 2019. The complainant again submits a request for the exercise of the right of access to the defendant with questions similar to those formulated in the e-mail sent to the defendant on August 19, 2019.

E-mail from the plaintiff to the defendant

August 19, 2019

"Where did you get my email address and from which part did you get it?"

"On what legal basis do you rely for send me this email?"

"What information do you still have my subject ?"

E-mail from the plaintiff to the defendant

September 13, 2019

"Where did you get my data?"

"What legal basis under the lines GDPR guidelines do you use to send me these emails?"

"What data do you hold for me"

regarding ?"□

41. Only the wording of the questions is different and the Complainant further adds, making□

reference to the provisions of the GDPR, arguments as to why it□

suspect that it is not a lawful treatment. Apart from the first question□

mentioned in the table above, the plaintiff also writes: "Therefore, I would like to be□

informed of how you obtained my personal data and of the□

how these are secured, etc."□

The defendant also does not respond to the email of September 13, 2019.□

42. In its conclusions, the defendant refers to the email of September 13, 2019 containing□

some additional questions (according to the defendant "a new list of questions")□

in order to argue that this extends the scope of the investigation of complaints and questions from the□

plaintiff: "the defendant adapted the scope of its investigation to also be able□

answer these questions."□

43. On September 20, 2019, the complainant again sends an e-mail in which he reminds the□

defendant that he addressed to the defendant "a request concerning the treatment of□

my personal data just over 30 days ago". It draws the attention of the□

defendant on the fact that he plans to take "other steps" if no response□

provided by the defendant "within a reasonable time".□

44. The defendant does not respond to this message from the plaintiff either and more than two weeks□

later, on October 10, 2019, the complainant finally filed a complaint with the Authority of□

Data protection.□

45. On reading the facts, it clearly appears that the defendant did not follow up "within the□

as soon as possible" to the request to exercise the right of access. The fact that no response has been□

made by the defendant to the complainant's last three messages is particularly□

questioning.□

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46. Given that the defendant asserts that it opened "an investigation" following the e-mail of the complainant of August 19, 2019 after finding on August 26, 2019 that the complainant was not known in its systems, the defendant could have at least informed the complainant that this investigation had begun and was in progress since the outcome of the complainant's request depended on it. Pursuant to Article 12, paragraph 1 of the GDPR, it is indeed the responsibility of the person responsible for the processing to "take appropriate steps to provide any information referred to in articles 13 and 14 as well as to carry out any communication under articles 15 to 22 and Article 34 with regard to the processing to the data subject in a concise manner, transparent, comprehensible and easily accessible, in clear and simple terms [...]".

47. If the defendant itself claims in its pleadings to have opened an investigation but does not inform the complainant and does not communicate for weeks about the taking of possible measures and the response to the request to exercise human rights concerned, communication regarding this request for access by the complainant does not take place in accordance with Article 12(1) GDPR.

48. It is also clear that the maximum period of one month after receipt of the request as contained in Article 12(3) of the GDPR has not been complied with. If the defendant had not yet complete its investigation into this and other matters and the complainant's requests, she could have asked for an extension of time, as provided in Article 12(3) GDPR. The Litigation Chamber therefore finds that the defendant also violates Article 12, paragraph 3 of the GDPR.

49. For the sake of completeness, it may be noted that the supplementary questions of the complainant formulated in his e-mail of September 13, 2019 do not give rise to the slightest interruption or suspension of the period referred to in Article 12(3) GDPR. The fact whether the respondent's "scope of investigation" is extended is an internal matter which has not no impact on the responsibility incumbent on it as controller of the processing of comply with the provisions of the GDPR. In other words, on the first access request, the

defendant should have responded adequately within one month of the e-mail from the

August 19, 2019.

50. Given that the defendant concludes in its conclusions that it does not process any other data of a personal character of the complainant and that the processing of the e-mail address is due to an "error of a human", the investigation should not have been of such magnitude that the defendant, until after the complainant has lodged his complaint with the Authority for the Protection of Personal Data, could not reserve the least following the request to exercise the right of access by the complainant. The length of the survey indicates an internal organization that does not facilitate sufficient exercise of the rights of the data subject on the basis of Article 15 of the GDPR as required by Article 12(2) GDPR.

51. For completeness, it may be specified that the defendant's August 26, 2019 request to the complainant to obtain additional information about the identity of the complainant is possible pursuant to Article 12(6) GDPR. The Litigation Chamber considers that the additional identifiers requested by the defendant seem proportional and appropriate to the request in question. In this case, the Litigation Division therefore finds no violation, since Article 12(6) of the GDPR allows the controller to

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doing so, better still, forces him to claim additional identifiers if the identity of the applicant is not established with certainty⁶.

b) Article 15 GDPR

52. The defendant does not give any idea of the data available to it concerning the complainant (even if limited to the complainant's e-mail address) or confirmation that it is processing or not (or other) personal data of the complainant.

Pursuant to Article 15(3) GDPR, however, the controller is obliged to provide a copy of the personal data to the complainant, as data subject, if the latter so requests as part of the right of access.

53. On the basis of the documents in the file, including the submissions of the Respondent, the Chamber
Litigation concludes that under Article 15 of the GDPR, the defendant still has not
given sufficient response to the complainant's request for access.

c) Article 24 GDPR

54. Given the above motivation, it can be concluded that the Respondent did not take
sufficient technical and organizational measures for its processing to be
take place in accordance with the provisions of the GDPR⁷.

55. Based on the provisions of the GDPR and more specifically concerning the responsibility of the
responsible for processing under Article 24 of the GDPR, the Litigation Chamber proceeds
to a concrete assessment of each case. To establish the gravity of the violation, the Chamber
Litigation not only takes into account the specific factual elements of the file but
also of the nature, scope, context and purposes of the processing in the context of which
the facts are located.

2.3.

Information to be provided when personal data has not been collected
with the data subject (Article 14 of the GDPR)

56. The processing of data is based on human error on the part of an employee of
the defendant. The defendant could not have known, at the time of sending the messages
containing direct marketing content, that such personal data had not
not been obtained from the complainant. According to the defendant, this is therefore indeed an "error
manual" after a "human error". The defendant therefore also did not obtain
e-mail address from a third party⁸.

6 In the specific context of this case, it is necessary, given the problem of homonyms, that the head of the
processing requires the additional data for identification and Article 11 GDPR does not apply.

7 Nevertheless, the controller bears the responsibility to comply with the legal provisions under the GDPR,

see DOCKSEY, C., "Article 24. Responsibility of the controller" in KUNER, C., BYGRAVE, L.A. and DOCKSEY, C. (eds.), The EU

General Data Protection Regulation: A Commentary, Oxford University Press, 557(560). □

8 See ZANFIT-FORTUNA, G., “Article 14. Information to be provided where personal data have not been obtained from the data subject” in KUNER, C., BYGRAVE, L.A. en DOCKSEY, C. (eds.), The EU General Data Protection Regulation: A Commentary, Oxford University Press, 434(436): “Article 14 regulates what information must be given to data subject when they do not provide themselves the personal data, but it is collected from third party sources.” □

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57. Since at the time of processing, the Respondent was unaware that the e-mail address had not been obtained from the complainant, nor can he be blamed for not having transmitted to the complainant the information required under Article 14, paragraphs 1 to 4 inclusive GDPR when sending direct marketing messages. In this case, article 14, paragraph 5, point b) of the GDPR applies since the provision of the information turns out to be "impossible". □

58. As an additional positive element in the assessment of compliance with obligations of information as controller, reference may also be made to the links to web pages regarding privacy in emails containing content of the defendant's direct marketing. This allowed the complainant quick access to the confidentiality statement of the defendant and the contact details of the delegate to the Data protection. The above finding is unrelated to the assessment by the Litigation Chamber of the other communications of the defendant with regard to the complainant. □

59. With regard to Article 14 of the GDPR, the Litigation Chamber finds no failure on the part of the defendant. □

3. Violations found and the imposition of an administrative fine □

60. The Litigation Chamber considers that the violations of the following provisions by the defendant are proven: at. □

b.□

vs.□

d.□

Article 5 of the GDPR, since the defendant does not take sufficient measures□

reasonable steps to rectify or erase personal data that has been□

treated wrongly;□

Article 6 of the GDPR, since none of the conditions for lawful processing to take place□

is not met;□

Article 15, juncto Article 12 of the GDPR, since the defendant has not undertaken□

sufficient appropriate measures for the complainant to receive the communication□

referred to in Article 15 of the GDPR in a transparent form; since the defendant□

does not sufficiently facilitate the exercise of the complainant's rights as a person□

concerned; given that the defendant does not provide any response to the plaintiff within the□

one month after receipt of his request; given that the defendant does not provide the□

complainant no response to his request to exercise the right of access;□

Article 24 of the GDPR, since the defendant has not taken the technical measures□

and organizational arrangements to ensure that its processing takes place□

in accordance with the provisions of the GDPR.□

61. Given the economic and social role of the defendant, the Litigation Chamber considers that□

the facts giving rise to a violation of Articles 5, 6 and 12 juncto Article 15 of the GDPR□

are serious and decides to proceed with the imposition of an administrative fine.□

62. The Litigation Division took note of the defendant's annual turnover□

over the past three fiscal years. These figures are for each of these three financial years□

between x and x billion euros⁹.□

9 The concrete annual turnover figures for the 2017, 2018 and 2019 financial years cited are known to the Litigation Chamber.□

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63. In view of Article 83 of the GDPR and the case law of the Court of Markets, the

Litigation Chamber justifies the imposition of an administrative sanction in a

concrete :

a) The seriousness of the violation

64. The Litigation Division finds that the insufficient response to requests for the exercise of

rights of data subjects indicates that the violation of Articles 12 and 15 of the GDPR has been

committed negligently. This also resulted in the complainant suffering more

long as necessary in a disturbing way the disadvantages of unlawful processing seen

that his personal data has not been rectified in a timely manner. Saw the

nature of the defendant's economic activities and related processing, a

organization with shortcomings in terms of appropriate measures aimed at

facilitating the exercise of the rights of data subjects is worrying.

65. The rights of data subjects are part of the essence of the General Data Protection Regulation.

data protection and violations of these rights are punished with the most severe fines

high, in accordance with Article 83, paragraph 5 of the GDPR.

66. The origin of the request to exercise the right of access by the complainant is unlawful processing.

A human error that led to the use of the complainant's email address is causing

unlawful processing. Although this processing does constitute a breach of Articles 5

and 6 of the GDPR, the Litigation Chamber obviously takes into account the fact that this is a

limited violation, concerning - as far as is known - only one data subject.

The fact that the treatment was finally stopped also plays a role in the assessment of the facts

by the Litigation Chamber.

67. For the above reason, the amount of the administrative fine that the Chamber

Litigation imposes is relatively low compared to the annual turnover of

the previous year. The Litigation Chamber could nevertheless impose

a higher fine for similar violations committed by officials of the

treatment of similar economic size in another factual context.□

68. Respondent's failures in communication and transparency□

must be classified as serious, as should the non-rectification of personal data□

staff who prevented the processing of the complainant's e-mail address from taking place□

in a lawful and fair manner is a serious breach of the GDPR. Therefore, according to the□

Litigation Chamber, an administrative fine constitutes an appropriate sanction.□

b) The extent to which the controller has taken technical or□

organizational□

69. The Litigation Chamber understands that within the meaning of the GDPR, the legal mission sometimes involves,□

and rather often, for the defendant and any other data controller, significant□

organizational consequences, in order to be able to take "appropriate measures" to□

respond appropriately to requests from data subjects, in accordance with the□

articles 12 and 15 of the GDPR.□

70. However, the Litigation Chamber draws attention to the fact that the provisions of the GDPR□

had already been in force for more than a year at the time of the events and that the□

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defendant had the necessary time to take all the technical and□

organizational measures to bring its processing and processes into compliance with the□

GDPR provisions.□

71. In this context, it is also surprising that the defendant did not reply to the three□

Complainant's latest emails, despite clear and constructive communications from the□

complainant. In this regard, the fact that this may be a small request for the□

defendant does not matter. The provisions of the GDPR concern each processing of□

personal data.□

c) The duration of the violation□

72. With regard to the duration of the violation, the Litigation Chamber draws attention to the□

period between the plaintiff's request to the defendant and the filing of the complaint by the complainant to the Data Protection Authority. The fact that no response was brought to the last three messages of the complainant and this for a period of more than one months, until the complaint is lodged with the Data Protection Authority, must be considered a long-term violation of the obligation of a transparent communication in the context of the exercise of the rights of the data subject, in accordance with Article 12(1) GDPR. Furthermore, the defendant did not comply with the deadline set out in Article 12(3) of the GDPR; it should be noted that until the presentation of the conclusions in the present case, the complainant had not received any satisfactory response to his request for access.

73. Furthermore, the Litigation Division underlines the fact that the defendant had already indicated the August 26, 2019 that the processing was potentially unlawful but that the complainant still has received a direct marketing email on September 12, 2019. This indicates that the duration of the violation is longer than if the defendant had implemented technical measures effective organizational and organizational measures to put an end to the unlawful processing after the rectification personal data, in accordance with Articles 5 and 6 of the GDPR.

d) Conclusion

74. All the elements set out above justify an effective, proportionate and dissuasive, as referred to in Article 83 of the GDPR, taking into account the assessment criteria that it contains, up to an amount of 10,000 euros. The Litigation Chamber emphasizes that in the present case, the other criteria of Article 83, paragraph 2 of the GDPR are not of such a nature to give rise to an administrative fine other than that set by the Litigation Chamber in the context of this decision.

4. Anonymization or pseudonymization of the Litigation Chamber's decision when of the publication

75. The Litigation Division takes note of the defendant's request to proceed with a

anonymization as complete as possible of the decision by the Litigation Chamber if it is published. The defendant specifies that the presence of elements which could lead to its identification in the press or in any other way may give rise to an "infringement irreparable to reputation".

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76. The Litigation Chamber emphasizes that it is very important - in the context of knowledge data protection, data protection awareness and practical interpretation of this notion - to communicate in a sufficiently transparent manner on its activities and to make its decisions known to the public. Therefore, it is important that the Litigation Chamber publishes as many decisions as possible, if not all of the decisions it makes.

This possibility is provided for by the national legislator in Article 95, § 1, 8° and in Article 100, § 1, 16° of the LCA.

77. The publication of the decision serves to draw the controller's attention to its responsibility. This responsibility is central to the GDPR. We can find that the negative perception that goes with not removing the name of a party, and more specifically the name of the defending party, in a published decision is a consequence of the rarity of the cases in which one does not carry out the deletion of the name of the defendant. In fact, the decision to delete the names of the parties falls within the discretionary assessment of the Litigation Chamber - the non-deletion of names is not an additional penalty.

78. Although the Litigation Division decides on a discretionary basis in each of its records whether or not to pseudonymize the decision, it seems in this case that the defendant's request can be granted, at any rate as regards the pseudonymization for publication. The risk of reputational damage and the possible importance of this constitute elements that the Litigation Chamber may take into consideration in its reflection as to whether or not to remove certain

identifiers, but the Litigation Chamber is not obliged to include in its decision □

a specific rationale for this decision. □

79. Given the importance of transparency regarding the decision-making process of the Chamber □

Litigation, this decision is published on the website of the Protection Authority □

Datas. However, it is not necessary for this purpose that the identification data of the □

parties are communicated directly. □

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FOR THESE REASONS, □

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

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to order the defendant, in accordance with Article 58, paragraph 2, c) of the GDPR □

and in article 100, § 1, 6° of the LCA, to fully respond to the request for access □

of the complainant, pursuant to Article 15, juncto Article 12 of the GDPR within one □

months after notification of this decision; □

to order the defendant, in accordance with Article 58, paragraph 2, d) of the GDPR □

and in article 100, § 1, 9° of the LCA, to immediately put the processing of data □

of a personal nature in accordance with the provisions of the GDPR, in accordance with the □

Articles 5 and 6 of the GDPR; □

to call the defendant to order, in accordance with Article 58, paragraph 2, b) □

of the GDPR and Article 100, § 1, 5° of the LCA, for not having sufficiently facilitated □

the exercise of the right of access by the complainant and having responded late to this request, □

in accordance with Article 15, juncto Article 12 of the GDPR; □

to impose on the defendant, in accordance with Article 58, paragraph 1, i) juncto □

Article 83 of the GDPR and Article 100, § 1, 13° of the LCA, a fine of

10,000 euros for violations of articles 5, 6 and 12 juncto article 15 of the GDPR.

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