Litigation Chamber

Decision on the merits 80/2022 of 13 May 2022

1/11

File number: DOS-2020-00190

Subject: sending by a City of e-mails to a mailing list without hiding the addresses of the

recipients

The Litigation Chamber of

the Data Protection Authority, made up of

Mr Hielke Hijmans, Chairman and Messrs Christophe Boeraeve and Frank De Smet,

members, taking up the matter in this composition;

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

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

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

on data protection), hereinafter "GDPR";

Having regard to the Law of 3 December 2017 establishing the Data Protection Authority (hereinafter

ACL);

Having regard to the internal regulations as approved by the House of Representatives on 20

December 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:

The complainant :

Mr X; hereinafter “the plaintiff”;

Y, hereinafter "the defendant".

The defendant:

I. Facts and procedure

1. On January 14, 2020, the complainant lodged a complaint with the Data Protection Authority

data (APD) against the defendant.

2. The subject of his complaint relates to the sending by the defendant of three e-mails to a list of

dissemination, of which the complainant is a part, without hiding the e-mail addresses of the recipients, the sending

that took place with all recipients in "carbon copy" (CC) and not in "carbon copy

invisible” (ICC). The complainant therefore denounces the communication of his e-mail address to

all of said mailing list.

3. The sending of these e-mails is part of an urban redevelopment project of the

defendant. On the occasion of this project, the defendant organized a citizen participation

through participatory workshops.

4. In this context, the defendant contacted by e-mail the persons selected for these

workshops to invite them to participate. The plaintiff having applied, the defendant

sent him on October 2 and November 4, 2019, two emails about these

participatory workshops.

5. As of November 12, 2019, the emails sent by the defendant in the context of these

participatory workshops no longer hid the other recipients of the mailing list.

6. The plaintiff drew the attention of the defendant to the contravention of this practice to the GDPR

immediately, as of November 12, 2019, upon receipt of the first email sent in CC and

not in CCI. Despite this, the defendant sent further visible copy (CC) emails to all

recipients, on December 19, 2019, January 14, 2020 and January 21, 2020.

7. In this context, upon receipt of the second problematic email on December 19, 2019,

the complainant again objected to the processing of his personal data on 20

December 2020 and this time copied the Data Protection Officer to his message.

data (DPO) of the defendant.

8. On January 14, 2020, in the absence of a response from the defendant, the plaintiff seized

ODA as specified in point 1 above.

Decision on the merits 80/2022 - 3/11

9. On January 17, 2020, the complaint was declared admissible by the Service de Première Ligne (SPL) of

the APD on the basis of articles 58 and 60 of the LCA and transmitted to the Litigation Chamber in

pursuant to Article 62, § 1 of the LCA.

10. In an email dated 28 January 2020, i.e. after the complainant's complaint was filed with the DPA, the

defendant, through its DPO, acknowledged that the processing of data to

personal nature of the complainant had not obtained his consent and that the latter was

entitled to request the immediate termination of the treatment. To justify his lack of

response since November 12, 2019 (points 6 and 7), the defendant, still by the pen of

its DPO, cited poor communication of information internally.

11. On February 10, 2020, the Litigation Chamber decides to request an investigation from the Service

d'Inspection (SI), pursuant to Articles 63, 2° and 94, 1° of the LCA.

12. On February 11, 2020, the Litigation Chamber's request to conduct an investigation was

transmitted to the IS in accordance with Article 96, § 1 of the LCA.

13. On October 27, 2020, the IS investigation was closed, its report was attached to the file and the file was

forwarded by the Inspector General to the President of the Litigation Division (art. 91, § 1 and § 2

of the ACL).

14. According to its report, the SI concludes that the Respondent breached Articles 4.1, 5.1(b),

5.1.c), 6.4, 12.3, 24.1, 24.2, 25.1, 25.2 and 32.1 of the GDPR for the following reasons:

has)

There is a processing of e-mail addresses in contravention of the provisions of the GDPR

consisting of the dissemination of personal data (e-mail addresses) to the

meaning of Article 4.1. of the GDPR.

b) This dissemination of personal data entails non-compliance with the principle of

minimization which implies that the sending of an e-mail cannot have the consequence that the

contact data of the recipients are communicated to all persons

to which the mail in question is addressed (article 5.1.c) of the GDPR).

c) The security of personal data has not been taken into account in the

contentious mailings leading to unauthorized disclosure of the e-mail addresses of

participants to all recipients of the mailing list (article 32.1 of the

GDPR).

d) Sending e-mails without hiding the addresses of the recipients constitutes processing

later incompatible with the initial purposes of the complainant's data and the list of

dissemination (article 5.1.b) juncto 6.4 of the GDPR). This processing does not comply with the principles of

Decision on the merits 80/2022 - 4/11

data protection by design and data protection by default (article

25.1 and 25.2 GDPR).

e) In its capacity as data controller, the defendant did not implement the

appropriate technical and organizational measures to ensure that the processing is

carried out in accordance with the GDPR, in contravention of Articles 24.1 and 24.2 of the

GDPR.

f) since the defendant has not responded within one month to the request for the exercise of

complainant's rights, it was guilty of a breach of Article 12.3. of the GDPR.

15. On January 12, 2021, the Litigation Chamber decides, pursuant to Article 95, § 1, 1° and Article 98

of the ACL, that the case can be dealt with on the merits.

16. On January 27, 2021, the parties are informed by e-mail of the provisions as set out in

article 95, § 2 as well as article 98 of the LCA. They are also informed, pursuant to Article

99 of the LCA, deadlines for transmitting their conclusions.

17. The deadline for receipt of the defendant's submissions in response was set for 10

March 2021, that for the plaintiff's reply submissions as of March 31, 2021 and finally that for

the defendant's reply submissions on April 21, 2021.

18. On March 16, 2021, the Litigation Chamber receives the submissions in response from the defendant.

The following arguments are developed there:

- Firstly, the defendant does not dispute that electronic addresses constitute

personal data. However, raising the fact that the complainant's email address was

made public by the plaintiff himself on two websites, the defendant wonders

as to the private nature of this data in the particular case.

- Secondly, referring to the objective of participatory democracy enshrined in various

political documents adopted at regional or municipal level, the defendant indicates that

the purposes of the processing are determined, explicit and legitimate1.

- Thirdly, the defendant indicates that there is no violation of the principle of minimization

(article 5.1.c) of the GDPR) because it has taken care to collect and process only data strictly

necessary for the implementation of the processing which consists of the exchange of information with the

workshop participants. According to her, the only data collected and processed are the

e-mail addresses of citizens who have expressed their wish to participate in the process

of citizen participation. Moreover, the defendant asserts that, contrary to the conclusions

1 In particular: the Declaration of Walloon Regional Policy 2018-2024, the Declaration of municipal policy of 20 December

2018, the Transversal Strategic Plan 2019-2014

of the IS, does not come under the principle of minimization the fact that an e-mail cannot have as

consequence that the contact details of the recipients are communicated to all

persons to whom the e-mail in question is addressed.

- Fourthly, the defendant does not dispute that the sending of the e-mails without hiding the

e-mail addresses of all the recipients of a mailing list (sending in CC and

not in CCI) constitutes further processing in this case. According to her, however, it is not

processing incompatible with the initial purposes pursued. Therefore, no violation

of Articles 5.1.b) juncto 6.4 of the GDPR has taken place.

- Fifth,

the defendant asserts that, as regards the technical measures and

organisational, useful precautions framing the processing were taken from the outset.

- Finally, sixthly, with regard to the breach of Article 12.3 of the GDPR, the defendant does not

does not dispute that the one-month period provided for by this article was not respected and justifies this by

an internal communication error.

19. In addition, the defendant also lists in its pleadings the actions taken by its DPO

in order to guarantee the security of personal data. In this respect, the defendant indicates

have taken the following measures:

- As for the complainant's complaint, contact was made with the department responsible for

sending of the disputed e-mails, a response was sent to the complainant on January 28, 2020 (point

10) and a treatment sheet was produced.

- As more general measures, a reminder was sent to all agents relating to

the security measures to take when sending "grouped" emails and further reflection

within the DPO Unit has been carried out.

20. As of March 31, 2021, the Complainant had not filed any pleadings in reply as required.

possible to do so in accordance with the procedural timetable. The defendant did not submit

submissions in reply and none of the parties requested a hearing.

II. Motivation

II.1. Regarding breaches of the GDPR

21. The defendant has the e-mail addresses of the participants in the redevelopment project

urban, including those of the complainant, in order to be able to communicate with them about the said project. The object

of the complainant's complaint not concerning the basis of lawfulness of the initial processing of his data

for which he indicates having given his consent, the Litigation Chamber will not examine this

aspect and assumes that for obtaining such data there is a basis of lawfulness such that

referred to in Article 6.1 of the GDPR.

22. With regard to the subject of the complaint, the Litigation Division does verify to what extent the

defendant may share the complainant's contact details with third parties, in this case with the

other participants in participatory workshops2.

23. In accordance with Article 5.1. b) GDPR, the processing of personal data for

purposes other than those for which the personal data was collected

initially can only be authorized if it is compatible with the purposes for which the

personal data was initially collected3.

24. As the Litigation Chamber mentioned in point 18 above, the defendant does not

does not dispute in its conclusions that the communication of the complainant's e-mail address to

other participants in the participatory process constitutes further processing. However the

defendant is of the opinion that this processing is not incompatible with the purposes for which

the personal data was collected initially – either the communication with this

last within the framework of the participatory workshops - and is part of the objective of

strengthening of the city's participatory democracy. It should be emphasized here that the conclusions of the

defendant are in this respect in contradiction with the initial position of the latter which, by the pen

of its DPO, recognized on January 28, 2020 the contrariety of this sending with the GDPR (point 10).

25. Taking into account the criteria listed in article 6.4. of the GDPR and its recital 504, it should be

check whether the subsequent processing - i.e., as already specified, the dissemination by e-mail of the

contact details of the complainant to other participants in the participatory process - is compatible or not

with the purpose of the initial processing.

26. The Litigation Chamber notes that the defendant processed the data at□

personal character in the context of his mission. However, the complainant could in no way□

reasonably expect the defendant to share this same data with third parties□

who certainly have a specific link with the defendant given that they are participants in the same□

workshop, but which for all that are no less foreign to the relationship between the complainant and the□

respondent5. Along the same lines, the European Data Protection Board (EDPB)□

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background 03/2021□

background 03/2021□

2 Decision□

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-03-2021.pdf.□

3 Decision□

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-03-2021.pdf.□

4 Recital 50 of the GDPR: [...] In order to establish whether the purposes of further processing are compatible with those for whi

personal data was initially collected, the controller, after complying with all requirements□

related to the lawfulness of the initial processing, should take into account, inter alia: any link between these purposes and the p

planned later; the context in which the personal data was collected, in particular reasonable expectations

of the persons concerned, according to their relationship with the data controller, as to the subsequent use of said

data ; the nature of the personal data; the consequences for data subjects of the further processing

intended ; and the existence of appropriate safeguards both in the context of the initial treatment and the subsequent treatment

5 See. for example in this respect the already cited decision 03/2021 of the Litigation Chamber.

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Decision on the merits 80/2022 - 7/11

considers that the persons concerned by the data processing should not be taken by

surprise as to the purpose of the processing of their personal data6.

27. It follows that there is no question of compatible subsequent processing, contrary to what

argues the defendant, so that a separate legal basis was required for the

communication of the contact details of the complainant to the other participants could be qualified as

lawful7.

28. Processing of personal data, including further processing

incompatible as in the present case, is in fact lawful only if it is based on a basis of lawfulness of its own.

29. Recital 50 of the GDPR8 indicates in this respect that a specific legal basis is required for the

processing of personal data for other purposes which are not compatible

with the purposes for which the personal data was originally collected.

These separate legal bases are those defined in Article 6.1. of the GDPR.

30. The defendant does not itself mention any basis of legality allowing it to proceed with the

processing of data that is the subject of the complaint, namely the communication of the e-mail address of the

complainant to the other participants in the participatory process9.

31. The defendant indeed considers that the said processing is compatible with the processing

initial as reported in its submissions in response (point 18 above) or recognizes sometimes

that the further processing complained of by the complainant is contrary to the GDPR (point 10)) admitting

that this is an error.

32. The Litigation Chamber could limit itself to noting that the defendant having wrongly judged that

the subsequent treatment was compatible with the initial treatment, it does not invoke - admittedly logically

- no basis of lawfulness in support of the disputed processing10 (subsequent incompatible) that it carried out and

thus violates Articles 5.1.b), junto 6.4. and 6.1.11 GDPR.

33. Without being obliged to do so, the Litigation Division will however examine below whether, in this case, the

contentious communications from the complainant's e-mail address may be based on one of the bases of

6 European Data Protection Board (EDPB), Guidelines on transparency within the meaning of Regulation (EU) 2016/679,

item 45 https://ec.europa.eu/newsroom/article29/items/622227/en

7 Along the same lines see. the substantive decision 03/2021 of January 13, 2021 of the Litigation Chamber, point 14

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-03-2021.pdf.

8 Recital 50 of the GDPR: The processing of personal data for purposes other than those for which the

personal data was initially collected should only be permitted if compatible with the purposes for

which the personal data was originally collected. In this case, no legal basis distinct from that which

permitted the collection of personal data will be required. [...]

9 Along the same lines, see. decision on the merits 03/2021 of January 13, 2021 of the Litigation Chamber, point 17

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-03-2021.pdf.

10 The Litigation Chamber recalls here the obligation for any data controller to identify, before proceeding with the processing,
the adequate basis of lawfulness pursuant to Article 6.1. of the GDPR. See. in this sense decisions 38/2021, 42/2022 and 48/20
available in particular on the APD website – “Decisions” section.

11 Failing to be compatible, the disputed processing would, as has been demonstrated, have had to rely on a proper basis of law
which is lacking in this case. It therefore follows from the breaches noted in Articles 5.1.b) and 6.4. of the GDPR a breach of
section 6.1. GDPR as well.

lawfulness set out in Article 6.1. under a), b), c), d), e) and f). In this case, the Litigation Chamber concludes
that this further processing of personal data does not have as a legal basis any of
these foundations. Indeed, the processing is not based on the consent of the complainant (Article
6.1.a) of the GDPR combined with Article 7 of the GDPR). The processing is not necessary for the performance of a
contract – which does not exist – to which the plaintiff would be a party or to the execution of measures
pre-contractual agreements taken at his request (article 6.1.b) of the GDPR). The treatment is also not
necessary for compliance with a legal obligation to which the defendant would be subject (article 6.1.c)
GDPR). The processing is unquestionably not necessary to safeguard the interests
complainant’s vitals (article 6.1.d) of the GDPR). Article 6.1.f) of the GDPR cannot be invoked by the
defendant pursuant to Article 6.1. paragraph 2, the defendant being a public authority
having carried out the disputed processing within the framework of its mission. As for Article 6.1.e) of the GDPR,
the Litigation Chamber considers that it could not be invoked by the defendant since
that even admitting that said processing takes place in the context of the performance of a mission
interest vested in the defendant, the necessity test is not met. In effect,
sharing the complainant's email address with other participants in the workshops in question
is not strictly necessary for the performance of this mission.

34. In the absence of a basis of lawfulness justifying the (subsequent incompatible) processing of the data of the
plaintiff, the Litigation Chamber concludes that the defendant violated Articles 5.1.b) juncto
6.4 and 6.1.12 of the GDPR in that the email address of the complainant has been processed

later incompatible with the determined, lawful and legitimate purposes for which they were

been collected13, without being able to rely on a basis of proper lawfulness.

35. In addition, in the absence of a response to the complainant's opposition request within one month

provided for by Article 12.3 of the GDPR – which exceeding of the deadline is not contested by the

defendant (point 10), the latter having left the complainant unanswered between 12 November

2019 and January 28, 2020 – the defendant breached this provision.

36. These violations of Articles 5.1.b), junto 6.4 and 6.1. of the GDPR as well as article 12.3. GDPR

testify that the defendant, as controller, did not implement

the appropriate technical and organizational measures to ensure and be able to

demonstrate that such processing is carried out in accordance with the GDPR. It contravenes for this reason

in Article 24 of the GDPR. Under the terms of this article, the controller is required to

implement appropriate technical and organizational measures to ensure and be

able to demonstrate that the processing is carried out in accordance with the GDPR taking into account

the nature, scope, context and purposes of the processing as well as the risks, including the degree

probability and severity varies, for the rights and freedoms of natural persons.

12 See. footnote 11 above.

13 Article 5.1.b) of the GDPR.

37. As the SI mentions in its investigation report, measures must also aim to ensure compliance

of Articles 25 and 32 of the GDPR. In the absence of sufficient evidence attesting to a

breach of these last provisions, the Litigation Chamber does not retain them here under

breaches of the GDPR on the part of the defendant. The Litigation Chamber specifies in this

respect that depending on the specific case, the subject of the complaint, the concrete circumstances of

each file and in particular the efforts made by the party in question to comply with the

GDPR during the procedure, it can choose not to retain a breach of one or

the other provision of the GDPR related to the main breach noted (even if it was singled out

by the IS) and is limited to reminding the data controller of his obligations without this reminder

does not in any way constitute a corrective measure or a sanction within the meaning of Article 100 of the

ACL..

38. The Litigation Chamber also considers that it is not relevant in this case to qualify the

communication of the complainant's email address to the other recipients of the mailing list

infringement of the principle of minimization (article 5.1.c) of the GDPR). There was also no violation

of section 4.1. of the GDPR.

39. For all intents and purposes, the Litigation Chamber adds that the fact that the complainant published his

e-mail address on either website has no impact on the necessary compliance with the

the data protection rules enshrined in the GDPR that apply to the processing concerned.

There is indeed reason to adopt a treatment-based approach, a principle which is at the heart of the

protection guaranteed by the GDPR. What the defendant calls the loss of the "private" character of

his e-mail address in his conclusions has no impact on the definition of "data to

personal nature" than on the conditions of the disputed processing. In general, the

data made public remaining “personal data” to which the GDPR

applies. While the GDPR certainly brings certain nuances to the conditions of their processing in

specific contexts, these are not applicable in this case.

II.2. Regarding corrective measures and sanctions

40. Under Article 100 LCA, the Litigation Chamber has the power to:

1° dismiss the complaint without follow-up;

2° order the dismissal;

3° order a suspension of the pronouncement;

4° propose a transaction;

(5) issue warnings or reprimands;

6° order to comply with requests from the data subject to exercise his or her rights;

(7) order that the person concerned be informed of the security problem;

8° order the freezing, limitation or temporary or permanent prohibition of processing;

9° order the processing to be brought into conformity;

Decision on the merits 80/2022 - 10/11

10° order the rectification, restriction or erasure of the data and the notification thereof;

ci to data recipients;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

13° to impose administrative fines;

14° order the suspension of cross-border data flows to another State or an organization

international;

15° forward the file to the public prosecutor's office in Brussels, who informs it of the follow-up

data on file;

16° decide on a case-by-case basis to publish its decisions on the website of the Protection Authority

Datas.

41. In assessing the appropriate sanction and/or corrective measure, the Chamber

litigation takes into account that, notwithstanding the fact that by way of conclusions it pleaded the

contrary, the defendant, through the pen of its DPO, admitted the existence of further processing

contrary to the GDPR and explained that the non-compliance with the deadline provided for in Article 12.3 of the GDPR was due

an internal communication error. The Litigation Chamber also takes into account the approach

of GDPR compliance initiated by the defendant aimed at remedying the shortcomings

raised in this case (paragraph 19). In these circumstances, the Litigation Chamber decides to

pronounce a reprimand against the defendant in accordance with article 100 §1, 5° of

the ACL.

Decision on the merits 80/2022 - 11/11

III. Publication of the decision

42. Seen

the importance of

transparency regarding

the decision-making process of

bedroom

Litigation, this decision is published on the DPA website. However, it is not

necessary for this purpose that the identification data of the parties are directly mentioned.

FOR THESE REASONS,

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

- to formulate a reprimand against the defendant pursuant to Article 100 §1, 5° of the

ACL,

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

contracts within thirty days of its notification, with the Authority for the protection of

given as a defendant.

(Sé). Hielke Hijmans

President of the Litigation Chamber