

Litigation Chamber

Decision on the merits 79/2021 of 15 July 2021

File number: DOS-2020-04991

Subject: Complaint for lack of sufficient follow-up given to a request for access in

pursuant to Article 15 of the GDPR

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

Chairman, and Messrs. Dirk Van Der Kelen and Jelle Stassijns;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 relating to the protection of natural persons with regard to the processing of personal data and to the free movement

of this data, and repealing Directive 95/46/EC (General Data Protection Regulation),

hereinafter “GDPR”;

Considering the law of December 3, 2017 creating the Data Protection Authority, hereinafter LCA;

Having regard to the internal regulations as approved by the House of Representatives on December 20, 2018

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

Considering the documents in the file;

made the following decision regarding:

the complainant :

Mr. X, hereinafter "the plaintiff";

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the defendant :

The Consumers' Union Test Achats SC, whose head office is located at rue de Hollande 13,

1060 Brussels, hereinafter "the defendant".

I. Facts and procedure

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1. On September 23, 2020, the plaintiff filed a complaint against Test Achats with the Autorité de data protection (hereinafter DPA). The subject of the complaint concerns the lack of sufficient follow-up given to the right of access.

2. On October 28, 2020, the complaint was declared admissible by the Front Line Service on the basis of Articles 58 and 60 of the LCA and the complaint is transmitted to the Litigation Chamber pursuant to Article 62, § 1 of the LCA.

3. On December 21, 2020, the Litigation Division decides, pursuant to Article 95, § 1, 1° and article 98 of the LCA, that the file can be dealt with on the merits and informs both the complainant and the defendant of this decision. Likewise, the parties have been informed of the provisions of Article 98 of the LCA as well as the deadlines for submitting their conclusions. The deadline for receipt submissions in response from the defendant was set for February 1, 2021, that for the submissions in reply of the plaintiff on February 22, 2021 and that for the submissions in reply of the defendant to March 15, 2021.

4. By letter dated December 24, 2020, the Respondent requested a copy of the file.

5. On January 28, 2021, the Respondent filed submissions in response.

6. On February 22, 2021, the Complainant submitted submissions in reply and indicated that he wanted to be heard at a hearing pursuant to Article 98, 2° of the LCA.

7. On March 15, 2021, the Respondent filed Reply submissions.

8. On June 17, 2021, the parties are heard by the Litigation Chamber, in accordance with Article 53 of the internal rules. On June 23, 2021, the minutes of the hearing are submitted to the parts. On June 28, 2021, the Litigation Chamber receives from the defendant a reaction to the minutes.

9. The Complainant indicates in his complaint that on July 8, 2020, he received from the Respondent a letter dated June 30, 2020 mentioning that a subscription had been concluded between the plaintiff and the defendant following a telephone conversation between them. The letter also mentioned the number of bank account of Mrs Z (the complainant's mother) and confirmed that a direct debit had been granted by the plaintiff to the defendant in order to be able to collect the amount of the subscription. The plaintiff reacted to this letter by letter dated July 15, 2020, asking the defendant to provide him all the personal data available to him. The complainant asks in the letter how his telephone number had been obtained, whereas this number was included in the list "Don't call me again". The Complainant also asked how the Respondent came into possession of the bank account number. The complainant also indicates that he asked these questions via the contact form on the defendant's website on the day of receipt of the letter from the Respondent, namely July 8, 2020. The Complainant did not receive a response.

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10. By letter dated September 12, 2020, the Complainant received a warning from the Respondent indicating that the amount of the subscription could not be withdrawn because the bank had not authorized it. It was asked to pay the amount since magazines had been sent to the complainant. In response to the warning, the Complainant returned a letter to the Respondent stating that there was no question of a validly established contract and that consequently, no amount was due to the defendant.

Defendant's submissions in response

11. Following the Complaint, the Respondent filed Response Briefs on January 28, 2021. The Respondent states that on June 23, 2020, telephone contact was established with the number of complainant's telephone and that the complainant's mother answered this call, agreeing to a trial subscription to a magazine. It would also have transmitted for this purpose the number of defendant's account to the collaborator. On June 30, 2020, a confirmation letter was sent to the complainant about this.

12. The Respondent asserts that the message that the Complainant sent to him on July 8, 2020 via his website
The Internet did not contain the complainant's e-mail address. Therefore, the message could not be processed,
according to the defendant. The plaintiff then sent a registered letter to the defendant on
July 15, 2020. This letter mentioned in particular the following:

"Dear,

I refer to my post of 08.07.2020 on your website which mentions the following:

"Madam, Sir, I received today, 08/07/20, a letter dated 30/6 concerning an alleged
contract [...] following a phone call that never took place with me.

Please communicate to me within 8 days all the data that you have about me and, the
where appropriate, regarding my home address, cf. the GDPR. How did you get
know a bank account number? I never authorize direct debits.

The landline number linked to my home is listed on the "don't call me anymore" list. I you
declares in default on this point. This message is costing me time and money. you have to pay me
150 euros, for loss of working time. Please confirm it to me by return mail, I will
will then let you know how to settle this sum."

I sent this message via the contact form on your website; no email address
general is planned, making it possible to follow the sending, nor any e-mail of confirmation resuming the
content of the message, without prejudice.

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I note that to date, no response has been given to my request within the time limit. The
aforementioned questions remain relevant and I await your prompt reaction with communication from
all the data that you are required to communicate to me. (".....").

[All passages quoted in this decision have been freely translated by the Secretariat
General of the Data Protection Authority, in the absence of an official translation].

13. According to the defendant, the aforementioned letter was scanned and sent internally to the Subscriptions department.
Then the mail was erroneously classified as already processed and no action was taken.

On September 23, 2020, the plaintiff again sent a registered letter to the defendant indicating that he had sent two messages previously to which he had received no reaction of the defendant. After this last letter from the plaintiff, the defendant indicated that he would erase all the complainant's data and that he would cancel the amount due for the subscription.

14. In the Respondent's first defence, the Respondent asserts that there was no question of a recourse to Article 15 of the GDPR by the complainant in order to access his personal data.

The complainant's letter was not forwarded to customer service or the privacy team as he had not been considered a request in accordance with Article 15 of the GDPR. According to respondent, a data subject wishing to exercise his rights can be expected to clearly indicate that it is exercising its rights in accordance with Article 15 of the GDPR. For this purpose, the complainant could have used the DPA model letter. Furthermore, the complainant did not send his request to one of the e-mail addresses used to deal with privacy issues, in accordance with the defendant's privacy policy. It is mentioned that the defendant grants great importance to the protection of privacy and that it has therefore organized itself accordingly. The complainant is also a lawyer and is therefore not ignorant in this area; he should therefore have quoted Article 15 of the GDPR in his request for access to his personal data. For these reasons, the defendant requests a dismissal.

15. In the alternative, the Respondent argues that if the Litigation Chamber finds that the request from the complainant concerns the exercise of the right of access pursuant to Article 15 of the GDPR, the request has been the subject of an erroneous internal qualification and has therefore not been processed in accordance with Articles 12 and 15 of the GDPR. The plaintiff's registered letter of July 15 2020 was received at headquarters, according to the defendant. At the time of receipt of mail, teleworking was the rule under the corona measures. According to the procedure, registered mail should be scanned by the manager and sent to the department concerned. The letter was identified by the responsible as a complaint for the subscriptions service, and not as a request based on the GDPR.

The letter was therefore only sent to the subscription service. The complainant's second letter of September 23, 2020 was also sent by the manager to the same department. This service has processed the letter and responded to it. The subscription has been cancelled. The Respondent therefore considers that the fact that the complainant's letters were not sent to the privacy team resulted in the absence of reaction to the complainant. The inbound letter processor interpreted the letter as a complaint against the trial subscription and not as a request for under Article 15 of the GDPR.

16. The Respondent indicates that following the letter from the DPA indicating that a complaint had been lodged against it, an e-mail was again sent to the complainant, namely on January 16, 2021. In this e-mail, the defendant advised that the complainant's personal data had been obtained via U. In this regard, it is indicated that the complainant's telephone number was not included on the list "don't call me again" when calling this number. According to the defendant, the number of telephone was only included on this list on September 25, 2020. The telephone conversation that the defendant claims to have had with the plaintiff's mother has been recorded and can if necessary be produced, but only to the mother, since it concerns her personal data staff. The personal data concerning the complainant available to the respondent were attached to the e-mail, also mentioning that the defendant was not sending any personal data to third parties. The data was obtained by the defendant at telemarketing purposes, in compliance with the obligations of the "do not call me again" list. For the rest, the data would only have been used to process the registration as a new subscriber, as well as to allow the management and monitoring of the relationship and to process correspondence internally. Finally, the email mentioned the complainant's rights under the GDPR. If the Litigation Chamber had to consider that it was indeed a question of a request to exercise the rights in accordance with Article 15 of the GDPR, the defendant requests to limit himself to formulating a warning or reprimand.

Complainant's Reply Submissions□

17. On February 22, 2021, the Complainant filed its submissions in response. In the first plea, the□
plaintiff requests access to all the information that both the defendant and U possess about his□
respect and concerning his address. The complainant also requests the sound recording as well□
that the transcription of the telephone conversation during which the trial subscription would have□
contracted with his mother. According to the complainant, despite repeated requests to access his□
personal data, he did not obtain any reaction from the defendant over a period of□
7 months. The plaintiff considers that there is disorganization on the part of the defendant. The complainant asks□
also to produce the SEPA mandate for automatic collection.□

18. In the second plea, the Complainant asks the DPA to prohibit the Respondent from dealing with□
personal data of third parties, until the defendant is able to do so□
efficient way. The complainant also asks to publish the decision of the Chamber□
Litigation so that the public is informed of how personal data□
are processed within the respondent's organization, when the respondent should rightly be serving□
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the general interest. The plaintiff claims an amount of 2500 euros for non-pecuniary damage and another□
amount of 2500 euros for the exchange of mail with the defendant. In the third ground, the□
plaintiff asks to be heard by the Litigation Chamber. In the fourth ground, the□
Complainant asserts that Respondent could not take corrective action, given□
that it appears from the submissions in response that the defendant was not aware of the reactions□
of the complainant. The complainant also requests the reimbursement of 8 euros, an amount which was□
debited from an account that does not belong to the complainant, according to the latter. During the hearing, he was□
established that the account number belongs to the complainant's mother. The complainant asks the DPA□
to impose a fine of 25,000 euros on the defendant, to reprimand him and to publish the decision□
in two national newspapers at the defendant's expense.□

Defendant's Reply Submissions□

19. In the summary submissions, the Respondent repeats the arguments already advanced in the conclusions. Moreover, the defendant emphasizes that, if the Litigation Division were to decide that it was indeed a request in accordance with Article 15 of the GDPR, this request was misclassified as not a human rights request concerned following a human error by an employee. According to the defendant, the Covid pandemic led to a decrease in the number of workers present, resulting in the disappearance of some control mechanisms. If in normal times a second opinion can be requested in case of doubt, this could not have been possible in the present case, according to the defendant.

20. The Respondent stresses that it attaches great importance to the protection of personal data personnel and compliance with the relevant legislation. The defendant points to the fact that when the entry into force of the GDPR, all staff members received training on the GDPR. Some customer service employees have been specifically trained to respond to requests made under the GDPR. A DPO has been appointed and a privacy team composed of lawyers was created in order to respond correctly to complex requests and complaints. According to the Respondent, a large majority of requests are answered correctly and in proper time. According to the respondent, the internal procedure for handling mail has been revised from so that registered letters are now also systematically sent to the customer service coordinator and legal department. The defendant states that in order to test the speed of processing registered letters, a few test letters were sent to the seat in recent weeks by the privacy team.

21. The Respondent therefore asks the Litigation Chamber to take into account the circumstances following mitigations:

“The offense was committed as a result of human error and without any deliberate intent;

Now, the data subject access request has been granted; Some efforts

considerable effort has been made to evaluate the current procedure and to improve it, so that

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such complaints can be better avoided; The procedure has been tested in practice; Following COVID19 measures imposed by the authorities, procedures had to be reviewed very quickly, hence the increased risk of human error. "

22. Respondent then reacts to Complainant's requests. According to the defendant, the request of the plaintiff to prohibit the defendant from processing personal data does not fall under the jurisdiction of the Litigation Chamber and must be rejected. If the Litigation Chamber considers that this falls within its competence, this request must be rejected given its nature excessive and given that the defendant has already demonstrated that it attaches importance to respect for obligations arising from the GDPR and that it was also actively analyzing the policy. The request of plaintiff to publish the decision of the Litigation Chamber at the expense of the defendant in two national newspapers must be rejected because this sanction does not fall within the competence of the Litigation Chamber. In the alternative, the Respondent submits that the claim is unfounded.

The plaintiff's request for compensation for costs and moral compensation must be rejected because this sanction does not fall within the jurisdiction of the Litigation Chamber.

The plaintiff also claimed the reimbursement of an amount that the defendant allegedly improperly appropriated. The defendant reacts by indicating that the examination intended to determine whether he is question of a valid SEPA contract or mandate does not fall within the jurisdiction of the Chamber

Litigation. Furthermore, the defendant wonders if there is an interest for the plaintiff in requesting the reimbursement of an amount which, as he himself indicates, was debited from a bank account which does not belong to him. Finally, the Respondent asks to dismiss the Complainant's request to be understood. The facts of this case are not subject to dispute and are clear, according to the defendant.

In reaction to the minutes of the hearing, the defendant emphasizes that the verbal explanations given during the hearing are in perfect harmony with the summary conclusions that he previously introduced. The Respondent also reiterated that he gave a great deal importance to the exercise of the rights of data subjects and has also organized itself in this sense. The defendant appended to his reaction the transcript of the conversation

telephone call between the plaintiff's mother and the defendant and points out that it appears that the number□
bank account was communicated during the telephone interview.□

On July 1, 2021, the complainant also reacted to the minutes. The complainant indicates that he□
maintains its claims in accordance with the submissions made and the defense conducted. the□
complainant indicates that he had not only asked to obtain the transcription of the□
telephone conversation, but also its recording. The complainant still wishes to consult□
the SEPA mandate as presented to the bank by the defendant.□

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II. Motivation□

II.1.□

Scope of the procedure□

23. Before the Litigation Division proceeds to the concrete assessment of the means, it considers□
useful to clarify certain points. In this procedure, the focus is only on what the□
complainant raised, i.e. the right of access and related provisions, such as the obligation□
data controllers to take the necessary measures to comply with the GDPR.□

The Litigation Chamber will therefore limit itself to processing the content of the complaint and will not□
will not comment on whether there is a breach of the GDPR principles relating to the□

Direct marketing.□

24. Article 58 of the LCA provides that any person may file a complaint in writing, dated and signed□
from the ODA. Article 58 LCA must be read in the light of article 77 of the GDPR which grants to any□
person concerned by data processing the right "to lodge a complaint" with□
of a supervisory authority. In its decision 30/2020 of July 8, 2020, the Litigation Chamber□
recognized that persons other than data subjects could lodge a complaint□
with the DPA, provided, however, that the complainant demonstrates a sufficient interest.□

25. In this case, the complainant lodged a complaint following a letter he received at his home about□
a subscription taken out in his name, but mentioning the bank account number of his□

mother. It is this letter which is at the origin of the request for right of access of the defendant. According to the defendant, the phone call was taken by the plaintiff's mother who allegedly accepted and transmitted the account number. It is thus established that the complaint relates to personal data of the complainant's staff.

26. The subject of the dispute lies in the fact that the complainant did not have access (in due time) to his data of a personal nature. The origin of the complainant's recourse to the right of access was – as indicated – the letter he received which contained his personal data. The fact that these letters have been sent, according to the defendant, after the plaintiff's mother accepted the subscription to a magazine subscription which has been confirmed by mail does not detract from the fact that it is a question of the treatment of personal data of the complainant. The Litigation Chamber therefore notes that it is demonstrated that the respondent has processed personal data relating to the complainant. The conditions of Article 77 of the GDPR and Article 58 of the LCA are thus fulfilled and it is not necessary to further analyze to what extent the complainant has a sufficient interest to lodge the complaint.

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II.2.

Conclusions of the parties and analysis of the Litigation Chamber

Regarding the right of access (article 15 of the GDPR)

27. The complainant alleges a violation of Article 15 of the GDPR. On June 30, 2020, the plaintiff received a letter from the defendant confirming that a magazine subscription had been subscribed between the plaintiff and the defendant, following a telephone conversation between them. During this conversation, a direct debit would have been granted in order to collect the amount of the subscription. The complainant then reacted by registered letter of July 15, 2020 to the letter in question from the defendant. He asked the latter to provide him with all the personal data of staff he had. In his letter of July 15, 2020, the complainant also indicated that he had also requested access to his personal data on July 8, 2020 via a

contact form on the defendant's website. The complainant then received on September 12

2020 a warning from the defendant as to the impossibility of collecting the amount of

the subscription. The complainant received no response to his letters and then filed a complaint with

ODA.

28. The Respondent asserts that the Complainant's first request via the contact form on the website

The internet did not contain a correct e-mail address so that no contact could be made

with the complainant. According to the Respondent, the Complainant's second letter was erroneously filed

as already dealt with and no response has therefore been given.

29. With regard to the Respondent's first plea, which argues that there was no question of an appeal

in Article 15 of the GDPR, the Litigation Chamber considers – contrary to what the

respondent – that a data subject cannot be expected to refer explicitly

in a request for access to the article in question of the GDPR – in this case Article 15 of the GDPR – which

is invoked. Such a reading of Article 15 of the GDPR goes against the letter, the nature and the

the intention of this article, i.e. to be able to access easily and in an accessible way the

personal data that is processed about data subjects. Section 12.1 of the

GDPR further provides that the controller takes the necessary steps to ensure that the person

data subject receives information about the processing in a concise, transparent,

understandable and easily accessible, in clear and simple terms. In this regard, it suffices that

the subject of the request is sufficiently clear, namely access to personal data

and/or a copy thereof.

30. Recital 63, which further explains Article 15 of the GDPR, further provides

including the following: "A data subject should have the right to access data

personal character that have been collected about him and to exercise this right easily and at

reasonable intervals, in order to become aware of the processing and to verify its lawfulness."

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31. Based on the documents brought by the plaintiff in the proceedings, the Litigation Chamber

finds that the request for access was formulated clearly enough, so that the defendant could reasonably have known that this was a request to exercise the right of access, as defined in Article 15 of the GDPR. The Litigation Chamber underlines the following in this regard in respect. In his message of July 8, 2020, the complainant requested access to his data at a personal character under the mention "cf. the RGPD". The absence of mention of the provision in question is not important in this context. The complainant further asserts in his conclusions not to have obtained access to all the data that the defendant processes. The defendant argues that all the data was indeed provided.

32. Next, the Litigation Chamber examines whether there is a question in this case of a violation of Article 15 GDPR by the defendant. As noted, the Complainant sent a message on July 8, 2020 via the contact form on the defendant's website following the letter he had received from this last. On July 15, 2020, the complainant sent a registered letter in which he reminded the defendant of the message in question.

33. The Respondent states in its pleadings that: "The letter was scanned internally at the Purchasing test by the Customer Care department. The attendant did not identify the subscriber and filed the letter by mistake as being treated. No follow-up was therefore given to this letter."

34. On September 23, 2020, the Complainant received a warning from the Respondent regarding the amount of the subscription which could not be perceived automatically. On the same day, the complainant sends a registered letter to the defendant in which he expresses his opposition to the warning and indicates having sent letters previously to the latter, to which he had no reaction. Furthermore, the complainant indicates that he will lodge a complaint with the DPA. In reaction to this letter, the complainant received a reaction on October 17, 2020, stating that his subscription and the charges will be waived.

35. Pursuant to Article 15 juncto Article 12.3 of the GDPR, the response to a request for access to personal data must be given within one month of receipt of the request.

This period may be extended by two months, taking into account the complexity and the number of

requests. If use is made of the possibility of extension, the controller must

inform the data subject within one month of the request for access. In this case, the

defendant did not react to the request within the time allowed, so that the violation of Articles 15

and 12.3 of the GDPR is proven.

Taking technical and organizational measures (Article 24 GDPR)

36. The Respondent then states that due to the pandemic, the number of workers present increased

diminished, leading to the disappearance of certain control mechanisms. If normally a

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a second opinion may be requested in case of doubt, this could not have been possible in this case, according to

the defendant.

37. The Litigation Chamber recalls that Article 24.1 of the LTD provides that: "Given the

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

probability and seriousness varies, for the rights and freedoms of natural persons, the person responsible

processing implements appropriate technical and organizational measures to

ensure and be able to demonstrate that the processing is carried out in accordance with this

regulation. These measures are reviewed and updated as necessary."

38. According to the aforementioned article, the data controller must take technical and

organizational arrangements to ensure compliance with the GDPR. Bedroom

Litigation believes that internal disruptions such as understaffed staff in

reason of the pandemic, as invoked by the defendant, cannot lead to the impossibility

for a data subject to exercise their rights. The principle of responsibility as established in

Article 5.2 of the GDPR implies that the controller can demonstrate that it meets the

obligations as described in Article 24 of the GDPR, including the obligation to take measures

organizational.

39. The right of access is one of the major requirements of the right to the protection of privacy, it constitutes

the "gateway" that allows the exercise of other rights that the GDPR confers on the person

concerned, such as the right to rectification, the right of access.¹ The right of access is also resumed at Article 8.2 of the Charter of Fundamental Rights of the European Union and thus constitutes one of the central elements of the fundamental right to data protection. The fact that the defendant is a consumer organization that defends the interests of consumers represents for the Litigation Chamber an additional reason why the defendant cannot take their responsibilities under the GDPR too lightly. The Litigation Chamber considers that such an organization has a certain role as an example.

40. The Respondent indicated in its pleadings that it had made internal efforts to assess and to improve the procedure in force, so that such complaints can be better avoided.

41. Respondent asserts that the above procedure has been tested in practice. Bedroom Litigation takes note of this.

¹ Decision 15/2021 of the Litigation Chamber.

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

42. Article 14 of the GDPR provides that where personal data has not been collected from the data subject, the controller provides in particular the following information to the data subject: the identity and contact details of the person responsible for the processing and, where applicable, the representative of the controller; if applicable, the contact details of the data protection officer; the purposes of the processing for which the personal data as well as the legal basis for the processing; the categories of personal data concerned; where applicable, the recipients or the categories of recipients of the personal data; where applicable, the fact that the controller intends to transfer personal data to a recipient in a third country or an international organisation.

43. The exhibits in the proceedings did not indicate that the Respondent had provided the

aforementioned information to the complainant. The Respondent indeed asserts the following in the
rebuttal conclusions introduced: "These data were obtained via U and following the conversation
telephone call during which the subscription was taken out. The telephone number to which you
you were contacted was not on the "Do not call me again" list at the time of the call.
Your number was only registered on this list on 09/25/2020. We have a
strict procedure in this regard, with several checks so as not to contact any listed number
on this list."

And to continue: "A call was made to the aforementioned telephone number in order to promote
a subscription to Test Achats. A lady [name X] responded, accepted the offer and also
transmitted a bank account number for the direct debit."

44. The Litigation Chamber infers from this that the defendant already had the name,
address and telephone number. The defendant dialed the telephone number and according to
his statements, the complainant's mother provided the bank account number. The fact that a number
number is not included on the list do not call me again does not in any way justify contacting
data subjects in the context of direct marketing without any legal basis.

In accordance with Article 5.1 of the GDPR, personal data must be processed
transparent way. This obligation of transparency also exists for all
organizations that exchange personal data. It is the responsibility of the
controller to take "appropriate measures" regarding the provision of the
information required such as the origin of personal data for the purposes of
transparency. A "due diligence" investigation towards the seller of the personal data
and the accuracy of the information transmitted regarding personal data is required.

The controller must always verify the origin, legal basis, purposes and

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the time limit for a type of processing, in accordance with its obligations under the GDPR.

The responsibility (article 5.2 of the GDPR) of the data controller implies that information

basic information is provided to the person concerned, namely the complainant, indicating that the responsible
of the processing itself processes the data in accordance with the GDPR and checks, before the rental
an address file, if this data is lawfully processed by newspapers, magazines
or the mail-order companies that provide it with address files.

The complainant can therefore expect the controller to provide information
on how these newspapers, magazines or mail order companies have
obtained the address of the complainant, as well as the legal basis on which the processing of his
mailing address by such newspapers, magazines or mail order companies in order to
demonstrate that the complainant's mailing address was lawfully leased and processed by the
controller. In order to guarantee the rights of the complainant, the controller
must also make available to the latter the contact details of newspapers, magazines or
mail-order companies in order to allow the complainant to exercise his right
of access with regard to these newspapers, magazines or mail order companies.²

In accordance with Article 14.3 b), the Respondent should therefore have informed the Complainant within
reasonable and, if the data was intended to be used to communicate with the
data subject, as was the case here, at the latest when the first

Contact has been established with the person concerned. A violation of Article 14 of the GDPR can therefore
be observed.

Defendant's exemplary position

45. The defendant fulfills the role of representative of consumer interests. He formulates himself
its mission as follows: "Take the interests of consumers to heart, seek solutions
to their challenges and help them assert their rights." As the Respondent indicates, and it is also
common knowledge, it is therefore considered an organization to which consumers
contact themselves for assistance when they wish to exercise their rights as
consumers. The Litigation Chamber therefore considers that the defendant must seek the
greater rigor when data subjects wish to exercise their rights with regard to the

defendant himself.□

46. Attached to its reaction to the minutes, the Respondent provided a transcript which is□

according to him that of the conversation between the collaborator of the defendant and Mrs Z, the mother of the□

complainant. We can deduce from the transcription that the collaborator offers him a subscription to□

the test.□

2 Decision 20/2021 of February 12, 2021 of the Litigation Chamber.□

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The collaborator then asks: "I need to go through your data if possible. I see the□

your husband's data, is it possible, X?"□

"Can we send it in his name?"□

To which Madame replies: "Yes, you can try, do that, you can always try, huh."□

It appears from the transcript that the lady indicates at different times that she wants to put an end to the□

conversation and being busy with something else. It is for this last reason that the end of the□

conversation and the collaborator indicates that he will contact her again. When Madame Z receives the second□

phone call, he is asked to provide his bank account number.□

After looking for her bank card, she communicates the account number to the employee□

of the defendant. After having transmitted her bank account number, the lady declares that she wants□

end the conversation and she probably breaks the connection, since the□

collaborator of the defendant no longer has a reaction to his last question consisting in knowing whether he□

agrees to the notice periods in force.□

47. The Litigation Chamber infers from the transcription of the telephone conversation that□

Mrs. Z was not sure why she had transmitted the account number□

bank or what she consented to. The employee also asks Mrs Z if□

the trial subscription can be put in the complainant's name. The Litigation Chamber informs the□

defendant that what is involved here is an extremely worrying method on the part of the defendant.□

In this way, one person could give consent for someone else. This□

of course does not comply with articles 6.1.a and 7 of the GDPR, which provide that only the person concerned can give his consent to the processing of his personal data.

The data controller is also subject to the principle of obligation of article 5.2 of the GDPR and must be able to demonstrate compliance with the principles of personal data processing personnel, including the principles of fairness and lawfulness of processing.

Direct marketing

48. The GDPR does not define what is meant by "marketing processing" or "for direct marketing purposes" according to the terminology in English. In its Recommendation 01/2020 of January 17, 2020 relating to the processing of personal data for the purposes of direct marketing, the DPA indicates that "direct marketing" means the following:

"Any communication in any form, whether solicited or unsolicited, from an organization or a person and aimed at the promotion or sale of services, products (paying or not), as well as marks or ideas, sent by an organization or a person acting in a commercial or non-commercial context, which is addressed directly to one or more

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natural persons in a private or professional context and involving the processing of data personal.

49. In this case, the Respondent indicates that he had telephone contact with the Complainant's mother via the complainant's telephone number as part of a marketing approach, namely the magazine sales. The Litigation Chamber recalls that any processing of data to personal character must have a legal basis. Therefore, data processing to personal character is only permitted if it is based on one of the six legal bases of article 6 GDPR. The legal basis must be established prior to processing. This indeed has consequences for the effective exercise of the rights of data subjects. In order to ensure these safeguards, the persons concerned must be informed as to the legal basis used for processing, in accordance with Articles 13 and 14.1 c) of the GDPR. The documents in the file

have not indicated that the respondent has complied with its obligation as controller□

to inform the complainant prior to the processing of data in accordance with article 14.1 of the□

GDPR. This provision requires information about the identity and contact details□

of the controller, the contact details of the data protection officer, the purposes□

of processing, the legal basis, the categories of personal data concerned and the□

need the recipient or categories of recipients of the personal data.□

50. The Litigation Chamber further recalls that Article 5.2 of the GDPR provides that the persons responsible□

processing ensure that the personal data is processed lawfully,□

loyal and transparent with regard to the data subject (article 5.1 a). The person in charge of□

processing therefore has an obligation to demonstrate that it has complied with the principle of accountability.□

Complainant's ancillary claims□

51. In his submissions, the Complainant first requests the withdrawal of the Respondent's authorization□

to process data from third parties "(...) as long as it has not been demonstrated that this can be arranged□

correctly and with an adequate response to complaints and requests for information."□

The Litigation Chamber is not competent to rule on a prohibition□

general to process data of persons other than the complainant.□

52. Secondly, the plaintiff demands compensation for costs as well as moral compensation.□

The Litigation Chamber does not have the power to grant such compensation.□

53. Thirdly, the Complainant requests the reimbursement of the sum of eight euros which would have been□

unduly debited from his account. However, this is not within the jurisdiction of the Chamber.□

Litigation.□

3 DPA, Recommendation on the processing of personal data for direct marketing purposes, 01/2020, 17 January□

2020, p. 8.□

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54. Fourthly, the complainant wishes that the decision of the Litigation Chamber be published in□

two national newspapers. Article 100, § 1, 16° gives the Litigation Division the possibility of□

decide on a case-by-case basis regarding the publication of the decision on the DPA's website. She does not
however, does not have the power to order publication in the media, such as the
asks the complainant.

III. Sanctions to be imposed

55. On the basis of the foregoing, the Litigation Chamber considers that:

-
the defendant did not react in a timely manner to the plaintiff's requests (of July 8, 2020 and of
July 15, 2020) to access his personal data, which constitutes a violation
articles 15 and 12.3 of the GDPR;

-
the respondent obtained the personal data of the complainant from a third party so that the
complainant was not informed of the legal basis or the purposes for which his data to be
personal character have been processed, so that a violation of Article 14 GDPR is
proven.

For these reasons,
the Litigation Division considers it appropriate to impose a reprimand
in accordance with Article 58.2 b) of the GDPR and Article 100, § 1, 5° of the LCA. In this regard, the House
Litigation takes into account the following aggravating circumstance: the defendant is a
organization that defends the interests of consumers, which implies a certain role of example
in its head.

On the other hand, the Litigation Division checked to what extent the infringements observed
were structural in nature. She could not establish it. The defendant further stated that
willing to improve internal processes and affirmed that he would also take steps
necessary for this purpose.

56. The Litigation Division therefore does not consider it necessary to impose an administrative fine.

IV. Publication of the decision

57. 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□

the identification data of the complainant are directly□

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communicated. Given the position of the defendant who has a monopoly as an organization of□

consumers and the role of example incumbent on it, when it comes to the protection of the rights□

of persons, the name of the defendant is published. The particularity of the case also does not allow□

anonymization, because the text of the decision, even anonymized, could make it possible to deduce who□

is the defendant in this case.□

58. In a recent judgment, the Cour des Marches recognized the importance of transparency□

regarding the decision-making process of the Litigation Chamber and indicated that the publication of□

decisions on the ODA website was justified in the context of transparency⁴. The Court of□

markets further considered that anonymization and pseudonymization may not be□

applied in some cases. According to the Court of Markets, this may in particular be the case when□

the identification of the controller is a matter of public interest.□

FOR THESE REASONS,□

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

- to issue a reprimand against the defendant, in accordance with Article 100, § 1, 5°□

of the LCA for violating Articles 12.3, 14 and 15 of the GDPR;□

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

Court of Markets within thirty days of its notification, with the Authority of□

data protection as defendant. □

(Sr.) Hielke Hijmans □

President of the Litigation Chamber □

4 Judgment of the Markets Court concerning NDPK/APD, 2021/AR/320. □