1/20

Litigation Chamber

Decision on the merits 64/2020 of September 29

2020

File number: DOS-2019-02481

Subject: Complaint for failure to close e-mail after termination of

functions

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

Hijmans, chairman, and Messrs. Yves Poullet and Christophe Boeraeve, members, taking over the business

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 the

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

Data Protection), hereinafter GDPR;

Having regard to the law of 3 December 2017 establishing 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;

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Complainant: X

The defendant: Y

1. Feedback from the procedure

Having regard to the request sent on April 23, 2019 by the complainant to the Data Protection Authority (APD);

Given the status of the file by the Front Line Service (SPL) and the attempt at mediation initiated

by the latter to the defendant;

Given the failure of mediation and the information - dated July 4, 2019 - to the complainant that

Article 62 LCA gives him, in this case, the possibility of requalifying his initial request for

complaint mediation with explicit consent on his part;

Considering the complainant's consent of August 27, 2019 in this regard;

Having regard to the decision taken by the Litigation Chamber during its session of September 17, 2019 to seize

the Inspector General on the basis of articles 63, 2° and 94, 1° LCA and referral to the latter on 18

September 2019;

Having regard to the report and minutes of the Inspector General's investigation sent on December 9, 2019 to the

Litigation Chamber;

Having regard to the letter dated December 18, 2019 from the Litigation Chamber informing the parties of its

decision to consider the file as ready for substantive processing on the basis of Article 98

LCA and communicating to them a timetable for the exchange of conclusions;

Having regard to the conclusions of the defendant filed by its counsel, received on January 24, 2020;

Having regard to the complainant's conclusions filed by his counsel, received on February 7, 2020;

Having regard to the defendant's submissions in reply filed by its counsel, received on February 21, 2020;

Having regard to the request made under the terms of its conclusions of January 24, 2020 by the defendant to be

heard by the Litigation Chamber pursuant to Article 51 of the Internal Rules

ODA;

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Having regard to the invitation to the hearing sent by the Litigation Chamber to the parties on June 5, 2020;

Having regard to the information sent on June 5, 2020 to the Inspectorate regarding the holding of the hearing pursuant to

section 48.2. the DPA internal rules;

Having regard to the hearing during the session of the Litigation Chamber of June 19, 2020 in the presence of the complainant,

Mr. X assisted by one of his advisers, Mr. D. Allard as well as in the presence of Mr. U for

the defendant (Y) assisted by counsel for the latter, Maître C. Duvieusart;

Having regard to the minutes of the hearing and the observations made thereon by the respective counsel

of the parts which have been attached to these minutes;

Having regard to the reaction form against a planned administrative fine sent on 8

September 2020 to the defendant. Under this form, the Litigation Chamber

communicates to the defendant that it is considering a fine against it as well as the reasons for

which breaches of the GDPR justify this amount;

Given the respondent's reaction of September 16, 2020 to this form.

2. Facts and subject of the complaint

1. The defendant is a company originally family, formed by Mr. V, father of the plaintiff.

The defendant is an SME which currently has just over ten employees (FTE

- full-time equivalents). The defendant's business sector is that of devices

medical. This is a regulated and controlled activity sector, in particular by the Federal Agency

Belgian Medicines and Health Products (FAMHP). An equivalent inspection body

exists in many countries with which the defendant also has relations.

2. The Complainant was Managing Director of the Respondent, a position from which he was removed in

November 2016. As such, he played a key role in the company created by his father regarding his

general operation, as regards commercial, regulatory and management aspects. The

termination of the complainant's activities in this company was done abruptly and

conflictual, without preparation of files or passing of witnesses to the attention of his successors.

3. By registered letter of March 26, 2019, the Complainant asked the Respondent to cease

the use of the 7 e-mail addresses below:

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two e-mail addresses linked to it, i.e. the addresses: x1@y.com and x2@y.com

(used since 1998)

-

An address which is linked to his wife, Mrs Z (having ceased her functions in the

during the first half of 2017): z@y.com

-

two addresses linked to his father, Mr. V (who left office in April 2013):

v1@y.com and v2@y.com

-

two addresses linked to his brother, Mr W (who ceased his functions in the current

of the 1st semester of 2017): w1@y.com and w2@y.com

4. According to this letter, the complainant asked the defendant to close the e-mail boxes

listed above using his first and last name as well as those of his family members having all

ceased all activity within the defendant. In the absence of proof of this closure within 7

days, the plaintiff told the defendant that he would seize the APD.

5. On April 23, 2019, the Complainant filed a complaint with the DPA. He indicates that he has not received

no reaction to his registered letter of March 26, 2019. He also denounces, email

produced in support, the fact that the administrative employee of the defendant consulted his mailbox,

what was reported to him by the sender of a message to him.

6. According to his request, the complainant indicates that because of his position as managing director

of the defendant until November 30, 2016 and its training), its mailbox x1@y.com

contained confidential, private and professional information, as well as exchanges

subject to medical secrecy, for example photographs. The complainant also indicates

suspect that private photographs available on his computer and that of his

wife would have been used to make a photo montage of bad taste, showing his wife

kissing another man, montage received by anonymous mail in December 2017.

7. Following the filing of this request, the Front Line Service (SPL) of the APD contacted

with the defendant on May 17, 2019, reminding it that in its capacity as data controller,

it was required to react within 1 month of receipt of the exercise request

of the rights of data subjects (in this case the complainant's request dated 26 March

2019), unless extended but of which the data subject should be informed. The SPL has, to this

respect, invited the defendant to confirm that it had taken the necessary measures as well as

specify the measures it intends to implement in order to comply with the principles that it

incumbent as data controller, in particular the principle of minimizing the

data (Article 5.1, c) of the GDPR).

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8. On May 23, 2019, the defendant wrote to the plaintiff that the email addresses bearing his name and

first name as well as those of his relatives have been deactivated. A letter of the same date is sent

to the SPL of the DPA to inform them as well.

9. On June 10, 2019, the Complainant wrote to the DPA SPL that contrary to what the Respondent

wrote to him on May 23, 2019, the three addresses x1@y.com, z@y.com and w1@y.com are, according to

the tests he carried out, still not closed.

10. By letter dated July 4, 2019, the SPL noted the failure of the mediation and the procedure

sues in the form of a complaint.

11. According to its conclusions, taking into account the findings made by the inspection (see Title 3

below), the plaintiff asks that the defendant be sanctioned for the illicit use of

personal data concerning him.

3. The inspection report of December 19, 2019

12. As part of his investigation, the Inspector General commissioned two reports of findings and

analysis with regard to the 3 addresses x1@y.com, z@y.com and w1@y.com mentioned by the

complainant as remaining active notwithstanding the intervention of the SPL of the APD (see above points

6-10).

13. The first findings and analysis report of November 10, 2019 states that the addresses

x1@y.com, z@y.com and w1@y.com do exist on the defendant's mail server

without any notification informing the transmitters of messages to these three recipients that these

latter are no longer users of these email addresses.

14. Questioned on the basis of these findings by the Inspector General, the Respondent indicated in

reply, by letter dated November 13, 2019, that she had now closed these 3 mailboxes.

She specified that "when the persons concerned left, these mailboxes had already been

disabled with the creation of a redirect for the simple purpose of not losing e-mails

of notified bodies, suppliers or customers, for example, these people

occupying key positions (Director, Quality Manager, etc.) in our company".

15. On November 28, 2019, a second finding was made, after which it was found that the three

e-mail boxes were now unreachable.

16. According to his investigation report of December 9, 2019, the Inspector General concludes in these

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terms:

Finding 1

- The ICT analysis showed that the disputed addresses, including that of the complainant, with the

company Y (read defendant) were still active on 10/11/2019 [read 11/10/2019]

despite the departure of the person concerned from the company for more than two and a half years, his various

erasure requests and a letter from Y (read the defendant) to the front line service

confirming the deactivation of the disputed e-mail addresses. However, it is recommended to

the employer to block the e-mail of the worker who has ceased his duties

as soon as possible and after inserting an automatic message warning

any subsequent correspondent of the fact that the worker has left his functions and this, during a

reasonable period of time (a priori 1 month). Beyond this period, messaging will be

ideally removed. In no case, the professional email address in the name of a former

worker cannot yet be used. The fact that these mailboxes still exist without

no notification indicating to the issuers of these three recipients that these persons

are no longer the users of these email addresses is also likely to allow the collection

and the potential use of personal data without the knowledge of the issuers.

Finding 2

Following the letter from the Inspection Service to Y (read the defendant), the e-mail addresses

disputes have been closed.

4. The hearing of the parties on June 19, 2020 before the Litigation Chamber

17. During this hearing, the parties presented their respective points of view, referring

in particular to the conclusions that they had communicated previously. An oral deposition

complete recounts what was said during the hearing. The Litigation Chamber pinpoints everything

particularly the following:

 Regarding the use of the complainant's e-mail address after his revocation,

the defendant clarified the following:

o All 'incoming' or 'in' messages were redirected to a single person, either

the administrative employee of the defendant. There was also no use

the complainant's e-mail address for sending messages to third parties,

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this administrative employee responding, if necessary, through her own mailbox

E-mail.

o As for the archives of the mailbox, the defendant recalled the hasty departure of the

plaintiff without compiling files for the attention of his successors. The complainant

emphasizes in this respect that this hasty departure is due solely to the will of the

defendant. The latter specifies that the consultation of the e-mail archives was

made for exclusively professional purposes. She also says she never

had the will to read messages of a personal nature, which

would have appeared in the complainant's mailbox. As for the photomontage in particular,

the defendant insists that the fact that it played no role in this matter and that the

filed complaint does not mention any serious evidence.

 The closure of e-mail addresses in two stages (first those mentioning the surname and first name

of their holders and then those mentioning only their first name) results, from the admission of the

defendant, poor knowledge of data protection rules

in its head. Compliance with the GDPR has, more generally, been carried out

by the Society.

 The parties disagree on whether or not the deletion of the addresses

email was requested by the complainant upon departure or if the first request dates from the

letter of March 26, 2019 (point 3 above). The complainant asserts that he requested it,

without success, at general meetings of the defendant but that this point was not

the agenda, these requests were not taken into account. The defendant states that he

there is no trace of a request to delete e-mail addresses prior to the written one

of March 26, 2019.

 To the question of why the defendant did not send a new address to the

control agencies (see point 1) at the time of notification of the change

administrator, the defendant indicated that it feared that this new address would be

not taken into account in due time (control bodies are slow to update their

databases) and that this does not therefore affect the continuity of its activities. So

In general, the purpose pursued by the conservation of active e-mail addresses was

not to lose any important information for the company given, in particular, the departure

hasty - but not at fault - of the plaintiff whose functions were key to the operation

of the defendant, thus compensating for the absence of transmission of files.

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 The complainant continues to exercise a professional activity in the same sector of activity

and states that keeping his email addresses open with the defendant is

likely to lead to confusion or at the very least to be a source of sending errors therefore

that this address is most often pre-registered in the computers of those who

wish to contact him. This situation cannot be excluded, according to him, even if, for

example, all the surgeons with whom he was in contact at the time when he exercised his

activities within the defendant, were informed of his departure

 To the question posed by the Litigation Division as to what is, on the date of the hearing,

the defendant's policy in this matter, the latter indicated that henceforth (as was

otherwise the case previously except for family X), no email address is

nominative ; the company working exclusively with functional generic addresses

and that the departures which followed those of the members of the X family took place in complete

serenity.

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5.

As to the reasons for the decision

5.1. In view of the absence of closure of e-mail addresses

As to the breach of the purpose principle enshrined in Article 5.1 b) of the GDPR, combined

a breach of Articles 5.1 c) (minimization) and e) of the GDPR (limitation of the duration

preservation)

18. In its capacity as data controller, the defendant is required to respect the principles

data protection and must be able to demonstrate that these are respected

(principle of responsibility – article 5.2. of the GDPR).

19. It must also, still in its capacity as data controller, implement all

the necessary measures for this purpose (Article 24 of the GDPR).

20. Article 5.1 b) of the GDPR enshrines the principle of finality, i.e. the requirement that the data be

collected for specified, explicit and legitimate purposes and are not processed

subsequently in a manner incompatible with those purposes.

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21. It is in the light of the purpose that other principles also devoted to

Article 5 of the GDPR: the minimization principle - according to which only adequate data,

relevant and limited to what is necessary with regard to the purpose may be processed (Article

5.1 c) of the GDPR) - and the principle of limitation of storage - under which the data
cannot be kept in a form allowing the identification of the persons concerned
that for a period not exceeding that necessary with regard to the purposes for which
they are processed (article 5.1 e) of the GDPR).

22. Finally, these principles and the obligations resulting therefrom for the data controller are
an echo in terms of the rights of the data subject since in particular, in application
of Article 17.1 a) of the GDPR, the data subject has the right to obtain from the controller
processing the erasure of data concerning him when this data is no longer necessary
with regard to the purposes for which they were collected or processed.

23. The e-mail addresses in dispute are, whether they consist of the surname and first name of the
persons to whom they have been attributed or only of the first name of these, of the data to
personal character within the meaning of Article 4 .1. of the GDPR. These are data relating
to an identified or identifiable natural person.

24. This address, created for professional purposes in the context of the defendant's activities,
should enable the complainant and other data subjects to receive and send
e-mails within the framework of their activities within the defendant.

25. As it stated in its pleadings and during the hearing, the defendant
deleted the disputed email addresses in two stages. First the addresses
containing first names and proper names have been deleted and in a second step, the
addresses containing a reference to first names only (i.e. x1@y.com, z@y.com and w1@y.com)
were also closed. The defendant explains that the purpose of maintaining these addresses was
not to lose important professional messages given the functions
of the complainant's managing director but also, for example, of the function of and manager
QMS (Management and Quality System) occupied by the complainant's brother, Mr. W. More
specifically, as it specified during the hearing and in its conclusions, the maintenance of
the complainant's address was intended, on the one hand, to compensate for the absence of transmission of

files (even if, - as the defendant points out in the terms of its reaction to the form

fine envisaged - alternative modalities should have been agreed with the complainant or

at least applied in the absence of agreement) as well as, on the other hand, not to lose messages

emanating from numerous national inspection bodies active in the field of medical devices

medical.

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26. The Litigation Chamber is of the opinion that in order to comply with the principle of finality (article 5.1b)

of the GDPR), combined with the principles of minimization (article 5.1 c) of the GDPR) and limitation of time

storage (article 5.1 e) of the GDPR), it is the responsibility of the data controller to block the

e-mail of the holders of these who have ceased their functions no later than the day

of their actual departure. This blocking must take place after having notified them beforehand and after

have had an automatic message inserted. This automatic message will alert all correspondents

subsequent to the fact that the person concerned no longer exercises his functions within the company and

will fill in the contact details of the person (or the generic email address) to contact instead

and place and this, for a reasonable period of time (a priori 1 month). According to the

context and, in particular, the degree of responsibility exercised by the data subject (such

a function of managing director which the complainant had held for a long time, in a company

then family in addition) a longer period can be accepted, ideally not exceeding 3

month. This extension must be justified and be done with the agreement of the person concerned or,

at least, after notifying her. An alternative solution must also be sought and

put in place as quickly as possible without necessarily waiting for the ultimate expiry of this

extension.

27. The Litigation Chamber considers that this way of proceeding is to be preferred to the

automatic forwarding of emails to another company email address

as had been put in place by the defendant. In the case of an automatic transfer, a

a fortiori without information to the sender of the message, there is indeed no control over the letters

electronic incoming or "in". Furthermore, in this case, private information

potentially sensitive could be disclosed without the knowledge not only of the person

concerned but also of the correspondent.

28. Beyond this period, the electronic mail of the data subject will be deleted.1

Indeed, the purpose of processing this personal data is then irrelevant.

1 In its Recommendation CM/Rec(2015)5 on the processing of personal data in the context of employment, the

Council of Europe Committee of Ministers states in Principle 14.5. the following: when an employee leaves his employment,

the employer should take technical and organizational measures so that the electronic mail of the employee is

automatically disabled. If the content of the messaging system had to be recovered for the smooth running of the organization,

the employer should take appropriate measures to recover its contents before the employee leaves and if possible

in his presence. The explanatory memorandum to the recommendation further specifies (point 122) that in those situations wher

leaves the organization, employers should deactivate the former employee's account so that they do not have access to their

communications after his departure. If the employer wishes to recover the contents of the employee's account, he must take the

necessary measures to do so before the departure of the latter and preferably in his presence. This recommendation

sectoral which complements the Convention for the protection of individuals with regard to the automatic processing of personal

Personality (ETS 108) illustrates how the principles of purpose, minimization and proportionate retention,

enshrined in both this Convention and the GDPR, shall apply.

29. The plaintiff having been dismissed by the defendant in November 2016, the Litigation Chamber

considers that the processing of this data should have ceased on this date or, at most,

given the position of high responsibility exercised by the complainant, within a reasonable time

date from it. The Litigation Chamber is of the opinion that this period could have varied from 1 to 3 months

subject to notification to the senders of messages that this e-mail address was not

more active, without automatic forwarding of e-mails sent.

30. With regard to the e-mail addresses of the complainant's relatives, they would have

also had to be deactivated within a period that could vary from 1 to 3 months depending on the function performed

by them within the company.

31. However, it follows from the documents in these proceedings that the disputed e-mail addresses of the complainant

have, for some, been canceled for two and a half years, or even three years (for those not including

than the first name of its holder) after the cessation of his activities within the defendant. The

addresses of the relatives of the complainant were given after a slightly shorter or sometimes longer period

again. In no way can the authority in any case, as the defendant claims,

admit that the blocking of the use of the e-mail mentioning the name and/or the first name of a

employee or officer or identifying them in any way, either conditional on a request

written by the data subject (see also infra points 36 et seq. and 54 below).

32. In support of the foregoing, the Litigation Chamber concludes that Article 5.1 b), taken together with Article

5.1 c) and e) of the GDPR was not complied with by the defendant.

Regarding the breach of Article 6 of the GDPR

33. Article 6 of the GDPR requires that any processing be based on lawfulness. In other words,

the data controller cannot start, nor continue as in this case, a processing of

data without relying on one of the bases of lawfulness listed in Article 6 of the GDPR, which concretizes

the principle of lawfulness set out in Article 5.1 a) of the GDPR.

34. The Litigation Division has, under the terms of the foregoing, noted that the

purpose, for which the data constituting the e-mail address was processed, has expired

with the termination of the activities of the plaintiff and his relatives with the defendant. Yes,

pursuing a legitimate interest in compliance with the conditions of Article 6.1 f) of the GDPR, the address

may remain active for a certain period of time (see points 26 and 29 above) in order to ensure the proper

operation of the company and the continuity of its services, beyond this period, no more

basis of legitimacy only allows the processing to continue.

35. Accordingly, the Litigation Chamber can only note that there is no longer any basis of lawfulness

provided the basis for the continued processing of this data. There has therefore been a breach of

Article 6 of the GDPR on the part of the defendant.

As for the breach of Article 17. 1 a) of the GDPR, combined with Article 12.3. from

GDPR

36. Finally, as it has already stated in point 22 above, the principles of purpose, minimization

and limitation of storage as well as the resulting obligations for the controller

of processing, are echoed in terms of the rights of the data subject. Failing for

the data controller to comply with these obligations spontaneously

given the extinction of the processing purpose, the data subject may obtain the erasure

by exercising this right recognized in Article 17.1 a) of the GDPR. Pursuant to this, she

has the right to obtain from the data controller the erasure of the data concerning him

when these data are no longer necessary in relation to the purposes for which they were

collected or processed.

37. Notwithstanding the complainant's request of March 26, 2019 to this effect, the data controller

did not comply with this request. Certainly the defendant, through the intervention of the SPL of the APD, has in

initially deactivated the addresses containing the surname and first name of the complainant and his

relatives. However, all addresses should have been deactivated, which was only the case at

the intervention of the Inspector General seized by the Litigation Chamber. The Litigation Chamber

notes that it was therefore necessary to come to the present contentious procedure to achieve this. She

finds a breach of Article 17.1 a) of the GDPR on the part of the defendant, combined with

section 12.3. of the GDPR if the complainant's request has not been answered within a period

one month from his letter of March 26, 2019.

38. Accordingly, on the basis of the foregoing, the Litigation Chamber finds that the defendant did not

not complied with Article 17.1 a), combined with Article 12.3. of the GDPR.

5.2. Regarding the consultation of the complainant's mailbox

39. As indicated above, the Litigation Chamber is of the opinion that in the event of the departure of

the organization, the employer must delete the e-mail addresses when these constitute

personal data, after having notified their holders and third parties of the date of

closing the mailbox. This obligation is also intended to allow holders of

sorting and forwarding any private messages they may have to their personal mailbox.

40. In the same way that it must be left to the person concerned to resume its effects

personal, it should be left to him to resume or delete his communications

electronic mail of a private nature before his departure. Similarly, if part of the content of his email

must be recovered to ensure the smooth running of the business (as argued by the

defendant in this case), this must be done before his departure and in his presence. In case of situation

contentious, the intervention of a trusted person is recommended.2 The hypothesis of

resignation or dismissal or any other form of cessation of activity and its consequences

should be regulated in an internal Charter relating to the use of IT tools.

41. The complainant produced with his complaint a message from the administrative manager of the

defendant from which it follows that his mailbox was consulted. Indeed, on January 26, 2017,

the administrative employee of the defendant wrote that she could not find any trace of the information

requested by former interlocutors of the complainant “whether in emails or in

company records”. The defendant insists on the fact that if there was consultation, it was

exclusively for professional reasons.

42. The Litigation Chamber finds that this consultation - undisputed - of the mailbox of the

complainant, even after his departure, was not supervised in any way.

43. Finally, the Litigation Division takes note of what the defendant indicates that on the occasion of the

present case, it instructed its counsel to verify the legality of its practices in terms of

Data protection. On the date of its conclusions of January 24, 2020, the defendant indicates

that this review is ongoing. The defendant also confirmed this during the hearing without

specify however that a procedure was stopped, limiting itself to indicating that since the departure of the

members of the X family, the departures had been prepared and had gone smoothly.

In its reaction to the proposed fine form, the defendant indicates that it has taken good

note of the recommendation of the Litigation Chamber.

2 For several years now, the Commission for the Protection of Privacy, which the DPA succeeded, had made available to

arrangement

from

employers

a

note

legal

on

his

site

https://www.autoriteprotectiondonnees.be/sites/privacycommission/files/documents/note-juridique-e-mails-employes-

absents_0.pdf as well as FAQs: https://www.autoriteprotectiondonnees.be/faq-themas/acc%C3%A8s-aux-e-mails-

demploy%C3%A9s-absentslicenci%C3%A9s relating to this theme of closing e-mail addresses in the event of

departure/termination of function in particular.

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6.

Regarding corrective measures and sanctions

44. 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° to propose a transaction;

5° issue warnings or reprimands;

6° order to comply with requests from the data subject to exercise these 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;

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

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 Authority for the protection of

data.

45. As to the administrative fine which may be imposed pursuant to Articles 83 of the GDPR and

of articles 100, 13° and 101 LCA, article 83 of the GDPR provides:

“Article 83 GDPR

1.

Each supervisory authority shall ensure that the administrative fines imposed in

under this article for breaches of this Regulation, referred to in paragraphs 4,

5 and 6 are, in each case, effective, proportionate and dissuasive.

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2.

Depending on the specific characteristics of each case, the administrative fines are

imposed in addition to or instead of the measures referred to in point (2) of Article 58

a) to h), and j). To decide whether to impose an administrative fine and to decide

of the amount of the administrative fine, due account shall be taken, in each case,

of the following elements:

(a) the nature, gravity and duration of the breach, taking into account the nature, scope or

the purpose of the processing concerned, as well as the number of data subjects affected

and the level of damage they suffered;

b) whether the breach was committed willfully or negligently;

c) any action taken by the controller or processor to mitigate the

damage suffered by the persons concerned;

d) the degree of responsibility of the controller or processor, taking into account

the technical and organizational measures they have implemented pursuant to Articles

25 and 32;

e) any relevant breach previously committed by the controller or the

subcontracting;

f) the degree of cooperation established with the supervisory authority with a view to remedying the breach

and to mitigate any negative effects;

(g) the categories of personal data affected by the breach;

h) how the supervisory authority became aware of the breach, including whether, and

the extent to which the controller or processor notified the breach;

(i) where measures referred to in Article 58(2) have previously been ordered

against the controller or processor concerned for the same purpose,

compliance with these measures;

(j) the application of codes of conduct approved under Article 40 or mechanisms

certificates approved under section 42; and

k) any other aggravating or mitigating circumstance applicable to the circumstances of

the species, such as the financial advantages obtained or the losses avoided, directly or

indirectly, as a result of the violation.

46. It is important to contextualize the breach of Articles 5.1 a), b) c) and e), 6 and 17.1 a) combined

in Section 12.3. of the GDPR in order to identify the most appropriate corrective measures.

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47. In this context, the Litigation Chamber will take into account all the circumstances of

case, including the reaction communicated by the defendant to the amount of the fine

envisaged which was communicated to him (see point I – retroacts of the procedure)3.

48. With regard to the administrative fine, the Litigation Chamber emphasizes that its purpose is to

effectively enforce GDPR rules. Other measures, such as the order of

compliance, the prohibition to continue certain processing operations, make it possible to

an end to a breach found. As can be seen from recital 148 of the GDPR, the sanctions,

including administrative fines, are imposed in the event of serious violations, in

in addition to or in place of the appropriate measures that are necessary.

49. In view of the aforementioned breaches, the Litigation Division sends the defendant a

reprimand on the basis of article 100. 1, 5° LCA.

50. The Litigation Division also takes note of the fact that the defendant is now working

exclusively with working email addresses. The fact remains that a policy

clear and transparent relating to the management of mailboxes at the time of departure, whether

either of an employee or of another function, should be established. Several times during the

procedure, the defendant states that it has taken note of it. The Litigation Chamber is of the opinion that

the adoption of such a document contributes to the effective implementation by the defendant of its

obligations arising from the GDPR and therefore imposes on it a detailed compliance order in

device pursuant to article 100. 1, 9° LCA for this purpose.

51. In addition to this reprimand and this order for compliance, the Litigation Division is of the opinion

that in addition, an administrative fine is justified in this case.

52. As to the nature of the violation, the Litigation Chamber notes that the absence of deletion

of the complainant's e-mail address constitutes breaches of the principles

founders of the GDPR (article 83.2 a) of the GDPR) It is indeed in contradiction with the principles

of lawfulness (art 5.1 a) of the GDPR), of purpose (article 5.1 b) of the GDPR), of minimization (article 5.1 c)

of the GDPR) and proportionate retention of data (article 5.1 e) of the GDPR) all dedicated

in Chapter II "Principles" of the GDPR as set out above.

53. Pursuant to Article 83.5 a) of the GDPR, violations of these provisions may amount to up to

20,000,000 euros or in the case of a company, up to 4% of the annual worldwide turnover

3 See. in this respect: Court of Appeal of Brussels (19th chamber A – Court of Markets), judgment of February 19, 2020, 2019/A

and Court of Appeal of Brussels (19th Chamber A – Court of Markets), judgment of September 2, 2020, 2020/AR/329 (available

only in Dutch).

total for the previous year. The fine amounts that can be applied in the event of a violation

of these provisions are higher than those provided for other types of breaches listed in

section 83.4. of the GDPR.

54. In its response to the Proposed Fine Reaction Form, the Respondent

considers that in the absence of a definition of the criterion of "seriousness" of the breach mentioned in

Article 83.2.a) of the GDPR, this seriousness could be assessed with regard to the consequences of the said

breaches and this, by analogy with the criterion applicable for the assessment of the breach

regarding the resolution of an agreement (art. 1184 of the Civil Code). The defendant puts

particularly in this regard, the limited number of data subjects and the lack of

concrete damage on the part of the plaintiff. These elements are effectively taken into account

by the Litigation Chamber in its assessment of the seriousness of the breaches of the case

of the species as required by Article 83.2 a) of the aforementioned GDPR (see points 57-58 below).

after). As regards breaches of a fundamental right, enshrined in Article 8 of the Charter of

fundamental rights of the European Union, the assessment of their seriousness will be made, in support of

section 83.2. a) of the GDPR, independently.

55. These breaches open the door to other possible breaches, namely the taking of

knowledge of private messages exchanged through the e-mail address, even this one
professional. As the Inspector General's report points out, "the fact that these mailboxes
still exist without any notification indicating to the transmitters of these three recipients that
these people are no longer the users of these email addresses is also likely to
enable the potential collection and use of personal data without the knowledge of the
issuers".

56. The Litigation Division also notes that, by repercussion, the right to erasure of the
complainant has also not been complied with (Article 17.1 a) of the GDPR). Respect for the rights of
data subjects, including through the establishment of clear procedures and
systematized, is essential to the effectiveness of the right to data protection of which any person
concerned, even if she was managing director of a family company like the defendant, must
benefit.

57. As to the number of data subjects affected by the violation, the Litigation Chamber
notes that the shortcomings observed only concern a limited number of people, i.e. the
complainant as well as some other members of his family (article 83.2 a) of the GDPR). Bedroom
Litigation also notes that only 13 people (full-time equivalent) work at the
within the defendant. The Litigation Chamber adds that indirectly, the issuers of
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messages intended for the latter may, however, also be affected by the absence
management of the closure of e-mail addresses.

58. The Litigation Division also notes that the plaintiff does not invoke concrete damage
(Article 83.2 a) of the GDPR). He merely invokes a risk of confusion potentially
harmful as soon as he continues to work in the same sector of activity as the
defendant, a risk which, in the opinion of the Litigation Chamber, cannot indeed be
theoretically excluded and must therefore be taken into account to a small extent.

59. As for the criterion of duration, the Litigation Division finds that these breaches lasted

over time (Article 83.1 a) of the GDPR).

60. Indeed, the complainant was dismissed from his position as managing director in November 2016.

His email addresses were deactivated in May 2019 and November 2019, i.e. after two years and

half and after almost 3 years, after the cessation of its activities for the electronic address

containing only the complainant's first name. With regard to the e-mail addresses of members of

the complainant's family, the time taken to remove them is, again, several years.

61. If, as has been recalled, account can be taken of the function exercised by the person

concerned within the entity to determine an adequate period during which the messaging of

the latter can remain active by means of a message indicating to the transmitters a new

address to which messages should be sent, a period of two and a half years / 3 years is totally

unreasonable and disproportionate, including for a managing director, founder of the

further defendant.

62. Admittedly, the breach began even though the obligations arising from the GDPR were not

still applicable. As the breach continued beyond May 25, 2018, the Chamber

Litigation is competent to know and apply the GDPR. Calculated from the date of entry

in application of the GDPR, the duration of the breach that can be sanctioned by the Chamber

Litigation is shortened but remains excessive.

4 The application of the principles contained in the law of December 8, 1992 applicable from the dismissal of the plaintiff in Nove

2016 would not have led to a different finding of breach. The Commission for the Protection of Privacy had put on

its site for explanatory notes on this topic (see footnote 2 above). Strictly speaking, however, it is

correct, as the defendant points out in its reaction to the proposed fine form that no relevant violation

committed previously cannot be held against him (art. 83.2.e) of the GDPR) any more than other complaints or decisions

regarding GDPR violations. The Litigation Chamber, however, points out that it has only been operating since May 25

2018, its predecessor (the Privacy Commission) not having this competence. The weight

granted to this assessment criterion is therefore currently relatively low but may vary over time.

63. As to whether the breaches were committed deliberately or through negligence

(Art. 83.2.b) of the GDPR), the defendant indicates in the terms of its reaction to the fine form

considered that it was certainly on a voluntary basis that it did not deactivate the addresses

disputed electronics. On the other hand, she insists on the fact, as she had done during the audition,

that it was not aware of disregarding its legal obligations by maintaining the addresses

disputed, this maintenance resulting from a lack of knowledge of the rules in this area on his part and

being motivated by the desire to preserve its economic interests.

64. The Litigation Chamber further notes that the plaintiff's request was not followed up

within the period of one month required by article 12.3 of the GDPR and that it is only at the end of the

successive interventions by the SPL and the Inspector General that the disputed email addresses have

deleted 7 months after the request made by the complainant on March 26, 2019 (article 83.2

f) GDPR). If the Litigation Chamber notes that during the hearing, the defendant indicated

that this two-step process was the result of his lack of knowledge of the regulations in

in terms of data protection, the Litigation Chamber regrets the delay in complying

to its obligations.

65. Finally, the Litigation Division is aware that the defendant indicates that it did not have

aware of requests to close the disputed e-mail addresses, including those of the

complainant, prior to that formulated by the complainant in his letter of 26 March 2019. The

defendant further emphasizes that, despite ongoing legal litigation between the parties

since 2017, the complainant has not made any such request. The Litigation Chamber is of the opinion

that, notwithstanding the lack of consensus between the parties, the question of whether this request

whether or not it was made by the complainant before his letter of March 26, 2019 is irrelevant. It is

the employer to comply with the requirements arising from the GDPR and to, on their own initiative, deactivate the

e-mail addresses of the persons concerned leaving the company, according to the terms

described in the terms of this decision, taking into account in particular the quality/function exercised

by the holders of the e-mail addresses concerned.

66. The Litigation Chamber finds that the other criteria of Article 83.2. of the GDPR are neither

relevant or likely to influence its decision on the imposition of a fine

administrative and its amount.

67. In conclusion, in view of the elements developed above specific to this case, the Chamber

Litigation considers that the facts found and the breach of Articles 5.1 a), b) c) and e), 6 and

17.1 a) combined with Article 12.3. of the GDPR, justify that as an effective, proportionate sanction

and dissuasive as provided for in Article 83 of the GDPR and taking into account the assessment factors

listed in Article 83.2. of the GDPR and the reaction of the defendant to the fine form

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envisaged, a reprimand (article 100.1, 5° LCA) and a compliance order detailed below

below (article 100.1, 9° LCA). accompanied by an administrative fine of 15,000

euros (article 100.1, 13° and 101 LCA) are pronounced against the defendant.

68. Given the importance of transparency with regard to the decision-making process and

the decisions of the Litigation Chamber, this decision will be published on the DPA website

by deleting the direct identification data of the parties and the persons cited,

whether physical or moral.

FOR THESE REASONS,

THE LITIGATION CHAMBER

After deliberation, decides to:

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Pronounce against the defendant a reprimand on the basis of article 100.1, 5°

ACL;

-

Issue a compliance order by adopting a policy resolving the matter

the closure of electronic messaging within the defendant in the event of the departure of

one of its administrators, employees and other possible functions and this, on the basis of

article 100.1, 9° LCA. This document must be communicated to the DPA within 3 months

from the date of notification of this decision via the address litigationchamber@apd-gba.be.

-

Order against the defendant an administrative fine in the amount of

15,000 euros pursuant to Articles 100.1, 13° and 101 LCA.

Under Article 108.1 LCA, this decision may be appealed to the Court of

contracts (Brussels Court of Appeal) within 30 days of its notification, with

the Data Protection Authority as defendant.

(Sr.) Hielke Hijmans

President of the Litigation Chamber