Litigation Chamber

Decision on the merits 31/2022 of 4 March 2022

File number: DOS-2020-00186

Subject: Identification of the license plate following the parking ticket, followed by a notice

parking tax

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

President, sitting alone;

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

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), hereafter

after 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 complainant";

.

.

.

.

.

.

The defendants:

the city of Kortrijk, Grote Markt 54, 8500 Kortrijk, represented by its counsel Me

Bart Martel and Anneleen Van de Meulebroucke, hereinafter "Defendant 1".

Decision on the merits 31/2022 - 2/26

FPS Mobility and Transport, Directorate General Road Transport and Safety

road, 56 rue du Progrès, 1210 Brussels, represented by his counsel Me Frédéric

Debusseré and Ruben Roex, hereinafter "the defendant 2".

I. Facts and procedure

1. On November 5, 2020, the complainant filed a complaint with the Authority for the Protection of

given against the defendants.

The subject of the complaint is the identification of the license plate belonging to the complainant following

to a report made by a Parko parking agent on May 28, 2020, followed by a parking ticket

then a tax notice for the parking tax. The complainant argues that although

that defendant 1, which has itself been responsible for the parking policy since the 1st

January 2020, has adhered to deliberation AF n° 14/2016 of January 21, 20161, this adhesion2 took place

through an agreement which was only concluded on September 1, 20203 and whose point 13 stipulates that

the agreement enters into force on January 1, 2020. The effective date mentioned is August 28

20204. According to the Complainant, at the material time, Defendant 1 did not have authorization

necessary to proceed with the identification of his license plate.

Defendant 1's security consultant contacted by Complainant referred to the authorization

AF n° 18/2015 of May 28, 20155 to justify the identification of the license plate. This

deliberation, however, concerns the identification and punishment of violators of the regulations or

communal ordinances and does not relate to a fee or tax. This brings the complainant

finding that both Defendant 1 and Defendant 2 relied for

several months on an authorization

inappropriate for

identify

plate holder

registration through the Department for Vehicle Registration (DIV), which would have

violates the protection of his personal data. The complainant wonders on what

legal basis defendant 1 relies, for the period from January 1, 2020 to September 1,

2020, to request from Respondent 2 personal data relating to the

1 Deliberation on the single authorization for the Municipalities to access the DIV directory for the purposes of identifying person

are indebted, due to the use of a vehicle, of a fee, tax or parking fee - Revision of the AF deliberation

No. 05/2015 of March 19, 2015 (AF-MA-2015-099)

2 https://mobilit.belgium.be/fr/circulationroutiere/inscription_des_vehicules/echange_de_donnees/gestion_du_stationnement

3 The membership agreement can be consulted via the following link

https://mobilit.belgium.be/sites/default/files/DGWVVV/kortrijk_14_2016.pdf

4 https://dt.bosa.be/fr/liste_des_beneficiaires_deliberation_af_ndeg_142016_du_21_janvier_2016

5 Deliberation on general authorization for Cities and Municipalities, autonomous municipal authorities and the Parking Agency

of the Brussels-Capital Region to be provided electronically with personal data from the Directorate for

the Vehicle Registration (hereinafter the "DIV") in order to identify and sanction the perpetrators of breaches of the regulation

municipal ordinances (AF-MA-2014-068)

holder of a license plate for the purpose of identifying the persons who are debtors,

due to the use of a vehicle, a fee, tax or parking fee and on

what legal basis defendant 2 provided for this purpose, for the same period, data to

personal character to the defendant 16.

2. On January 18, 2021, the complaint was declared admissible by the Front Line Service

in accordance with Articles 58 and 60 of the LCA, and was transferred to the Litigation Chamber

in accordance with Article 62, §1 of the LCA.

3. On February 25, 2021, the Litigation Chamber decides, pursuant to art. 95, §1, 1° and art. 98 of the

ACL, that the file is ready for substantive examination, and the parties concerned are informed

of the provisions mentioned in article 95, § 2, as well as those of art. 98 ACL. They are
also informed of the deadlines for presenting their means of defense in accordance with art. 99
of the ACL.
The deadline for receipt of the submission in response from the defendants was set for April 8
2021, that of the plaintiff's reply submission on April 29, 2021 and that of the submission in
reply of the defendants on May 20, 2021.
4. On February 26, 2021, Complainant electronically accepts all communications
regarding the case, in accordance with Article 98 of the LCA.
5. On March 15, 2021, the complainant requested a copy of the file (art. 95, §2, 3° LCA), which was sent to him
transmitted on March 23, 2021.
6. On March 19, 2021, defendant 2 requested a copy of the file (art. 95, §2, 3° LCA), which was sent to it
transmitted on March 23, 2021. On April 7, 2021, it also accepts electronically all
communications concerning the case, in accordance with Article 98 of the LCA.
7. On March 25, 2021, Defendant 1 electronically accepts all communications
concerning the matter and indicates that it wishes to make use of the possibility of being heard,
in accordance with article 98 of the LCA, as well as to receive a copy of the file (art. 95, §2, 3°
LCA), which is transmitted on April 7, 2021.
8. On April 6, 2021, Respondent 2 requests an extension of time to present its
conclusions, which is granted by the Litigation Chamber on April 7, 2021.
The deadline for receipt of the submission in response from the defendants was thus set at 15
April 2021, that of the conclusion in reply of the complainant on May 6, 2021 and that of the conclusion in
reply of the defendants on May 27, 2021.
6 See also in this context Decision on the merits 81/2020 of 23 December 2020

9. On April 15, 2021, the Litigation Chamber received the submission in response from Defendant 1.
First, Respondent 1 contests the admissibility of the complaint and argues that the body

competent to rule on the complaint is not the Data Protection Authority but the□

Flemish Control Commission. It also raises a number of points of□

procedure which would have violated the rights of the defence. As to the merits of the case, the defendant 1□

maintains that it is the legal successor of RCA Parko and that, as such, it could avail itself of the□

deliberations of the Sectoral Committee for the Federal Authority which it invoked. She also adds□

that she has always acted in good faith.□

10. On April 15, 2021, the Litigation Chamber received the response from Defendant 2, who□

also based on the relevant deliberations of the Sectoral Committee for the Federal Authority□

and the legal estate of the head of defendant 1 to decide that the data of the plaintiff□

appearing in the directory of the DIV could be provided to defendant 1.□

11. On May 6, 2021, the Litigation Chamber receives the complainant's reply submission in which□

he explains that the authorization on the basis of which his personal data has been□

processed in order to be able to collect a parking fee was□

inappropriate and that there was no legal basis for processing their personal data□

to this end.□

12. On May 27, 2021, the Litigation Chamber received the submission in reply of the defendant 1 which□

repeats the defenses put forward in the conclusion in response, supplemented by means□

regarding additional allegations made by the complainant.□

13. On May 27, 2021, the Litigation Chamber received the submission in reply of the defendant 2 which□

reiterates the defenses set out in its reply submission, adding that it disputes□

to be a defendant in these proceedings and alleges a violation of the principles of good□

administration.□

14. On July 8, 2021, the parties are informed that the hearing will take place on October 29, 2021.□

15. On October 29, 2021, the defendants will be heard by the Litigation Chamber. the□

complainant was duly summoned to participate in the hearing but did not appear.□

16. Following the hearing which took place on October 29, 2021, the Litigation Chamber invites the two□

defendants to take a position on the following by November 16, 2021 at the latest:

How the deliberations referred to in the pleadings and during

of the audience relate to the GDPR? More specifically, after the entry into force of the

GDPR, is there a sufficient legal basis for the City of Kortrijk to, on the one hand,

request data from the DIV and, on the other hand, so that the FPS Mobility and Transport, Directorate

General Road Transport and Road Safety, discloses data on the basis of a deliberation,

and this in the light of article 6.1.e in combination with article 6.3 of the GDPR (legal basis of interest

public) and GDPR Article 24 (accountability).

On the same date, the complainant is also informed.

17. On November 8, 2021, the minutes of the hearing are submitted to the parties.

18. On November 15, 2021, the Litigation Chamber receives some remarks from the defendant 1

concerning the minutes, which it decides to include in its deliberation.

19. On November 16, 2021, the Litigation Chamber receives some remarks from the defendant 2

concerning the minutes, which it decides to include in its deliberation.

20. On November 16, 2021, Respondent 2 submits its arguments to the question posed by the Chamber

Litigation as discussed during the hearing, as well as in the subsequent letter

dated October 29, 2021. This essentially merely states that as a service

federal public, on the basis that the legislator is presumed not to have intended to infringe

superior legal rules such as European Union law, and based on the principle of

legal certainty, it can be assumed that the legal instruments provided for by legislation and

Belgian regulations comply with the GDPR. She doesn't see it as part of her job

or within its competence, as FPS Mobility and Transport, to question these

legal instruments, to defend them or not to apply them.

21. On November 15, 2021, Defendant 1 asked the Litigation Chamber for clarifications

on the aforementioned issue, as well as a report to take a position.

22. On November 24, 2021, the Litigation Chamber explains the scope of the question to the

Defendant 1 and authorizes it to make its point of view known by December 8, 2021 at the latest.

23. On December 8, 2021, Respondent 1 submitted its arguments relating to the question posed by the

Litigation Chamber as it was exposed during the hearing, as well as in letters

later dated October 29, 2021 and November 24, 2021. Defendant 1 advises that it

is unable to respond to the request for a response from the Litigation Chamber for the

following reasons: incompatible with the rights of the defense and the general principles of good

administration, it is not the responsibility of a data controller to verify the compliance of the

Belgian regulations on the processing of personal data with the GDPR,

and going beyond referral to the Litigation Chamber.

24. The October 29, 2021 hearing was held with three members sitting. Between the hearing and the

deliberation on the decision, one of the sitting members has indicated that he is withdrawing from the matter,

referring to Article 43 of the LCA. Consequently, and since the LCA does not allow two

members to take a decision, said decision shall be taken by the president, sitting alone

(article 33, § 1, paragraph 3 of the LCA).

II. Motivation

a) Jurisdiction of the Data Protection Authority

25. The defendants argue that the Data Protection Authority, including its organs and

therefore also the Litigation Chamber, would not be competent in this case. Indeed, the

defendants argue that the Flemish Control Commission is competent to control

compliance with legal (and constitutional) provisions and other regulatory provisions

with regard to the protection of personal data by an entity such as that referred to in

article 10/1, §1, of the decree of July 18, 2008 relating to the electronic exchange of data

administrative 7 (hereinafter: the "decree of July 18, 2008") when this control is the responsibility of a

federated jurisdiction.

26. As already set out in its decision 15/2020 of 15 April 20208, the Data Protection Authority

data ("APD") is competent to handle this matter.

Regulatory powers regarding the protection of personal data

27. Firstly, the Litigation Chamber emphasizes that the GDPR is a regulation directly

applicable in the Union and cannot be transposed into national legislation by the Member States

members. GDPR provisions also cannot be specified in legislation

national, except for the points for which the GDPR explicitly allows it. The protection of

data has therefore become, in principle, a matter of European law.9

28. The establishment of any regulatory provisions relating to personal data

personnel by the federal authority or a federated authority must therefore be done within the framework established by

the GDPR. In this regard, the Litigation Chamber refers to Article 22 of the Constitution and to the

consistent case law of the Constitutional Court on the subject, which stipulates that the right to respect

of privacy, as guaranteed by Article 22 of the Constitution (as well as by the treaties), has a

7 Cf. article 10/1 of the decree of July 18, 2008 "relating to the electronic exchange of administrative data", as inserted by

article 20 of the decree of June 8, 2018 "containing the adjustment of the decrees to regulation (EU) 2016/679 of the European P

Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and

to the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)" (hereinafter

the "GDPR decree"). M.B. June 26, 2018.

8 https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-15-2020.pdf§§ 32-35 and 66 et seq. See

also Decision 23/2022, § 6, https://www.autoriteprotectiondonnees.be/publications/classement-sans-suite-n-23-2022.pdf

9 See p. ex. in C. KUNER, L.A. BYGRAVE and C. DOCKSEY (eds.), The EU General Data Protection Regulation: A Commenta

University Press, 2020, 54-56.

broad in scope and includes in particular the protection of personal data and

personal information.10

29. With regard to the right to respect for private life, article 22 of the Constitution provides what

follows:

“Everyone has the right to respect for his private and family life, except in the cases and under the conditions set out by the

law.

The law, decree or rule referred to in Article 134 guarantees the protection of this right. »

30. Article 22 of the Constitution dating after the 1980 state reform, the word "law" mentioned

in this provision refers to a federal law. Restrictions on the rights guaranteed by this

constitutional provision cannot in principle therefore be instituted by a decree or

arrangement. This would mean that an interference with privacy - including the processing of

personal data - cannot result from decrees or ordinances.11

31. Given that such an interpretation would erode the competences of the communities and

regions, the Constitutional Court and the Legislation Section of the Council of State, among others, have judged

that the establishment of general restrictions is a matter reserved for the federal legislator. In

In this case, the federated entities retain the possibility of providing specific restrictions in the

within their competence, provided that they comply with the general federal legislation in this regard.

material.12

32. In summary, the Litigation Chamber finds that the federal authority and the communities and

regions are respectively competent to enact general and specific rules in

protection of private and family life, and this only in areas where the GDPR

allows it and within the framework of the rules of the GDPR which are directly applicable in the order

Belgian law.13 Even when specific rules on the protection of personal data

personnel are established by the federated authorities within the framework of what the GDPR allows, the

general rules arising from federal legislation on the protection of personal data

staff must be respected.

10 See p. ex. CC, no. 29/2018, March 15, 2018, B.11; no. 104/2018, July 19, 2018, B.21; no. 153/2018, 8 November 2018, B.9.

A. ALEN and K. MUYLLE, Handboek van het Belgisch Staatsrecht, Kluwer 2011, p. 917 et seq.

11A. ALEN and K. MUYLLE, Handboek van het Belgisch Staatsrecht, Mechelen, Kluwer, 2011, 918; K. REYBROUCK and S. SC

bevoegdheden, Antwerpen, Intersentia, 2019, 122; J. VANDE LANOTTE, G. GOEDERTIER, Y. HAECK, J. GOOSSENS and T.

Belgisch Publiekrecht, Brugge, die Keure, 2015, 449.

12 Court of Arbitration, No. 50/2003, April 30, 2003, B.8.10; no. 51/2003, April 30, 2003, B.4.12. ; 162/2004, October 20, 2004 a

19 January 2005; CC, October 20, 2004, February 14, 2008; Av. CdE n° 37.288/3 of July 15, 2004, Doc. Speak. Speak. fl. 2005

n° 531/1: "[...] communities and regions are only competent to authorize and regulate specific restrictions on the

privacy law only insofar as, in doing so, they adapt or supplement certain basic standards

determined at the federal level, but [...] they [are] not competent to erode these basic federal standards".

13 J. VAN PRAET, De latente staatshervorming, Brugge, die Keure, 2011, 249-250.

Decision on the merits 31/2022 - 8/26

Supervisory authorities in the context of the protection of personal data

33. The defendant refers to Article 57, paragraph 1, f of the GDPR and to Article 51, paragraph 1, of the

GDPR, from which it follows that all Member States determine which public authority must exercise

control functions and that it is possible to appoint more than one control authority.

34. In the wake of the GDPR, the law of 3 December 2017 creating the Data Protection Authority

data14 (hereinafter: "LCA") was adopted.

The DPA was therefore created under Article 4, § 1, first paragraph, of the LCA. It is true that, as

explicitly confirms this in article 4, § 1, paragraph 2 of the LCA, the federated entities themselves

can also create data protection authorities, as also indicated by the

Council of State in its opinion no. 61.267/2/AV of June 27, 201715 (see below). In application of this

article, the Flemish legislator appointed the Flemish Control Commission (hereinafter: "VTC" -

Vlaamse Toezichtcommissie) created by article 10/1 of the decree of 8 June 2018.16

Supervisory powers of supervisory authorities

35. Given the concurrent competences set out above in terms of the protection of

personal data, article 141 of the Constitution requires the legislator to establish a

procedure to prevent jurisdictional conflicts between legislative norms.17 This task has

entrusted to the legislative section of the Council of State. With regard to the skills of

aforementioned supervisory authorities, the Litigation Chamber refers to Opinion No. 61.267/2/AV

of June 27, 2017 of the legislative section of the Council of State which was issued as part of the preliminary

project that resulted in the LCA. In this opinion, the Council examined in detail the rules relating to the

distribution of competences in data protection supervision.18

36. The Council of State indicated in the aforementioned preliminary draft that the federal authority may create a

supervisory authority having "general competence (...) over all data processing at

personal nature, in particular those involved in matters for which the

14 M.B. 10 January 2018.

15 Av.CdE n° 61.267/2 of June 27, 2017 on the preliminary bill "reforming the Commission for the protection of privacy", rn.

7.1-7.2. See also p. ex. Av.CdE, n° 66.033/1/AV of 3 June 2019 relating to a draft decree of the Flemish Government of 10 Dece

2010 "executing the decree relating to private placement, with regard to the establishment of a registration obligation for

sports agents", 4; Av.CdE, n° 66.277/1 of July 2, 2019 relating to a draft decree of the Flemish Government "on the

terms and conditions concerning the processing, storage and probative value of electronic data relating to benefits in the

framework of family policy", 6-7.

16 M.B. June 26, 2018.

17 Article 141 CC. : "The law organizes the procedure tending to prevent conflicts between the law, the decree and the rules re

as well as between the decrees between them and between the rules referred to in article 134 between them. »

18 Ibid., 8, p. 28-45.

communities and regions are competent"19. Such a settlement does not affect the jurisdiction

communities and regions, [...]", declared the Council of State. 20 Therefore, according to the

Council of State, the federated control authorities can only be authorized to control the

specific rules that they have enacted for the processing of data in the context of the activities

which fall within their competence, and this, of course, only insofar as the GDPR

still allows Member States to adopt specific provisions and that there is no

violation of the provisions of the ACL. The Council of State thus confirms its position in the opinion

no. 37.288/3 of July 15, 2004, cited in opinion no. 61.267/2/AV of June 27, 2017, in which the Council
of State considered the following regarding the jurisdiction of the Life Protection Commission
private sector, the predecessor of ODA:
“The authors of the project rightly start from the principle that the decree legislator cannot encroach
on the competences of the Privacy Protection Commission, established by the law of 8
December 1992. To implement the directive, the federal legislator was able to create a body of
control having general authority over all processing of personal data,
including those that take place in matters falling within the competence of the communities and
regions. »21
37. In summary, the DPA, as the federal supervisory authority, is the competent authority for
monitor general rules, including mandatory provisions of the GDPR that do not require
additional national transposition.22 This is also the case if the data processing
concerns a matter which falls within the competence of the communities or regions and/or if the
controller is a public body that comes under the communities or regions,
as a municipality, even if the federated entity has itself already established a supervisory authority
within the meaning of the GDPR.
38. In view of the foregoing, the Litigation Chamber concludes that for a federated controller to be
competent, it is by no means sufficient that the processing of the data concerns a federated matter, in
in this case the subject of additional trade regulations. In addition, the federated entity
in question must also have enacted, within the margin of maneuver that the GDPR leaves to the States
members, specific rules for the processing of personal data in the
19 Ibid., 8, rn. 5, referring to the Av.CdE, n° 37.288/3 of July 15, 2004 on a preliminary draft decree "concerning the system
Health information", Doc.Parl. Parl.fl. 2005-06, n° 531/1, 153 et seq.
20 Ibid., 8, rn. 6.
21 Av. CoE. No. 37.288/3 of July 15, 2004.
22 See also p. ex. Av.CdE, n° 66.033/1/AV of June 3, 2019 relating to a draft decree of the Flemish Government of December 1

"Executing the decree relating to private placement, with regard to the establishment of a registration obligation for□

sports agents", 5; Av.CdE, n° 66.277/1 of July 2, 2019 relating to a draft decree of the Flemish Government "□on the terms□

regarding the processing, storage and probative value of electronic data relating to benefits under the□

family policy", 7.□

framework of this subject. It is only the control of the respect of these specific federated rules□

which can be entrusted to the federated controller.□

39. The Litigation Chamber emphasizes that the notion of "□specific rules□" should not be□

interpreted too broadly. It emerges from the cited opinion of the Council of State that the notion of "rules□

specific□" refers to specific restrictions or particular guarantees, which are distinguished□

or go beyond the general provisions, warranties and restrictions contained in the ACL, the□

GDPR or federal law, or arising therefrom. In other words, the mere fact that the entities□

federated (by decree or decision) implement or confirm a general rule does not mean□

this does not mean that this rule acquires the character of a "□specific rule□". It is not a question of a□

specific rule that if the federated entities, using the leeway authorized by the GDPR,□

introduce additional safeguards or restrictions.□

40. In addition, possible limitations of the competences of a data protection authority in relation to□

under the GDPR would only be possible if a controller had been established at the level of an entity□

federated by fulfilling all the requirements that are imposed on a controller under□

of the European Treaties, and to whom all the tasks and competences of the controller would have been□

assigned. In this context, particular reference is made to Articles 51 to 59 of the GDPR.□

41. The Litigation Division finds that the disputed processing was carried out on the basis of□

three general deliberations23 granted by the sectoral committee set up by the Commission for□

the protection of privacy (hereinafter: "□CPVP□"). The CPVP and the sectoral committees have been□

abolished by the law of July 30, 2018 on the protection of individuals with regard to the□

processing of personal data.24 Permissions and relevant processing of personal data□

personal data by the defendant within the framework of the authorizations in question,

namely the data communication of the Crossroads Bank of vehicles - i.e. the plate

of registration - to the controller having requested it within the framework of his

powers relating to additional parking regulations, must therefore be

assessed in the light of the new legal framework, namely the provisions of the GDPR, since May 25

2018.

42. In the current legal framework, and more particularly under article 35/1 of the law of 15 August 2012

relating to the creation and organization of a federal service integrator25 and the law of 5

23 AF Deliberation No. 02/2016 of January 21, 2016, AF Deliberation No. 14/2016 of January 21, 2016 and AF Deliberation No.

May 2015.

24 Article 280 of the law of 30 July 2018 on the protection of individuals with regard to the processing of personal data

personal character.

25 M.B. August 28, 2012.

September 2018 establishing the Information Security Committee, the Security Committee of

information (hereinafter: "CSI") is authorized in particular to grant deliberations on certain

communication of personal data, including also the communication of data

contained in the Crossroads Bank for vehicles. Article 35/1, § 4 of the Law on

the Federal Service Integrator specifies that "the deliberations of the security committee of

information [are] motivated and [have] a general binding effect between the parties and vis-à-vis

vis-a-vis third parties". On the basis of the same article, the Data Protection Authority may at any time

examine any deliberations of the Information Security Committee, regardless of the date on which

which it was granted, against higher legal standards, such as the GDPR. In

Consequently, the Litigation Division is competent to assess whether the authorizations and

processing carried out on this basis complies with the obligations provided for by the GDPR.

43. In view of the foregoing, the Litigation Chamber concludes that this case does not concern the

verification of data processing by an authority in accordance with article 10/1, §1 of the decree

of 18 July 2008 relating to the electronic exchange of administrative data in relation to a

specific rule drawn up by the federated authority within the framework of its federated competence. As

this has been demonstrated, the authorizations in question are of a general nature and the control in relation

to the GDPR of these authorizations as well as the processing of personal data

carried out on this basis therefore falls to the Litigation Chamber.

b) Rights of defense and principles of good administration

The complaint

44. Respondent 1 argues that the rights of the defense have been breached because it does not know

clearly against which complaint it must defend itself. Defendant 1 submits that three complaints

were filed by the complainant and refers to the documents submitted by the complainant on August 10

2020, November 5, 2020 and December 7, 2020.

45. In this regard, the Litigation Chamber notes that the complainant first attempted to file his complaint

on August 10, 2020 but, as the complaint only concerned the last page of the complaint form

- which contains only the date of the complaint, the signature as well as the surname and first name of the complainant - the

complainant submitted the complete complaint form on November 5, 2020. Subsequently, on December 6

2020, the plaintiff submitted documents in support of his complaint filed on November 5, 2020.

Contrary to what defendant 1 maintains, the plaintiff therefore filed only one

complaint, namely the one that was filed in its entirety on November 5, 2020. This

complaint was therefore attached to the letter sent to the parties on February 25, 2021, which sets out the timetable

of the conclusions and requests the presentation of the means of defence. It is only after the

complaint has been filed in its entirety and the complainant has provided the supporting documents

necessary that the complaint could be declared admissible by the Front Line Service, as

it has been done. In addition, Defendant 1 received a copy of the file, so she had

all the elements to assert his defence.

Decision on admissibility and decision on readiness for treatment as to the□

bottom□

46. Defendant 1 argues that the "so-called" decision, according to it, of the Service de Première Ligne,□

does not clarify the facts or the alleged violations. Defendant 1 also considers that it□

cannot deduce from the letter from the Litigation Chamber dated February 25, 2021 what are□

the alleged infringements or what the possible sanctions would be. Respondent 1 adds□

that she does not know if there is still an effective decision of the Front Line Service, and that she□

was not informed of any decision of the Litigation Chamber on the state of□

preparation for substantive processing. This leads defendant 1 to conclude that the□

rights of defense have been violated, as have the principles of good administration.□

47. The Litigation Chamber specifies that the decision of the First Line Service on the admissibility□

of the complaint is included in an e-mail sent to the Litigation Chamber and that the e-mail in□

question is an integral part of the administrative record. The Litigation Chamber therefore began□

a substantive processing procedure. The Litigation Chamber informs the parties (both the□

plaintiff and the defendants) in a single letter, both of the admissibility of the complaint□

pursuant to Article 61 of the ACL - this provision requires sensu stricto that only the complainant□

be informed of the admissibility of his complaint - and of the opening of the procedure on the merits in□

mentioning all the information in accordance with article 98 of the LCA in combination with□

Article 95, § 2 of the LCA.□

48. With regard to the decision on admissibility, as well as the decision that the file is□

ready to be dealt with on the merits, the Litigation Division therefore refers to the e-mail dated 25□

February 2021 with the letter and attached documents expressly informing the parties□

the fact that the complaint was declared admissible by the Frontline Service on January 18, 2021 and□

that the Litigation Division has decided that the case is ready to be examined on the merits. That□

therefore means that the letter containing the timetable for the conclusions as such serves as□

notification to the parties, both of the decision on admissibility and of the state of preparation for a□

treatment as to substance, so that both Article 61 of the LCA and Article 98 of the LCA in

combination with Article 95 § 2 have been complied with.

To the extent that Defendant 1 submits that neither the Frontline Service's decision on the

admissibility nor the decision of the Litigation Chamber on the state of preparation for treatment

on the merits do not indicate the grounds on which they are based, the Litigation Division must

recall that the aforementioned decisions of the First Line Service, on the one hand, and of the Chamber

Litigation, on the other hand, are not final decisions, but simply decisions that

precede the final decision of the Litigation Chamber. Only the final decision must be motivated.

Decision on the merits 31/2022 - 13/26

The letter with the schedule of conclusions contains all the information prescribed by

article 98 of the LCA and precisely tends to motivate the final decision of the Litigation Chamber

based on the means of defense presented by the parties, in compliance with the rights of defence.

This decision constitutes this final decision and must be justified as such.

49. Respondent 1 also argues that it does not know why the Litigation Chamber did not

decided to pursue the complaint in another way. The Litigation Chamber emphasizes that it

there is no obligation of negative motivation, so that it is not required to justify

why it would not have made use of the other possibilities provided for in Article 95, § 1 of the LCA.

50. Insofar as it proves necessary, the Litigation Chamber emphasizes that the guarantees

procedural must of course be respected and that if there is any ambiguity,

this was dispelled in the follow-up process, ensuring impartial and fair treatment.

The points raised by defendant 1 do not entail a violation of the rights of the defence,

since the defendants had the opportunity to present their arguments fully

through conclusion in response and rejoinders. In addition, the defendants were able to exercise

fully their adversarial rights during the hearing before the Litigation Chamber. The

defendants have therefore suffered no prejudice; the rights of defense have been fully

respected.

c) Legal basis

51. Complainant wonders on what legal basis Respondent 1 relies, for the period

from January 1, 2020 to September 1, 2020, to request from defendant 2 data from

personal character relating to the holder of a license plate for identification purposes

people who are debtors, because of the use of a vehicle, of a remuneration, tax or

parking fee and on what legal basis defendant 2 provided for this purpose,

for the same period, personal data to the defendant 1.

Deliberation and legal succession

Decision on the merits 31/2022 - 14/26

52. Defendant 1 relies on deliberation AF no. 02/2016 of January 21, 201626 as well as on the

AF deliberation no. 18/2015 of 28 May 201527 to maintain that it already had its own access

in the DIV directory for the purpose of identifying the persons liable, as a result of the use of a

vehicle, a parking fee.

53. As defendant 1 itself points out, the beneficiaries of deliberation AF no. 02/2016

are the private concessionaires of the Flemish towns and municipalities, as well as the agencies

empowered municipalities. As an autonomous municipal authority, RCA Parko is an agency

external empowerment of defendant 1 and, as such, RCA Parko adhered to the deliberation AF

n° 17/2010 on May 5, 2015, which was replaced by deliberation AF n° 02/2016, but which maintained

deliberation AF no. 17/2010 regarding the validity of declarations of commitments

individual approved, therefore also that of the RCA Parko. This means that the RCA Parko is

beneficiary of AF deliberation No. 02/2016 and is therefore authorized to receive from Management for

the Vehicle Registration (DIV) of the identification data of the holders of a vehicle

registered that are liable for a fee or tax. Defendant 1 could not

itself subscribe to this authorization since it does not fall into the category of beneficiaries

possibilities of this particular deliberation.

54. Defendant 1, for its part, is the beneficiary of deliberation AF no. 18/2015, but this

concerns the authorization to obtain the communication of personal data from the DIV to

purposes of identifying and sanctioning violators of municipal regulations or ordinances

under the law of June 24, 2013 on municipal administrative sanctions. That

means that Defendant 1 can obtain data from the DIV based on this deliberation,

but within the limit of the imposition of municipal administrative sanctions and therefore not for

levy a parking charge, as in the present case.

55. On the basis of these elements, the Litigation Chamber finds that defendant 1 is attempting to

demonstrate that it had, at the time of the facts giving rise to the complaint, an authorization to

access the DIV directory for the identification of persons, in this case the complainant,

who, due to the use of a vehicle, are liable for duties, taxes or royalties

parking, basing itself, on the one hand, on a deliberation of which defendant 1 is not itself

same beneficiary (AF Deliberation No. 02/2016) and, on the other hand, on a deliberation whose

Defendant 1 is certainly a beneficiary, but does not authorize it to obtain data from the DIV

with a view to collecting a parking tax (AF Deliberation No. 18/2015).

26 Deliberation on single authorization and amending, as regards private concessionaires of Flemish towns and municipalities

and the Flemish communal autonomous agencies, the deliberation AF n° 17/2010 of October 21, 2010

27 Deliberation relating to the granting of a general authorization to Cities and Municipalities, to autonomous municipal authoritie

Brussels-Capital car parks to receive personal data from the Registration Department electronically

of Vehicles (hereinafter the "DIV") for the identification and sanction of offenders of municipal regulations or ordinances

Decision on the merits 31/2022 - 15/26

56. Such an argument by

which

defendant 1 combines

the two deliberations

above and then asserted that she was authorized to request

the data

identification of the complainant to the DIV in order to collect the parking tax due to him

can however be accepted, as explained below.

57. Insofar as Defendant 1 argues that, in view of the dissolution and liquidation

of RCA Parko with effect from January 1, 2020 and its integration into city services, it

has from this moment taken over the rights and obligations, therefore also those provided for in the AF deliberation

n° 02/2016, as the legal successor of RCA Parko, the Litigation Chamber can establish,

on the basis of article 244, §3, of the decree of 22 December 2017 on local administration28, that the

Defendant 1 was the legal successor of RCA Parko in its own right, as confirmed by the

decision of the municipal council of the defendant 1.

58. With regard to the legal succession, Respondent 1 refers to Opinion No. 14/200429 and to the

Recommendation No. 03/201530 of the Commission for the Protection of Privacy, which establishes the

principle that the legal successor does not need to request a new authorization

provided that the purpose for which the legal successor processes the personal data

personnel in question remains unchanged and that he can thus use the authorization granted to his

legal predecessor.

59. However, the Litigation Chamber should note that Recommendation No. 03/2015 provides as

condition for the takeover of the existing authorization by the legal successor - i.e. without

the latter does not have to request a new authorization - that the competent sectoral committee must

be able to assess whether the applicant who wishes to continue to use the existing authorization is indeed the

legal successor. In addition, the sector committee must be able to assess whether the legal successor offers

sufficient security guarantees. In this regard, defendant 1 itself refers to

AF Deliberation No. 31/2015 of December 10, 201531 which refers to Opinion No. 14/2004, but fails to

demonstrate that such notification of the legal succession has taken place, so that no

28 Art. 244, § 3. The rights and obligations of the dissolved autonomous municipal authority are taken over by the municipality.

29 Opinion No. 14/2004 of 25 November 2004 concerning the request for an opinion from the Chairman of the Management Co

Personnel and Organization concerning the Royal Decree of 29 January 1991 which authorizes certain members of the personn

and the Civil Service to access information from the National Register of Natural Persons and to use the identification number□

of the National Register: can this Royal Decree constitute a sufficient legal basis to authorize the General Directorate e-HR of th

Federal Public Personnel and Organization to have access to the information of the National Registry of Natural Persons and to

of the National Register within the framework of the accomplishment of the tasks related to the execution of the Royal Decree n°

a database of public sector personnel.□

30 Recommendation no. 03/2015 of 25 February 2015 concerning the procedure to be followed for authorisations, both by the s

regional service integrators and federated administrations, as part of the transfer of powers following the Sixth□

State reform.□

31 Deliberation AF no. 31/2015 of 10 December 2015 concerning the request made by the "□Vlaamse Belastingdienst□" (Flemi

of Taxes) in order to be able to use, as legal successor of the Department of Finance and Budget of the Flemish Authority,□

the authorization granted by AF deliberations no. 39/2013 and 40/2013 of December 12, 2013:□

"During its examination, the Committee may therefore limit itself to verifying whether the claimant is the successor in law to the D

and Budget of the Flemish Authority, specifically with regard to the purposes/tasks which are the subject of deliberations AF no.

and 40/2013. In addition, the Committee also examines whether the applicant offers sufficient guarantees in terms of data secur

Decision on the merits 31/2022 - 16/26□

evaluation of the aforementioned conditions has taken place. However, these conditions are expressly□

also included in Recommendation No. 03/201532, but they were not complied with by□

defendant 1 who has neither notified the legal succession nor demonstrated the security guarantees□

necessary with regard to AF deliberation No. 02/2016. It follows that Respondent 1 does not□

cannot validly invoke deliberation AF no. 02/2016 to obtain data from the□

defendant 2 for the purpose of collecting a parking tax against the plaintiff.□

60. With regard to Opinion No. 14/2004 and Recommendation No. 03/2015, the Litigation Chamber□

clarifies that, although these are not of a directly enforceable legal nature, they must□

be examined in the current legal context which imposes to assess whether the requirements of the GDPR are□

complied with, in particular with regard to the obligation of transparency (Articles 5. 1, a) of the GDPR33, 12.1 of the□

GDPR34 and 14.1. a) of the GDPR35) which requires that the personal data of the person□

concerned are treated in a transparent manner.

61. It appears from the factual elements of the file that it was absolutely not clear to the Complainant that the

Defendant 1 had requested its data from Defendant 2 simply as a

legal successor to RCA Parko, as Defendant 1 has not provided any form of

transparency in this respect and that it was therefore not possible for the complainant to take

knowledge, in an easily accessible and understandable form, of the processing of

personal data concerning him by the defendant 1. Given the absence

complete transparency necessary with regard to defendant 1, defendant 2 did not have

also not correct information, so that the latter therefore declared to the

complainant on February 15, 2021 that the communication by defendant 2 of the complainant's data

to defendant 1 was made on the basis of deliberation 18/2015 relating to sanctions

municipal administrative authorities and that defendant 1 did not have a legal basis

for the management of parking at the time of collection of the parking tax in respect of

of the complainant36. Based on the foregoing, the Litigation Chamber concludes that the

32 "In the context of a transfer of competences, it is important to specify which authority takes over the competence, if the tran

for the same purposes or only for part of them, and to provide information on security. »

33 Article 5.1 a) GDPR. Personal data must be:

a) processed in a lawful, fair and transparent manner with regard to the data subject (lawfulness, fairness, transparency);

[…]

34 section 12.1. of the GDPR. The controller shall take appropriate measures to provide any information referred to in Articles 1

and 14 as well as to carry out any communication under Articles 15 to 22 and Article 34 with regard to the processing at the

data subject in a concise, transparent, comprehensible and easily accessible manner, in clear and simple terms, in particular

for any information intended specifically for a child. Information is provided in writing or by other means including,

where appropriate, electronically. When the data subject so requests, the information may be provided

orally, provided that the identity of the data subject is demonstrated by other means.

35 Section 14.1. of the GDPR. Where personal data has not been collected from the data subject, the controller

processing provides the latter with all of the following information:

a) the identity and contact details of the controller and, where applicable, of the controller's representative;

[…]

36 See below under marginal n° 62 et seq.

Decision on the merits 31/2022 - 17/26

Defendant 1 has breached GDPR Article 5.1(a), GDPR Article 12.1 and

Article 14.1 a) of the GDPR since the complainant was not informed, on the one hand, of the succession

of RCA Parko by Defendant 1, by which the latter acquired the status of

data controller with regard to the data processing described in the deliberation

AF n° 02/2016, and, on the other hand, of the processing of the data which results from it in the head of the

Defendant 1.

Deliberation and GDPR

62. In addition, the Litigation Chamber draws attention to the fact that the defendants are unaware of the

fact that the deliberation(s) as such do not in themselves constitute a basis

separate legal basis for data processing. Since the entry into force of the GDPR37, all

controller must comply with all the principles it contains. More

Specifically, a controller must rely on one of six legal grounds

listed in Article 6 of the GDPR. In the public sector, the legal basis for Article 6.1.c) (the

processing is necessary for compliance with a legal obligation to which the controller

is subject) or Article 6.1.e) (the processing is necessary for the performance of a mission of interest

public or subject to the exercise of official authority vested in the controller)

will often be used. In such cases, the processing must be based on a legal provision

meeting the requirements of article 6.3 of the GDPR.

63. The deliberations invoked by the defendants were granted by the Sectoral Committee for

the Federal Authority, which ceased to exist by virtue of Article 109 of the LCA. However, this does not remove

nothing to the fact that, in accordance with article 111 of the LCA, it remains possible to adhere to the authorizations

above, provided that the person applying for membership submits a

written and signed declaration of commitment, in which it confirms that it agrees to respect

the conditions of the deliberation in question, to the Information Security Committee, which is the body

created by the legislator to grant the deliberations relating to the exchange of personal data

personnel or the use of the National Registry number.

a) As regards the defendant 1

64. Defendant 1 has, albeit belatedly - i.e. after the facts which are the subject of the complaint

- adhered to AF deliberation no. 14/2016 of January 21, 201638, which allows it to obtain

defendant 2 the communication of personal data contained in the directory

of the DIV for the identification of the complainant for the purpose of collecting the parking tax.

37 The GDPR has been in force since May 25, 2018 (Article 99.2 of the GDPR).

38 Deliberation on the single authorization for municipalities to access the DIV directory for the purpose of identifying persons

which are debtors, because of the use of a vehicle, of a remuneration, tax or parking fee - Revision of the deliberation

AF No. 05/2015 of March 19, 2015

65. Not only did the accession to AF deliberation no. 14/2016 only take place on August 28, 2020, so

after Respondent 1 requested and obtained Complainant's data from the

Respondent 2. Respondent 1 considers that it can claim that the agreement concluded between the

Defendant 1 and Defendant 2 in connection with this membership on September 1, 2020, which

provides for its retroactive entry into force from 1 January 2020, is fully valid and, to this end,

is again based on AF deliberation no. 02/2016 in its capacity as legal successor in

claiming that the accession agreement to deliberation AF n° 14/2016 constitutes a simple

legal confirmation of a factual situation, since, as a legal successor from

of January 1, 2020, it considers that it can derive rights from AF deliberation no. 02/2016, of which it

affirms that it is almost identical to the deliberation AF n° 14/2016.

66. The Litigation Division can only note that at the material time, defendant 1 was not

authorized, neither on the basis of the legal succession (see above, marginals n° 52 - 61), nor on
the basis of deliberation AF n° 14/2016 in the absence of a timely adhesion, to ask the
the defendant 2 the personal data of the complainant with a view to his identification in
as part of a parking charge. The retroactive effect of the membership agreement is absolutely not
relevant here. With regard to the membership agreement, it should be noted that, unlike
what defendant 1 asserts, it can indeed be assessed by the Litigation Chamber
insofar as it has an impact on the processing of data of third parties who are not parties to
said agreement, including the plaintiff in this case. It is established that at the time of
events that occurred on May 28, 2020, it was absolutely not clear to the plaintiff that the defendant 1
would conclude on September 1, 2020 a membership agreement to deliberation AF no. 14/2016,
so that at the time of the facts, the complainant did not have the information to which he is entitled in
pursuant to Articles 5. 1, a), 12.1 and 14.1 a) of the GDPR. In this regard, the Litigation Chamber notes
also that AF deliberation no. 14/2016 itself already requires as such that the
data subjects, including the complainant, must in any case be clearly informed
the name of the controller, in this case defendant 1, the purpose of the processing,
the origin of the data collected and the existence of a right of access and rectification of the
data. The deliberation adds that
the clear provision of information is, moreover,
particularly important in situations where it is less than reasonable for people
concerned to expect their personal data to be processed. It emerges
clearly from the facts that the complainant did not have this information and therefore had no
knowledge of the legal basis on which the processing of his data would be based
personal character. There is therefore, here too, an infringement of Article 5. 1, a) of the GDPR, Article 6,
Article 12.1 GDPR and Article 14.1 a) GDPR.
67. Furthermore, it is not enough for a controller, in this case Respondent 1, to have
of an authorization and assumes that, on the sole basis of the relevant deliberation, he has a right to the

personal data mentioned in this authorisation. Since the entry into force of

Decision on the merits 31/2022 - 19/26

GDPR, the data controller is indeed required to comply with the obligations imposed on him

imposed by him and therefore to assess the deliberation he wishes to use in terms of the standard

superior legal authority in order to verify whether the communication of personal data

authorized by the deliberation in question complies with the GDPR. In this sense, the federal chamber

of the Information Security Committee also expressly reported on August 28, 2020 to the

defendant 1 that his adherence to deliberation AF No. 14/2016 does not exempt him from his

obligations to comply with the GDPR.

68. However, it is clear from the Defense of Defendant 1 that it fully aligned its

data processing on the relevant deliberations relying entirely, as

indicated in its conclusion, on the position of defendant 2 with regard to the application of the three

deliberations39 that it invokes. For example, Respondent 1 indicates that both before and after

the integration of the RCA Parko into the services of the city, she inquired with the

respondent 2 to find out whether additional formalities had to be completed. The

Litigation Chamber finds that defendant 1 did indeed contact the

respondent 2 on December 2, 2019. Respondent 1 argues in this regard that it is itself

even the parking policy and that it already has an agreement with the Banque-

Crossroads of Vehicles in

the framework of a

identification of plate holders

of registration which are liable for a remuneration, a tax or a royalty of

parking lots to cities and towns, etc., thus referring to AF deliberation no. 18/2015 revised -

according to the defendant 1 - by deliberation AF no. 14/2016. In this regard, the Litigation Chamber

must also note that defendant 1 wrongly establishes a link between, on the one hand, the deliberation

AF n° 18/2015 which concerns municipal administrative sanctions and to which it has adhered

and, on the other hand, deliberation AF no. 14/2016 which concerns the duties, taxes and royalties of

parking lot and of which she is not the beneficiary at the time. Defendant 1 therefore gives

an erroneous presentation of the facts by asserting that deliberation AF n° 18/2015 would have been revised

by deliberation AF no. 14/2016. Defendant 2 then fails to point this out and maintains

that Defendant 1 should take no further action. On June 26, 2020, the

Defendant 2 reaffirms that Defendant 1 has access to the DIV directory, but without specifying

on what deliberation this access is based.

39 AF Deliberation No. 02/2016 of 21 January 2016 relating to a single authorization and amending, with regard to private conce

of Flemish towns and municipalities and the autonomous Flemish municipal agencies, AF deliberation no. 17/2010 of 21 Octobe

AF Deliberation No. 18/2015 of 28 May 2015 on general authorization for Cities and Municipalities, autonomous municipal autho

and the Parking Agency of the Brussels-Capital Region to be electronically communicated personal data

personnel of the Vehicle Registration Department (hereinafter the "DIV") in order to identify and punish the perpetrators of offens

municipal regulations or ordinances

AF Deliberation No. 14/2016 on a single authorization for the Municipalities to access the DIV directory for the purposes of ident

persons who are debtors, as a result of the use of a vehicle, of a fee, tax or parking fee - Revision of the

AF deliberation n° 05/2015 of March 19, 2015

Decision on the merits 31/2022 - 20/26

69. Defendant 1 takes refuge in the fact that, despite two previous confirmations of the

respondent 2, she did not have the proper authorization to consult the

directory of the DIV in order to sanction infringements of the municipal compensation regulations

relating to parking, but that the absence of the authorization in question is based on a

misunderstanding. She adds that the city could and should rely on the accuracy of the message from

the DIV which confirms in writing that the authorization required from the head of the city was in order40.

70. Only when Respondent 2 considers it appropriate for Respondent 1 to

adheres to deliberation AF no. 14/2016 that defendant 1 does so, but nevertheless

long after the facts presented by the complainant occurred.

71. Respondent 1 then also attempts to lay its own responsibility on the Committee

sector for the Federal Authority and the FPS Strategy and Support. Thus, defendant 1 claims that

the Sectoral Committee for the Federal Authority created the impression that it had, as a city, adhered

AF deliberation no. 17/2010 - as subsequently revised by AF deliberation no. 02/2016

- by naming the city as a beneficiary in the adoption of the declaration of commitment vis-à-vis

of deliberation AF No. 17/2010, as well as the fact that the FPS Strategy and Support would have mentioned

respondent 1 in the list of beneficiaries on its website.

72. This argument is not at all convincing, however, given that the potential beneficiaries of the

AF deliberation no. 17/2010 - then AF deliberation no. 02/2016 - may under no circumstances be

the municipality itself, but only

private dealers and

the agencies

empowered municipalities. The statement to which defendant 1 refers is: "Parko

RCA/City of Kortrijk", where the mention of the name of the city only gives an indication of the place where

the real beneficiary, namely RCA Parko. It is impossible for defendant 1 to

conclude that she herself was a beneficiary with respect to this deliberation, given the

clearly defined target group in the deliberation of possible beneficiaries, which does not include

the cities.

73. It follows from all of the foregoing that the Litigation Chamber must find a breach of the

Articles 5.2 and 24 of the GDPR on the part of the defendant 1.

b) Regarding Defendant 1 and Defendant 2

74. A controller is bound by the principles of data protection and must

be able to demonstrate that these principles are respected (responsibility - article 5.2 of the

GDPR). Respondent 1 is a data controller with respect to the data to be

personal character that she requests and obtains from respondent 2. Respondent 2 is

40 Decision of the College of Mayor and Aldermen dated 22 February 2021 concerning the letter of objection to the parking tax,

as filed by the plaintiff.

Decision on the merits 31/2022 - 21/26

also a data controller with respect to personal data

which it provides to Defendant 1. Although Defendant 2 denies being a party defendant

because the complaint would be directed only against defendant 1, there is no doubt that

the Complainant is not only targeting Defendant 1, but also Defendant 2 in view of the

finding that the complainant expressly states that there has been a breach of his privacy because

both Defendant 1 and Defendant 2 used an erroneous authorization as the basis for

identify it by means of its license plate through the directory of the DIV whose

Respondent 2 is the controller. There is no doubt that the Complainant is aiming not

only defendant 1, but also defendant 2, since the identification of the holder of the

number plate is only possible if defendant 2 provides the personal data

personnel necessary for the defendant 1. In other words, the identification of the plaintiff at the

means of his license plate is only possible if defendant 1 requests the data

of identification to defendant 2 and that defendant 2 then also provides these data

identification to Defendant 1. If Defendant 2 had not provided Defendant 1 with the

identification data of the complainant, it would simply not have been possible to identify the

complainant on the basis of his license plate. It is therefore in this sense that the plaintiff,

as evidenced by the documents in the file, addressed the defendant 2 on several occasions. The

Complaint specifically concerns the identification by the license plate of the vehicle

registered in the name of the plaintiff and therefore unquestionably targets defendant 1 and the

defendant 2.

75. The two defendants base their submissions on Article 6.1 e) of the GDPR for the

data processing carried out by each of them (Defendant 1 with regard to the

processing of data requested and obtained from defendant 2; defendant 2 with regard to

concerns the provision of data to the defendant 1). Article 6.1 of the GDPR, which is the

concretization of the principle of lawfulness referred to in Article 5.1 a) of the GDPR, requires that all processing
have a legal basis. This means that before starting processing activities, the
controller must determine which of the six legal grounds applies and
what a specific end. It does not appear from the file that the complainant was informed of the legal basis
upon which the defendants now rely in the proceedings before the Chamber
Litigation, namely that the processing is necessary for "the performance of a mission of interest
public" (article 6.1 e) of the GDPR). This legal basis is invoked only after the fact and therefore after
that the processing of personal data has taken place. Consequently, the defendants
processed the complainant's personal data in spite of his expectations and, by
therefore, without any information being provided by the defendants before the treatment
41 In accordance with Article 13(1)(c) and/or Article 14(1)(c), the controller must
inform the person concerned.

Datas. In this respect, the Litigation Chamber notes that the provision of information does not
concerns not only the legal basis (article 14.1 c) of the GDPR), but all the information
provided for in Article 14.1 of the GDPR in order to comply with the principle of transparency (Article 5.1 a) of the
GDPR).

76. The two defendants simply relied on the deliberations granted by the
Sectoral committee for the Federal Authority without any examination of the requirements imposed by the GDPR
since its entry into force.

77. Based on the facts of the record, it appears that neither Defendant 1 nor
Defendant 2 has not assumed its responsibility with regard to the principle of lawfulness, fairness and
transparency, which leads the Litigation Chamber to conclude that a violation of Articles 5.2
and 24 of the GDPR was committed by the two defendants.

78. The Litigation Chamber specifies that a deliberation has no legal significance in the light of the
GDPR. A deliberation can, at most, be considered as an opinion of the CSI, which is a body

separate from the data controller who is the recipient of the deliberation. Such deliberation

does not relieve the data controller, in this case both defendant 1 and the

defendant 2, of their obligations under the GDPR, in particular their

liability obligation (Article 5.2 in combination with Article 24 GDPR).

79. In the current legal framework, and more particularly under article 35/1 of the law of 15 August 2012

relating to the creation and organization of a federal service integrator and the law of 5

September 2018 establishing the Information Security Committee, the CSI is authorized to perform

deliberations on certain communications of personal data.

80. Article 35/1, § 4 of the Law relating to the federal service integrator specifies that "the deliberations

of the information security committee [are] reasoned and [have] a general binding scope

between the parties and vis-à-vis third parties".

81. The preparatory works of the law of September 5, 2018 indicate that "it [is] crucial that

decisions having a general binding effect can be issued in the form of

deliberations [so that] all actors [have] legal certainty that data sharing is

legally permissible if they properly comply

the conditions contained in

the

deliberation"

82. The Litigation Division understands the importance for actors of obtaining legal certainty

before processing personal data. However, it considers that the development

binding decisions regarding the processing of personal data is

contrary to the philosophy and provisions of the GDPR. This is particularly important because these

decisions directly affect the rights of third parties to the protection of their personal data

personal.

83. In particular, the Litigation Chamber draws attention to the obligation of liability

introduced by the GDPR in Article 5.2 in combination with Article 24 of the GDPR, which is one of the pillars

of the GDPR and according to which data controllers must be able to demonstrate that they

process personal data in accordance with the principles relating to the processing of

personal data contained in article 5.1 of the GDPR.

84. The Litigation Chamber emphasizes that such a system therefore creates an ambiguous situation

for the data controllers, such as in the present case the defendant 1 and the

defendant 2, who expect to be able to obtain data on the basis of deliberation or

of a communication, or to be able to provide data from the DIV directory, but which,

on the other hand, are bound by the principle of responsibility to take measures themselves

proactive to ensure that the principles governing the processing of personal data

staff have been respected and must also be able to demonstrate this. This leads to a risk of

disempowerment of data controllers, which is totally incompatible with the

principles of the GDPR and contrary to Article 5.2 in combination with Article 24 of the GDPR.

85. The Litigation Chamber finds that one or more deliberations cannot in themselves

constitute a legal basis for the processing. The Litigation Chamber emphasizes in this regard

that a deliberation or adherence to a deliberation can never imply the obligation for the

responsible for the processing concerned to communicate personal data. This

latter retains complete freedom to make its own judgment on the matter.

86. In addition, the Litigation Chamber underlines that after deliberation by the CSI, all the principles of the

GDPR continue to apply of course, including the principle of liability (article 5.2 in

combination with Article 24 of the GDPR).

87. Finally, the Litigation Chamber recalls that the defendants had the possibility, after

the audience, to take an explicit position with regard to the interrelation of the deliberations

with the GDPR, in particular the principle of accountability, in order to ensure absolute compliance

rights of defence.

88. Respondent 2 made use of this possibility, but merely asserts that as

federal public service, on the basis that the legislator is presumed not to have intended to infringe

higher legal rules such as European Union law, and on the basis of the principle

of legal certainty, it can be assumed that the legal instruments provided for by the legislation

and Belgian regulations, comply with the GDPR. She does not consider him to be her

tasks or within its competence to question, defend or not apply these

legal instruments.

89. Once again, the Litigation Chamber must conclude that Respondent 2 is resting

entirely on the instrument of deliberation and confines itself to it without further examination under the GDPR,

Decision on the merits 31/2022 - 24/26

notwithstanding the fact that the CSI itself also indicates that joining a deliberation does not

does not release the data controller from its obligations to comply with the GDPR. This applies

of course not only to the adhering party, but to any data controller, therefore also to

the defendant 2.

90. Defendant 1 chose not to respond to the Litigation Chamber's request to

take a position on the question posed in the letter of October 29, 2021 as it has already been

previously formulated during the hearing, because of what it considers to be a

incompatibility with the rights of the defence, as well as with the general principles of good

administration. Defendant 1 goes further by arguing that the Litigation Chamber cannot

not go beyond the limits of the procedure set by the complainant and cannot pass judgment

ultra small.

91. Notwithstanding the additional clarifications that the Litigation Chamber gave to the

Respondent 1 on the issue raised at the hearing and repeated in the letter dated 29

October 2021, defendant 1 persists in its refusal to take a position. The defendant 1

considers that there are discrepancies between the explanation given during the hearing, the question

raised in the letter of October 29, 2021 and additional details in the letter of October 24, 2021

November 2021. It goes without saying that the Litigation Chamber formulated the question

raised during the hearing in the most precise manner possible in the letter of October 29, 2021,

precisely in order to respect the rights of the defence. If it appears that Defendant 1 has

need further clarifications, the Litigation Chamber will respond to them in order to give the

defendant 1

the possibility of fully exercising their rights of defense and

bedroom

Litigation refers to the position previously taken in this regard in Decision 34/2020

on the merits of June 23, 202042. Respondent 1 cannot therefore argue that because of a

alleged discrepancy, the question would not be clear, nor that the Litigation Chamber would not have

indicated what specific objections she would have to see a possible non-compliance. The

Defendant 1 maintains that no indication was given to it, during the period preceding

the hearing of October 29, 2021, that there could be a breach of the basis

legal basis for the processing of data in the context of parking fees and taxes.

92. According to Respondent 1, it cannot be expected to analyze all the points and hypotheses

possible and conceivable to assess compliance with the articles of the GDPR mentioned in

the letter. However, the Litigation Chamber finds that defendant 1 thus again denies its

obligation of responsibility, which it also confirms in this way that it bases the processing of

data entirely on the deliberation(s) it relied on and believes it can use as

legal basis (quod non) and that it fails to compare the deliberation(s) with the requirements of the

42 https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-34-2020.pdf in particular marginal numbers

GDPR. The legal basis was the complainant's sticking point from the start of the procedure and was

the direct cause of his complaint. Furthermore, the complainant expressly stated in his conclusion in

replies that the defendants breached Articles 5 and 6 of the GDPR43. Defendant 1 cannot

therefore in no way claim that, when assessing the legal basis, the Chamber

Litigation would rule ultra petita.

93. Still according to Respondent 1, which adheres to the position of Respondent 2, an authority of
control cannot require an administrative authority to demonstrate the legality of a framework
regulatory when it has not itself defined this framework, that it only uses and, while the
complainant or the supervisory authority itself does not provide any evidence of non-compliance.
The Litigation Chamber notes that defendant 1 reformulates the question posed by the
Dispute Chamber as a question relating to the conformity of the Belgian regulations in
force in the processing of personal data with the GDPR, about
which the defendants argue that it is not for them to challenge the legality of
the current Belgian regulations on the processing of personal data, the
defend it or not to apply it (deliberately).
94. It is clear that the Litigation Chamber did not ask to assess the Belgian regulations by
relation to GDPR. It was asked, as has been stated on several occasions, whether the
defendants consider that it may be enough for them to have a deliberation to be able to
process the personal data of data subjects, and if they
believe they have a legal basis within the meaning of Article 6.1 of the GDPR, or if they still have
obligations based on their responsibility under the GDPR. This point is left unanswered
by the two defendants, despite the fact that they had the opportunity to take a position on this subject
and to exercise their rights of defence. However, they both explicitly chose not to
to take a position.
95. In the circumstances set out above, in particular the fact that any ambiguities in the
Belgian regulatory framework result mainly from choices of a regulatory nature, it is appropriate
however, not to impose any sanction on the defendants other than an injunction to put the
processing in accordance with the GDPR, as set out below.
43 In his reply submission, the complainant states:
"A fortiori, the defendants violated, among others - but not exclusively - Articles 5 and 6 of the GDPR. Neither the invitation to pa
the report, nor the tax notice for the collection of paid parking only mention my personal data

have been processed. Nowhere is there any trace of personal data processing or reference to life legislation.

private. »

III. Publication of the decision

Decision on the merits 31/2022 - 26/26

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

Litigation Chamber, this decision will be published on the website of the Protection Authority

Datas. However, for this purpose, it is not necessary to disclose the data directly.

identification of the complainant, but nevertheless to mention the identification data of the

defendants, taking into account the general interest of this decision, on the one hand, and

the inevitable re-identification of the defendants in the event of pseudonymization, on the other hand.

FOR THESE REASONS,

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

to order the defendants, pursuant to Article 100, § 1, 9° of the LCA, to put the processing in

compliance with Articles 5.1, a); 12.1. and 14.1 a) of the GDPR, as well as with Articles 5.2 and 24 of the

GDPR, within two months, and to inform the Data Protection Authority within the

same deadline.

In accordance with Article 108, § 1 of the LCA, this decision may be appealed in a court of law.

period of thirty days from its notification to the Court of Markets, with the Authority of

data protection as defendant.

(Sign). Hielke Hijmans

President of the Litigation Chamber