

Litigation Chamber

Decision on the merits 19/2020 of 29 April 2020

File number: DOS-2018-05421

Subject: Complaint against a City on the regularity of the consultation of the photo of a citizen in the National Register by a municipal employee

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

Hijmans, chairman, and Messrs. Y. Pouillet and C. Boeraeve, members. The case is taken up 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);

Considering the Law of August 8, 1983 organizing a National Register of natural persons. ;

Having regard to the Internal Rules of the Data Protection Authority as approved by the

Chamber 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:

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The Complainant

The data controller (hereinafter the defendant)

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I.

Feedback from the procedure

Having regard to the complaint filed on October 2, 2018 by the complainant with the Authority for the Protection of data;

Having regard to the decision of October 26, 2018 of the Frontline Service of the Data Protection Authority declaring the complaint admissible and forwarding it to the Litigation Chamber at the same date;

Having regard to the decision taken by the Litigation Chamber during its session of November 14, 2018 to request an investigation by the Inspection Service pursuant to Articles 63.2° and 94, 1° LCA; Given the referral to the Inspector General on the same date;

Having regard to the report and minutes of the Inspector General's investigation sent to the Chamber on May 17, 2019 litigation;

Having regard to the decision taken by the Litigation Chamber during its meeting of May 28, 2019 to consider that the case was ready for substantive processing under Articles 95 § 1, 1° and 98 LCA;

Considering the communication, on May 29, 2019, of the report and minutes of the investigation of the Inspector General to the parties and the invitation of the Litigation Chamber to the parties to put forward their arguments according to an established schedule; Having regard to the decision of July 19, 2019 of the Litigation Chamber to replace the final filing deadline for the defendant from July 19, 2019 through the date of August 19 2019;

Having regard to the submissions filed on August 19, 2019 by counsel for the defendant and the email accompanying under which counsel for the defendant specify that their client wishes be heard pursuant to Article 51 of the Internal Rules of the Protection Authority

Datas ;

Having regard to the hearing during the session of November 18, 2019 during which the defendant represented by his counsel appeared. At the end of this hearing, the Litigation Division decided to put the case in continuation and asked the defendant to provide it with all the documents additional information which would attest to the latest measures put in place since the communication of its findings in August 2019;

...□

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Having regard to the minutes of the hearing of November 18, 2019;□

Having regard to the additional documents filed by the defendant on November 22 and 26, 2019;□

Having regard to the complainant's response letter of December 11, 2019;□

Considering the last documents filed in reply by the defendant on January 14, 2020.□

II.□

The facts and the subject of the complaint□

According to her complaint, the complainant states that she has doubts as to the regularity of the□

consultation of his photo in the National Register dated May 11, 2018 by an employee of the□

defendant. On June 27, 2019, she sent an email to the Belpic helpdesk (FPS Interior – Direction□

General Institutions and Populations) in these terms:□

" Dear,□

By consulting my file via IBZ, I note that a consultation in "Code transaction 08□

– Photo consultation" was made on 05/11/2018 at 2:39 p.m.□

Knowing that I was on my honeymoon at the time, I find it quite strange that□

someone is looking at my picture.□

(....) I therefore know from experience that one does not consult a transaction code 08 without reason□

valid. It is certainly a colleague, so I would like to know more if possible.□

(...)".□

On June 28, 2019, the Belpic HelpDesk replied by email as follows:□

“Staff members of bodies authorized to access data in the Register□

national are bound by professional secrecy. Improper consultation of files (e.g. at□

private purposes) engages their personal responsibility at the disciplinary, civil and penal level.□

In the event of suspicion concerning abusive or non-regulatory consultation of your data□

by an organization, you can inquire directly with it. The□

organizations are indeed required to ensure the traceability and archiving of the consultations carried out within them and will normally be able to provide you with information concerning the nature of these consultations.

If the answer provided is not satisfactory or if you have serious reason to believe that a consultation is abusive, you have the possibility of lodging a complaint with the ...

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Privacy Commission (<https://www.privacycommission.be/fr>) or a court.

The services of the National Registry generally do not have information concerning the consultations carried out by these bodies and are also not authorized to manage the complaints".

Still by email of June 28, 2019, the complainant addressed a former work colleague, to know to whom to address your claim with the defendant. With no response, the complainant reiterated her request by email of August 14, 2019. By email of August 29, 2019, the defendant is answered that an investigation has been requested and that the complainant will be informed of the outcome of the investigation later.

The complainant inquired about the follow-up to her request by email of September 27, 2019. email of September 27, 2019, he is answered as follows:

"Dang,

Een onderzoek werd opgestart maar leverde geen total zekerheid op noch at betreft de persoon die uw dossier consulteerde (alleen de foto), noch wat betreft de eventuele motivatie voor de raadpleging.

Er werden geen bekentenissen afgelegd. De feiten werden evenwel geacteerd".

Free translation:

" Hello,

An investigation was opened but did not provide absolute certainty or concerning the person who consulted your file (only the photo) nor the possible motivation of the consultation.

No confession was made. However, the facts have been recorded.

On October 2, 2019, the complainant filed a complaint with the Data Protection Authority.

III.

The Inspector General's investigation report and minutes

According to his report and investigation minutes of May 17, 2019, the Inspector General draws up the following observation:

Finding 1: the defendant was unable to justify the consultation

in dispute in accordance with Article 17 of the Law of 8 August 1983 organizing a national register ...

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natural persons. In this respect, its register of consultations does not indicate the purpose for which the data from the National Register have been consulted.

The report also mentions the defendant's reference to Recommendation 07/2017 of 30

August 2017 from the Privacy Commission to cities and towns regarding

recording of the reason for consulting the National Register. 1 Indeed, by letter dated 19 February 2019, addressing the Data Protection Officer (DPO) of the defendant, the Inspector

General requests in particular that he be provided with "an explanation of the reasons why no concrete answer was given to the question of the citizen [read the complainant] (see the recommendation of CPVP No. 07/2017 of 30 August 2017 to cities and towns concerning the registration of the ground consultation of the National Register by members of their staff (CO-AR-2017-013)".

The defendant indicates by letter in reply dated April 29, 2019 that the check carried out on the basis of the complainant's request was made on August 20 and 21, 2019 by consulting the

SAPHIR logging used for access to the National Registry. A request for an explanation was then

took place with the agent under whose name this consultation was registered, namely Mr. X, □
employee of the defendant. □

The defendant goes on to state that the reason why the identity of the agent who consulted □
the photo of the complainant was not communicated is linked to the lack of absolute certainty as to the □
fact that this agent is indeed the author of the consultation. This lack of absolute certainty is □
“due to the fact that at the time of his hearing he had no memory of having carried out this consultation □
and specified never to consult the photos of citizens from the National Register but only □
in the Belpic application, to make a comparison when ordering identity cards. □

The reason for the logged consultation could not be established” (Excerpt from the defendant’s letter □
of April 29, 2019 addressed to the Inspector General of the APD). □

Finally, still in the context of the inspection, the defendant adds that several elements attest □
of its desire to strengthen, since 2018, the awareness and accountability of the agents to whom □
access to the National Register is granted as part of their function. She points out in this regard that □
the systematic recording of the purpose for which the data in the National Register are □
consulted has not yet been made mandatory. The system aimed at combating unfounded access □
is essentially preventive in nature, but without detective exploitation of the logging of □
access, except at the request of a citizen. □

The Inspection report notes in this respect that the defendant undertakes in the following terms: □

1 This recommendation is published on the website of the Data Protection Authority and was published on the website of the Co
of □

2017: □

https://www.autoriteprotectiondonnees.be/sites/privacycommission/files/documents/recommandation_07_2017.pdf □

protection □

adoption □

private □

August □

his□

from□

life□

of□

in□

the□

the□

...□

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"A recommendation will be made with a view to making it compulsory to enter the reason for□

consultation. (...). Consequently, a recommendation aimed at supplementing the system with a□

layer of detective nature will also be formulated, based on the principle that the pattern□

recorded in the access logging must be able to be corroborated by an element□

concrete, such as a file, a request, etc. and that a verification by sample□

can be sure" (Excerpt from the Inspection report - respondent's response of 5□

April 2019 – opinion of the DPO).□

IV.□

The hearing of November 18, 2019□

During the hearing held on November 18, 2019, the defendant, through its□

counsel, set out the arguments it had developed in its pleadings of August 19, 2019. More□

in particular, counsel for the defendant admits that a problem did indeed arise□

during the consultation of the complainant's photograph. The defendant also points out□

the seriousness with which the complainant's complaint was treated and the measures that were decided and□

have been put in place or will soon be put in place to comply with article 17 of the Law relating to□

in the National Registry.□

PLACE□

v.□

As to the competence of the Data Protection Authority, in particular□

the Litigation Chamber□

Pursuant to Article 4 § 1 LCA, the Data Protection Authority (DPA) is responsible for the□

control of the data protection principles contained in the GDPR and other laws containing□

provisions relating to the protection of the processing of personal data, including the Law□

of 8 August 1983 organizing a national register of natural persons.□

Pursuant to Article 33 § 1 LCA, the Litigation Chamber is the litigation body□

ODA administration. It is seized of the complaints that the Service de Première Ligne (SPL) forwards to it.□

pursuant to Article 62 § 1 LCA, i.e. admissible complaints. In accordance with article 60 paragraph□

2 LCA, complaints are admissible if they are written in one of the national languages, contain□

a statement of the facts and the indications necessary to identify the processing of personal data□

personnel to which they relate and which fall within the competence of the DPA.□

As for the consultation of the photograph denounced by the complainant, this consultation dates from 11□

May 2018. It therefore took place on a date prior to the entry into application of the GDPR. Bedroom□

Litigation is therefore not authorized to know about it. Indeed, the Litigation Chamber finds the□

legal basis of its jurisdiction in the Law of 3 December 2017 establishing the Authority of□

...□

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data protection (LCA) whose entry into force has been fixed, with some exceptions, on the date of 25□

May 2018 (Article 110 of the LCA). If the Litigation Chamber is competent with regard to processing□

of data which, of course, began before May 25, 2018 but continues today, it is not□

for one-off processing that would have taken place before May 25, 2018, no retroactivity□

not having been provided for the exercise in time of its competence.□

In this case, as set out in point III above, the inspection carried out following the filing□

of this complaint revealed breaches subsequent to the date of May 25, 2018, of which the Chamber□

Litigation is therefore authorized to hear (see point VI below).□

VI.□

On the reasons for the decision□

As a preliminary point on the violation of the rights of the defense invoked by the defendant□

In its submissions of August 19, 2019, the defendant deplores, as a preliminary point, that the complainant□

did not file submissions (point 10 of the defendant's submissions). She adds that he is□

impossible, given the wording of the latter's complaint, to grasp in an exhaustive manner what□

is reproached and more precisely the legal provisions which would have been violated.□

Accordingly, the defendant is of the opinion that its rights of defense have not been respected in this case.□

During the hearing of November 18, 2019, the defendant repeated its regrets and grievances at this□

respect.□

The Litigation Chamber is also of the opinion that a plaintiff cannot be required to identify□

in a clear, precise and exhaustive manner the legal provisions in support of which he is filing his complaint.□

This work of qualification of the facts - constituting breach(es) of the regulations in force in□

matter of protection of personal data, if applicable - is the responsibility of the Inspectorate and□

the Litigation Chamber. That in this regard, the letter of February 19, 2019 from the Inspector General□

questions the defendant on the reasons for which it did not comply with the Recommendation□

07/2017 which clearly states that the mention of the reason for the consultation constitutes a□

guarantee necessary and mandatory to access the National Registry in a legitimate manner.□

It appears from the defendant's response letter of April 25, 2019, that the latter understood□

what he was accused of. The Inspection report communicated on May 29, 2019 to the defendant□

status of this recommendation yet. Finally, in point 11 of its conclusions in reply, the□

defendant, notwithstanding its preliminary defence, states: "Notwithstanding the foregoing, two□

requests seem to emerge from the complaint filed on October 2, 2018:□

-□

-□

The identity of the author of the disputed consultation of the National Register;□

The reasons for this consultation, insofar as remain in the head of the□

complainant of doubts as to the link between this consultation and her dismissal, that she□

qualifies as abusive”.□

...□

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The defendant then defends itself with regard to these complaints in its pleadings.□

In conclusion, taking into account the foregoing, it can only be accepted that the rights of defense of□

the defendant would not have been respected.□

*□

On the necessary respect for the principle of responsibility (Articles 5 § 2 and 24 of the GDPR) and□

the obligation of security (Articles 32 of the GDPR and 17 of the Law organizing a Register□

of natural persons), coupled with the principles of finality (article 5 § 1 b) of the□

GDPR) and security (Articles 5 § 1 f) of the GDPR)□

In its capacity as data controller, the defendant is required to implement the□

data protection principles and must be able to demonstrate that these are complied with□

(principle of responsibility – article 5.2. of the GDPR). It must also, still in its capacity as□

controller, implement all the necessary measures for this purpose (article 24 of the□

GDPR). The Litigation Chamber insists, as it has already had the opportunity to recall in many□

previous decisions taken against public officials², on the fact that the public sector,□

must, in general, set an example in the measures it adopts to guarantee the□

respect for the fundamental right to the protection of personal data.□

Article 32 of the GDPR (security obligation) specifies the following:□

“1. Considering the state of knowledge, the costs of implementation and the nature of the□

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

and severity varies, for the rights and freedoms of natural persons, the data controller□

and the subcontractor implement the appropriate technical and organizational measures in order to
guarantee a high level of security adapted to the risk, including, among other things, as required:
(...)

b) the means to guarantee the confidentiality, integrity, availability and
ongoing resilience of processing systems and services
(...)

2 See Data Protection Authority, Litigation Chamber, Decisions 10/2019 and 11/2019 of November 25, 2019 to
under which the Litigation Chamber recalls that the status of public agent of the controllers placed
in question should have been accompanied by exemplary behavior with regard to compliance with the legislation, including that
relating to the protection of personal data.
...

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d) a procedure to regularly test, analyze and evaluate the effectiveness of the measures
technical and organizational measures to ensure the security of the processing (...)"³.

This article 32 translates article 5.1.f) of the GDPR (Chapter II-Principles) which sets out the principle
of integrity and confidentiality in these terms:

“Personal data must be: (...) f) processed in such a way as to guarantee a
appropriate security of personal data, including unauthorized processing
unlawful or unlawful and against accidental loss, destruction or damage, by means of
appropriate technical or organizational measures”.

The security of personal data is elevated to the rank of principle – which demonstrates its importance
increased – whereas it was not included in article 6 of Directive 95/46/EC of the European Parliament
and of the Council of October 24, 1995 on the protection of individuals with regard to the
processing of personal data and on the free movement of such data, repealed by
entry into force of the GDPR).

Among the appropriate security measures intended to guarantee the confidentiality of data, a

controller such as the defendant is necessarily required to put in place□

organizational and technical security measures that guarantee access control4: in□

in other words, only people who, in the exercise of their own function, need access□

to such or such data must be able to benefit from the necessary access for this purpose.□

The Litigation Division recalls in this regard Article 5 § 1 b) of the GDPR (Chapter II-Principles) which□

enshrines the principle of purpose, i.e. the requirement that data be collected for purposes□

determined, explicit and legitimate and are not further processed in a way□

incompatible with these purposes. In this respect, the defendant is authorized to consult the Register□

national for purposes determined in accordance with the Law of 8 August 1983 organizing a Register□

national of natural persons.□

3 It is the Litigation Chamber which underlines.□

4 See. in particular the Reference Measures in terms of security applicable to any processing of personal data□

personnel issued by the Commission for the Protection of Privacy:□

<https://www.autoriteprotectiondonnees.be/lexique/mesures-de-reference>□

Logical security of access□

The organization must ensure that personal data are only accessible, in accordance with their classification,□

only to people and applications that have explicit permission.□

It will maintain an up-to-date list of the various persons authorized to access and process this data and their□

respective powers (creation, consultation, modification, destruction).□

These different authorizations must be translated into technical devices and access controls to the different elements.□

computers (programs, procedures, storage elements, telecommunications equipment, etc.) involved in the□

processing of personal data.□

These technical provisions must include activities upstream (application development) and downstream (management of copies

backup).□

If the level of security requires it, the identification of the participants will be supplemented by an authentication procedure.□

...□

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The data controller must therefore ensure that the personal data is not□

accessible only to people and applications that have explicit permission to do so. It suits□

assign each person their own account and access to personal data should be□

be exclusively authorized by applying the need-to-know principles. These persons□

should only have access to the functionality or data they need for the purposes of□

the execution of the tasks assigned to them, in compliance with the principle of purpose.□

In its Recommendation 03/2017, to which the Inspector General also refers, the Commission□

of the Protection of Privacy (CPVP) at the time, states that the principle of responsibility (articles□

5.2. and 24 of the GDPR) recalled above "therefore implies not only that the person responsible for□

processing complies with the provisions of the GDPR, but also that it can demonstrate it (...). It's not enough□

to take the appropriate technical and organizational measures, in accordance with the terms of the Regulations;□

this must also be done in a transparent and traceable way that allows, in the event of regular checks,□

to provide proof of the guarantees applied" (point 16 of recommendation 07/2017).□

Recommendation 01/2017 further specifies that the GDPR, then in force but not yet in□

application, will reinforce the existing obligations of the LVP [read the Privacy Act, i.e. the Law of 8□

December 1992 on the protection of privacy with regard to the processing of personal data□

personal nature], will submit, as soon as it comes into force on May 25, 2018, the managers of the□

treatment, in this case the cities and towns - including the defendant -, to the principle of□

accountability and will also raise the bar for the transparency of□

processing (principle of transparency). The said recommendation concludes that: "the joint reading□

current national legal provisions and the future GDPR leads to the conclusion in this□

recommendation that the mention of the reason for the consultation constitutes a necessary and□

mandatory for legitimate access to the National Register" (point 6 of the recommendation□

07/2017)5.□

It is therefore incumbent on the defendant to ensure that access to the National Register remains limited to□

purposes for which this access was authorized. It is also his responsibility to be able to
to prove.

Compliance with the purpose principle, a pillar of data protection, cannot be verified.

if the agents of a structure such as the defendant do not record the reason for the consultation that they
operate. It is equally essential in this respect that in accordance with Article 24 of the GDPR, the
respondent has an adequate control mechanism ensuring that its authorized agents

5 Emphasis added by the Litigation Chamber.

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consult the National Register solely for these purposes. The defendant must have
a computer application that legitimizes each consultation carried out by its
staff and thus demonstrates that the consultation took place within the framework of the exercise of the tasks of the
staff member who conducted the consultation.

In addition to Article 32 of the GDPR, the defendant, in its capacity as the authority having access to the National Register,
is also required to comply with the specific provisions of the Law of 8 August 1983 organizing a
National Register of Natural Persons. According to article 17 of this law - entered into force

December 23, 2018 - to which the Inspector General refers:

“Each public authority, public or private body having obtained authorization to access
information from the National Register of Natural Persons, including the services of
police, as well as those of Justice cited in Articles 5 and 8 must be able to
justify the consultations carried out, whether these are made by an individual user or
by an automated computer system. To this end, in order to ensure the traceability of
consultations, each user keeps a register of consultations.

This register indicates the identification of the individual user or process or system that
accessed the data, what data was accessed, how it was
consulted, namely for reading or for modification, the date and time of the consultation as well as

that the purpose for which the data from the National Register of Natural Persons was

consulted.

(...).⁶

The Litigation Chamber has already indicated that the facts at the origin of the complaint being prior to the date

of May 25, 2018, she could not know. The inspection – conducted from November 21, 2018 to May 17

2019 - nonetheless disclosed that the Respondent had generally not yet completed

the implementation of the technical and organizational measures required to comply with the articles

5.2., 24 of the GDPR (principle of liability) as well as Articles 32 of the GDPR and 17 of the Law of 8

August 1983 organizing a National Register of natural persons (security obligation), coupled

in Articles 5 § 1 b) and f) of the GDPR (principles of purpose and security), which the defendant does not

don't dispute.

VII.

On corrective measures and sanctions

Under the terms of Article 100 LCA, the Litigation Chamber has the power to:

6 Emphasis added by the Litigation Chamber.

...

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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.□

It is important to contextualize the breach of articles 5.2., 24 of the GDPR as well as articles 32 of the□

GDPR and 17 of the law of August 8, 1983 organizing a National Register of natural persons,□

combined with Articles 5 § 1 b) and f) of the GDPR in order to identify the most effective corrective measures□

adapted.□

The Litigation Chamber notes that both the principle of security (Article 5 § 1 f) of the GDPR) (and the□

obligations arising therefrom – Article 32 of the GDPR) and the purpose principle (Article 5 § 1 b) of the GDPR)□

that the principle of security guarantees, are essential principles of the system of protection put in place□

by the GDPR. The principle of liability set out in Article 5.2. of the GDPR and developed in article 24□

are at the heart of the GDPR and reflect the paradigm shift brought about by it, i.e. a□

changeover from a regime that relied on prior declarations and authorizations from the authority□

of control towards greater accountability and responsibility of the data controller.□

Compliance with its obligations by the latter and its ability to demonstrate it are therefore all the more important.□

important. Breaches of these principles constitute serious breaches.□

With regard to the number of people potentially concerned, the National Register includes a□

identification database of all natural persons who are registered in the register of□

...□

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the population, waiting register and register of foreigners kept by the municipalities or even the□
consular registers, i.e. for the defendant alone, more than XXX registered out of a total of 11 million□
of persons registered in the National Register.□

The extent of the operations carried out in the National Register by cities and towns such as the□
furthermore, the defendant cannot moderate the obligation to provide for a mechanism guaranteeing compliance□
the purposes for which the data in the national register can be accessed by indicating the□
reason for this consultation or the requirement of effective control. On the contrary, both Article 32 and Article□
24 of the GDPR prescribe that the nature of the technical and organizational measures taken by a□
entity such as the defendant is proportionate to the seriousness of the risks to the rights and freedoms of□
persons concerned. By nature, this database comprising a certain number□
of information – albeit limited – of more than 11 million people requires a framework□
particularly rigorous, not only in view of its scale, but also because of its□
very vocation of recording, memorizing and communicating information relating to□
the identification of natural persons.□

The Litigation Chamber notes that as early as 2015, the Sectoral Committee of the National Register had provided□
details of the exact extent of this obligation to keep log files in the□
framework of access to the National Register by local administrations. In this Recommendation, the□
Committee specifies that “this tracing must include the identification of the individual user or the□
process or system that accessed this data, the data that was accessed, how□
they were accessed (in reading, in modification, ...), when they were accessed as well as the reason□
this access.”⁷ The Committee further recommended that a mandatory field be provided for□
recording the reason for access.□

The Commission for the Protection of Privacy (CPVP) had also indicated on several occasions,□
even before recommendation 01/2017, that the recording of the reason for consulting the register□

national level is of crucial importance.⁸

Of course, these were recommendations. However, they bear witness to the major concern

expressed a long time ago and recommendations to put such a mechanism in place well before

the entry into force of the GDPR. In other words, the question was not new and the defendant,

because of its quality, could not ignore them.

7 Recommendation 01/2015 of the Sectoral Committee of the National Register to municipalities and local administrations relating

information security, to regulate their access to the national register and subsequent processing of data from the Register

national, February 18, 2015, points 44-49.

8 See. point 23 of Recommendation 01/2017 already cited and the references mentioned.

...

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The Litigation Chamber also notes that, both during the inspection and in its conclusions,

the defendant explains the various decisions taken to comply with its security obligations

intended to meet the requirements of the GDPR and the Law of 3 August 1983 organizing a Register

national of natural persons. These decisions are attested by various documents in the file such as

that the internal documentation relating to access to the national register, the appointment and the work of the

Data Protection Officer (DPO) (opinion of 5 April 2019) as well as a recommendation of 25

April 2019 (accepted on May 6, 2019) aimed at making referral of the reason for consultation with

an implementation planned for the last quarter of 2019.⁹ The Litigation Chamber

notes that most of these documents and decisions were adopted during the inspection.

It also appears from the documents provided by the defendant in the context of the

continuation decided by the Litigation Chamber following the hearing of November 18, 2019 that the

work to implement the DPO's recommendation to make mandatory, in any application

in the National Registry, the entry by the user of the purpose for which the data in the National Registry

are consulted (in addition to the other data to be recorded and this, in accordance with article 17 of the law

National Register of August 8, 1983) actually continued during the last quarter

2019 (minutes of meeting “Access to the National Register of September 16, 2019”).⁹

It also appears from the documents in the file that recommendations were made by the DPO of the defendant regarding the control of access to the National Register (excerpt from the minutes of meeting “Access to the National Register of September 16, 2019”).

The Litigation Chamber also notes that during the month of October 2019, the follow-up of the DPO's recommendations resulted in particular in the identification of the reasons for consultation for each of the groups having access to the national register and their introduction in "SAPHIR".

The Litigation Chamber also notes that by email of November 22, 2019 wording “Important GDPR SAPHIR – RN consultation: new procedure”, the defendant sent to its agents an email in which their DPO informs them that a procedure has been put in place which will now include the choice of a reason for consultation before any consultation of the National Register of a citizen. In the Saphir application, a drop-down list containing a series of design patterns consultation relating to the respective matters of the staff members concerned will appear during any request to consult the National Register. Under this procedure, staff must select the purpose corresponding to the type of file processed.

⁹ See. the exhibit “meeting access to the national register of May 3, 2019” of the defendant

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The Litigation Chamber further notes that by email of the same November 22, 2019, the defendant communicated to its computer correspondents a message according to which a periodic (quarterly) and systematic control of assigned accesses is put in place: a listing containing the surname, first name and the associated access group for each agent included in the database “Users Saphir – RN” database is established. The control will ask for confirmation of the names of the agents for which access must be maintained. In the absence of a response, access will be systematically removed.

In addition to these specific measures relating to the indication of the reason for consulting the National Register,

the defendant transmitted to the Litigation Division the training materials used in support of internal GDPR awareness sessions. It also communicated to the Litigation Chamber exchanges of e-mails between its DPO and the heads of its various departments regarding the finalization of the Register of personal data processing activities (article 30.1. of the GDPR) as well as the Records as such for the processing activities of different departments. The defendant indicates that the preparation of these registers is also planned for the remaining departments.

The Litigation Division takes note of this information and the documents sent to it. She considers that these testify to a certain number of steps taken by the defendant to comply with the obligations to which it is bound in its capacity as data controller.

That while the Chamber welcomes such steps, it nevertheless regrets that the defendant, aware of its security obligations, did not require its agents to keep a manual register accesses and their reasons while waiting for IT solutions.

In general, the Litigation Chamber emphasizes the good cooperation of the defendant - admittedly required by Article 31 of the GDPR - both with the Inspector General and with the Chamber Litigation.

In conclusion, in view of the elements developed above specific to this case, the Chamber Litigation considers that the facts found and the breach – to which the defendant affirms that it has since been remedied - Articles 5.2., 24 of the GDPR as well as Articles 32 of the GDPR and Article 17 of the Law of 8 August 1983 organizing a National Register of natural persons, combined with the Articles 5 § 1 b) and f) of the GDPR, justifies that as an effective, proportionate and dissuasive sanction a reprimand (article 100 § 1, 5° LCA), is pronounced against the defendant.

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 website of the Authority of data protection through the deletion of the direct identification data of the parties and of the persons mentioned, whether natural or legal.

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FOR THESE REASONS,□

THE LITIGATION CHAMBER□

Decides, after deliberation, to address the defendant with a reprimand on the basis of Article 100 §□

5° of the ACL.□

*□

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

markets within 30 days of its notification, with the Authority for the protection of□

given as a defendant.□

Hielke Hijmans□

President of the Litigation Chamber□