Litigation Chamber

Decision on the merits 54/2021 of 22 April 2021

File number: DOS-2019-06237

Object :

Complaint relating to unlawful consultation of the National Register in the

context of the allocation of family allowances

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

Hijmans, chairman, and Messrs. Y. Poullet and C. Boeraeve, members, taking up the case 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 protection

data), hereinafter GDPR;

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

Having regard to the Rules of Procedure 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 X1, (hereinafter “the complainant”);

The defendant: Y1, (hereinafter “the defendant”);

In the presence of: Y2 ASBL, (hereinafter “the voluntary intervener”);

Having both as counsel Maître Paul Van den Bulck and Maître Andrine Like, lawyers at the Bar

of Brussels, whose cabinet is established Rue des Colonies 56 box 3 at 1000 Brussels.

1. Feedback from the procedure

Having regard to the request for mediation filed on December 8, 2019 by the complainant with the Authority of

data protection (DPA);

Given the failure of the mediation attempt communicated to the complainant on February 20, 2020 by the

First Line (SPL) of ODA;

Considering the agreement given by the complainant on February 20, 2020 for his request to be transformed into a complaint

pursuant to section 62.2. ACL;

Considering the decision of March 9, 2020 of the SPL declaring the complaint admissible and the transmission of it to the

Litigation Chamber;

Having regard to the letter of April 8, 2020 from the Litigation Chamber informing the parties of its decision to

consider the file as being ready for substantive processing on the basis of Article 98 LCA and their

communicating a timetable for the exchange of conclusions. In this letter, the Litigation Chamber

specified in particular the following to the parties:

Without prejudice to any argument that you would like to develop, you will make sure to clarify the

Litigation Chamber on the data processing that took place, on the role of the different

possible stakeholders and their quality with regard to the regulations for the protection of

data as well as on the precise legal basis of the disputed consultation of the data of the

complainant. You will also make sure to explain the measures put in place to guarantee

access to only data justified by the processing of files and the traceability of this access.

You will also inform the Litigation Chamber of what is concretely understood by

the terms "induced and involuntary consultation" used in the attachments to the complaint

in view of the facts of the case.

Having regard to the main conclusions filed on May 22, 2020 by the defendant as well as by Y2

(the voluntary intervener) who voluntarily intervenes in the cause by this means (see below the

points 30 and following);

Having regard to the plaintiff's arguments of June 9, 2020;

Having regard to the additional and summary conclusions of the defendant and the voluntary intervener of 3 July 2020;

Having regard to the invitation to the hearing sent by the Litigation Chamber to the parties on December 10, 2020;

Having regard to the hearing during the session of the Litigation Chamber of January 19, 2021 in the presence of the complaina and Maître A. Like, representing both the defendant and the voluntary intervener;

Having regard to the letter sent by counsel for the defendant and the voluntary intervener on January 26 2021;

Having regard to the minutes of the hearing and the observations made thereon by the parties who been attached to these minutes.

2. The facts and the subject of the request

2.1. Preliminary remarks

1. For the proper understanding of its decision and of all the actors to whom the documents procedure and the files of the parties refer, the Litigation Chamber specifies the following:

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FAMIFED is the federal agency for family allowances. FAMIFED was to insure until 31 December 2019 the management of family allowances, including in the Region of Brussels-Capital.

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IRISCARE has, under the terms of the 6th state reform, become, instead of FAMIFED, the supervisory authority of the family allowance funds for the Brussels-Capital Region. IRISCARE is responsible for setting up and managing the family allowance system of the Brussels-Capital Region.

- During a period of transition, the two structures coexisted so that the relay of the mission can pass from FAMIFED to the new regional authorities, of which, as mentioned, for the Brussels-Capital Region, IRISCARE. In the context of this decision,

IRISCARE and FAMIFED are indistinctly referred to as “the Supervisory Authority”.

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The complainant includes the Crossroads Bank for Social Security (BCSS) among the “interveners”

revolving around the disputed data processing indicating that it was the BCSS which, at the time

facts, develops the TRIVIA application. The TRIVIA application allows benefit funds

families to consult the available files of integrated actors, to integrate themselves

actors and to create files and to obtain, through the intervention of the BCSS, access to the various

social security network sources.

2. The defendant is the shared service center of group Y. It renders administrative services

to the various entities of the Y group. In this respect, it ensures in particular the monitoring relating to the protection

personal data from all family allowance funds in the group. She

has a Data Protection Officer (DPO) as well as a “Corporate1 Compliance

Officer” and “Information Security Officer”.

3. Y2, here a voluntary intervening party, aims in particular to pay family allowances to

its affiliates who have children.

4. Mr. X2 is the complainant's son, affiliated with Y2, who voluntarily intervened in the case (see below

dots 30 et seq.).

2.2. The facts giving rise to the dispute

5. In July 2019, the voluntary worker consulted the data of the complainant's son in the Registry

national, in particular the “household composition” data and its history. This consultation

took place in order to manage the family allowance file of the complainant's son, one of his affiliates, and to

determine the amount of family allowances - including any supplement - that would be

entitled to receive from January 1, 2020. This consultation was done via the TRIVIA application,

developed by the BCSS, made available to family allowance funds, including the intervener

voluntary, by the supervisory authority. This consultation was made on the basis of the Registry number

national of the affiliate, Mr. X2.

6. It is this consultation of the history of the composition of Mr. X2's household that is the subject of the complainant's complaint. Indeed, during this consultation, the voluntary worker had access to the information that the complainant had been part of his son's household at a time of his life. The complainant complains that this consultation of personal data concerning was not based on any valid basis of legitimacy within the meaning of Article 6 of the GDPR (see. title 2.3; points 23 et seq.).

1 Deliberation 18/008 of January 9, 2018 on the communication of personal data by the Agency federal government for family allowances (Famifed) and various other social security institutions at the Ministry of the German-speaking Community, in the context of the transfer of competences to follow up on the sixth reform status – using the TRIVIA application.

7. This search for the history of the composition of the household is called by the supervisory authority "looking for P028". It is carried out via the TRIVIA application already mentioned. During this research, the history of the composition of the household of Mr. X2 displayed the complainant as having been part of his household in the past, as head of household.

8. On September 24, 2019, the Supervisory Authority received a request for information from the complainant via the contact form on its website. By this request for information, the complainant questioned the supervisory authority about the consultation of its data on July 9 and 17, 2019.

9. There followed an exchange of e-mails between the complainant and the Supervisory Authority. The latter informed the complainant of the nature of the P028 research which had led to access to certain data on concerning and invited him, if necessary, to contact the family allowance fund (either the voluntary worker), in order to inquire further about the reason for accessing his data as they appeared in her son's household composition history.

10. On 7 October 2019, the complainant sent his request for information to the service for the protection of data of the voluntary worker via the address “[…]”.

11. On October 10, 2019, the defendant, which, as mentioned above in point 2, monitors

on the protection of personal data of all family allowance funds

of the group, acknowledged receipt and answered a first time the request for information from the

complainant.

12. On October 14, 2019, the Respondent responded a second time to the Complainant. This answer made

following a request for acknowledgment of receipt from the complainant regarding his request for information, which

acknowledgment of receipt had been sent by the defendant on October 10, 2019 (see point 11 below).

above).

13. On November 6, 2019, the Complainant wrote once again to the Respondent. The same day, the

respondent responded a third time to the complainant and confirmed that it had responded promptly to the

October 10 and 14, 2019 at his request of October 7, 2019.

14. On November 7, 2019, the plaintiff, still addressing the defendant, developed his fears

and raised the following question:

"Whether we check his tax flow [read Mr. X2's tax flow] does not bother me personally

no problem and that seems normal to me since his household is beneficiary/beneficiary

Family Allowances.

BUT, what are the legal bases that allow you to consult my own

private data and tax flow?"

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15. On November 7, 2019, the Respondent replied a fourth time to the Complainant and confirmed that the

the complainant's tax flow had not been examined and that only the identification data of the

plaintiff had come to light when consulting her son’s household history.

16. On November 12, 2019, the complainant confirmed receipt of the registered letter from the

defendant by which the latter provided proof of the sending of its e-mails of 10 and 14

October 2019.

17. On November 20, 2019, the Respondent informed the Complainant that a request for clarification had

yet been requested from the Supervisory Authority regarding the consultation of his data. the

Defendant's DPO returned the same day (i.e. a fifth time) with said clarification of

the supervisory authority. In the response sent by the defendant to the plaintiff, the supervisory authority

confirms that it appeared that there had been access to the complainant's identification data,

the latter being mentioned as having been part of the household of his son and that it was necessary to understand

that this consultation was "induced and not voluntary" (in other words, that it was a

incidental access via the history of the household composition of the complainant's son).

18. The same day, after receiving this response (see point 17 above), the complainant put the

defendant in default to justify the legal bases of the consultation of its data.

19. On November 27, 2019, the Respondent came back to the Complainant for a sixth time, telling him that

the provisions of the General Law on Family Allowances (hereinafter "LGAF") justified the

consultation of the history of the composition of the household of Mr. X2 (the complainant's son) with

of the National Register (i.e. articles 51 and 54 LGAF). Literally, it indicated, for the

good understanding of the complainant, that the mission of the family allowance funds included

the verification of the rights to the allowances, including the verification of the "history of the

family composition for which the funds have the right to query the National Register".

20. On 8 December 2019, the complainant lodged a request with the DPA in these terms:

"I noticed that (Y2- Brussels) [read the voluntary worker] had consulted my data

personal without any valid reason in my eyes given that I am a pensioner, without

family for more than 10 years and that I live in Wallonia.

After questions from the managers, I received an answer that did not satisfy me in any way.

given that the history of the family composition of the household of one of my sons - whose

household apparently benefits from family allowances in Wallonia - does not have to open (from

induced and non-voluntary manner regardless of the legal references, unless my mistake is

part, do not allude to it) on interrogations of my private data which are in no way

concerned.

This is not, in my view, a normal procedure but a malfunction (or a

pirate query) that I cannot accept."

21. On February 3, 2020, the defendant responded to questions from the SPL in the context of the attempt

mediation conducted by this APD service. In essence, the respondent replied to the DPA which

had already been answered to the complainant by the Supervisory Authority, or that a P028 search had been

carried out and that the consultation was non-voluntary on its part but resulted from the consultation

– necessary in the exercise of its legal missions – consultation of the history of the

household composition of the complainant's son.

22. When communicating his conclusions on June 9, 2020, the complainant denounced that a new

consultation of his data, still without legitimate basis according to him, had taken place on April 21

2020. Arrested on June 3 in this regard, the defendant, on June 15, 2020, told the plaintiff that

this consultation was part of the management of this file pending before the DPA.

The Litigation Chamber specifies from the outset that it will also rule on this second

consultation, the legality of which is called into question by the complainant under the terms of his conclusions

when it is closely linked to the facts denounced by the complainant under the terms of his form

of complaint.2

2.3. The subject of the complaint

23. In these same conclusions of June 9, 2020, the complainant clarified the subject of his complaint and expressed his

that his son, Mr. X2, has not been domiciled with him since 2006. Consulting the history

of the composition of the household of the latter – even necessary for the granting of allowances – must, according to

be subject to a time limit taking into account (1) either the day on which the person whose

"household composition history" data is consulted is potentially

beneficiary/beneficiary of the allowances/supplement, (2) or from the day of the birth of the child

beneficiary. Access to the history of the "household composition" since the birth of the person

whose history is consulted - as happened in this case - is irrelevant and

disproportionate to the aim pursued (the granting of family allowances).□

2 See. in this sense points 18 and s. of Decision 38/2021 of the Litigation Chamber:□

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-38-2021.pdf□

According to the complainant, this access constitutes a breach of security that is all the more unacceptable:□

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that it comes from public authorities;□

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that it potentially affects millions of people (beyond himself, his□

wife and all the people with whom her son has, at some point in his□

life, lived under the same roof);□

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that the useful data (i.e. the date(s) which open(s) the right to benefits□

family and from which date(s) the consultation of the history of the□

composition of management could be relevant) is/are available in the Cadastre□

family allowances;□

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that the “P028” search system replaced an earlier system which□

allowed for relevant and targeted research. The complainant cites in this regard the passage□

following excerpt from the "Specific functional description of the P028 message" sheet:□

1.2.1.1.□

P028 Household composition history query□

Principle□

The P028 message is used to request data relating to the history of the□

composition of the household in the National Register on the basis of a Registry number□

national. This flow can be extended later with data from the register of the□

BCSS.

This consultation flow combines the old consultation messages P036 and P038

in a single message. Unlike the P036 consult message, this flow displays

the complete history, whether or not the person sought is the head of the household. It is not

therefore no longer necessary to carry out several consultations for this purpose. (…)

24. Finally, still in his conclusions of June 9, 2020, the complainant makes a series of requests to

the Litigation Division, i.e. (page 11 of its conclusions):

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To condemn jointly and severally the defendant, the voluntary intervener,

the supervisory authority, the FPS Interior (National Registry), the Crossroads Bank for Security

Social Security (BCSS), or even any dishonest authors responsible for accessing and processing

of its data, in accordance with Articles 221 to 230 of the Law of 30 July 2018 relating to the

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

staff ;

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To inform the Public Prosecutor of the breaches noted and to inform the complainant of this

Steps ;

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To ensure that the necessary corrections have been made to remedy the shortcomings

denounced under penalty of penalty;

To obtain proof that his tax data has not been processed within the framework of the

consultation denounced;

To obtain the necessary explanations regarding the consultations of July 9, 2019 and April 21, 2020

by FAMIFED in the National Registry;

To obtain the identification and full contact details of all persons who have had access

to his personal data and failing that, condemn the defendant, the voluntary intervener and

the other workers on penalty payments;

To invite those responsible in the broad sense of the unlawful processing, or even the possible perpetrators

dishonest, to compensate him for the material and moral damage suffered.

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2.4. Position of the Defendant and the Voluntary Intervener

25. The Defendant and the Voluntary Intervener, for their part, seek, in support of their submissions,

that the Litigation Chamber declares the plaintiff's complaint, if admissible, unfounded, the

consultation of the household composition of Mr. X2, son of the complainant, being from their point of

perfectly legal and legitimate view. They therefore request that the complaint of the

complainant without action. The defendant and the voluntary intervener add that if by impossible,

the DPA had to consider that in the circumstances of the case, access to the history of the

composition is illegal, it should challenge both the National Registry and the Authority

of guardianship insofar as they are the ones who determine the data accessible during a

research P028 (page 11 of the additional and summary conclusions of the defendant and

voluntary worker).

3. The hearing of January 19, 2021

26. During the hearing of January 19, 2021 - the minutes of which were established - the parties presented

the arguments they had developed in their respective conclusions.

27. The following elements were particularly highlighted by the parties:

the status of data controller of the voluntary worker;

the deliberate choice, according to the plaintiff, to set up a search that carries the

consultation of potentially irrelevant data and the seriousness of the problem at

with regard to the number of people who may be affected by this structural failure;□

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the absence of any legal impact of the “induced” and “non-voluntary” nature of the access□

to data not relevant to the qualification of processing within the meaning of article 4.2. GDPR;□

the demonstration by the defendant and the voluntary intervener of the obligation to resort to□

the TRIVIA application and the impossibility for them to modify the parameters to consult the□

only historical data relating to a targeted period of time.□

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PLACE□

As a preliminary□

□ As for the quality of the parts□

28. Both in terms of its submissions and the hearing (see title 3 above), the intervener□

voluntary declares himself responsible for processing within the meaning of article 4.7. of the GDPR with regard to the□

contentious consultation, a consultation which it moreover qualifies as incidental. The defendant is for□

its share qualified as subcontractor of the voluntary intervener (page 10 of the conclusions and page 11□

additional and summary conclusions of the defendant and the voluntary intervener).□

29. The Litigation Chamber takes note of this and sees, in the context of its own analysis with regard to□

to the elements of facts submitted to it and having regard to the elements of applicable law, no□

reason for not recognizing that the voluntary intervener and the defendant had these respective qualities.□

With regard to the voluntary worker more particularly, she defines, at the start of her□

own mission, the purposes and means of the data processing that it operates within the meaning of□

Article 4.7 of the GDPR which defines the data controller.□

□ As for the voluntary intervention□

30. The Litigation Chamber takes note of the voluntary intervention of Y2 in this procedure. This intervention is the result of the decision of Y2 who, voluntarily, and for the needs of the cause, intervened in the proceedings by way of pleadings (see title 1).

31. The Litigation Division specifies that neither the LCA nor the Internal Rules of the DPA explicitly provide for the mechanism of (voluntary) intervention by a party that would not have been questioned by the plaintiff.

32. Nevertheless, in the exercise of its competences, it is incumbent on the DPA, and therefore on the the Litigation Chamber in the exercise of the powers assigned to it, to facilitate the exercise of the rights granted to data subjects by the GDPR, including the right to carry complaint (Article 77 of the GDPR – also recognized in Article 8.3. of the Charter of Rights

as part of the essence of the right to data protection). In this perspective, filing a complaint must remain an easy process for people data subjects whose personal data are processed and with regard to the processing of which they consider that there has been a breach of data protection rules.

33. As it has already had the opportunity to develop in its Decision 17/20203, the authorities of data protection must to this end play an active role through the missions and powers vested in them under Articles 57 and 58 of the GDPR.

34. In the same way that the plaintiff cannot be expected to identify immediately, from the terms of his complaint, all of the relevant legal grievances with regard to the facts denounced4, of the same way he cannot be expected to identify with certainty the data controller concerning. To assert the contrary would be tantamount to seriously jeopardizing the right of complaint of the complainant. Indeed, the identification of the data controller, even in support of the definition provided for in Article 4.7. of the GDPR, is a process that can be particularly complex. Certainly detailed guidelines have already been published on several occasions by the European Committee Data Protection (EDPS) and its predecessor the Article 29 Working Party on it.5

Nevertheless, it is clear that this identification often remains thorny. It requires

sometimes even recourse to the Inspection Service in the most difficult cases.

35. In support of the foregoing considerations, in order to give practical effect to the right to lodge a complaint,

and through it, to contribute to the effective application of the GDPR, the Litigation Chamber

therefore naturally accepts this voluntary intervention. She specifies that, of course, the debate

contradictory has been tied with the latter as well. In these circumstances, the Chamber

Litigation is able to impose sanctions on the voluntary intervener, if necessary.

 As for the competence of the DPA and the Litigation Chamber

36. The Litigation Chamber specifies here from the outset, with regard to the measures requested by the

complainant (see point 24), that it is in any event not competent to grant

any compensation even in the event of breaches noted. Indeed, this

3 Decision 17/2020: https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-17-

2020.pdf Voy. also Decision 80/2020 of the Litigation Chamber:

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-80-2020.pdf

4 Decision 38/2021 of the Litigation Chamber:

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-38-2021.pdf

5 See EDPB Guidelines 07/2020 on the concepts of controller and processor in the GDPR, at edpb.europa.eu.

competence is not listed among the corrective measures and sanctions that it can decide in

application of sections 58.2. GDPR and 95 and 100 LCA.

4. Regarding breaches of the GDPR

37. The Litigation Chamber notes that it appears from the statement of facts above that the plaintiff

criticizes the voluntary worker for having accessed personal data on

concerning and this, according to its terms, without valid legal basis.

38. The Litigation Chamber notes that the parties do not dispute that during the consultation of

the history of the household composition (National Register) of Mr. X2 in July 2019,

the Voluntary Advocate did have access to the information that the Complainant had, at

a time, was part of his son's household as head of household.

39. The fact of having accessed this information constitutes a processing of personal data

within the meaning of Article 4.2 of the GDPR6 regardless of whether the data controller

treatment which accessed it – in this case the voluntary intervener – intended to seek

this information or if there was access to it incidentally, fortuitously, and this, on the occasion of the

search for data relating to a separate person, in this case, the complainant's son. that

the voluntary worker had the intention or not to process this personal data,

whether or not she then used it to make her decision, all these elements are irrelevant

on the qualification of "processing" within the meaning of Article 4.2. of the GDPR.

40. The Litigation Chamber recalls that any processing of personal data must

rely on one of the bases of lawfulness provided for in Article 6 of the GDPR.

41. Article 3, paragraph 1, 9° of the Law of 8 August 1983 organizing a national register of persons

(hereinafter the RN Law) provides that for each person registered in the National Register, the

"household composition" data is recorded and stored as well as the modifications

successive changes made to this information as well as their effective date; it is

the history (article 3 paragraph 2 of the RN Law). The Royal Decree of 8 January 2006 determining

the types of information associated with the information referred to in Article 3, paragraph 1, of the law

of 8 August 1983 organizing a National Register of natural persons specifies as to

6 See. Article 4.2 of the GDPR: "processing" means any operation or set of operations whether or not carried out using

automated processes applied to personal data or sets of personal data, such as

that the collection, recording, organization, structuring, storage, adaptation or modification,

the extraction, consultation, use, communication by transmission, dissemination or any other form of

provision, reconciliation or interconnection, limitation, erasure or destruction.

him in his article 1, 9° that are associated with the information "household composition" the data

following: “household reference person” on the one hand and “household member” on the other

go.

42. Consequently, consultation of the “household composition” data in the National Register of

the complainant's son may, de facto, take cognizance of personal data

people other than the son himself, such as members of his household. Personal data

that appear in the household composition and its history are both character data

relating to the person whose National Register is consulted AND personal data

personnel relating to the people who are included in the composition and history of its

housework. There will therefore be processing of personal data of third parties

(distinct from that for which the “household composition” data is consulted, i.e. in this case the son

of the complainant) as long as they are or have been part of the household of the person for whom

the “household composition” data is consulted (as here the complainant). It does not result

however not necessarily a lack of basis of lawfulness for the processing of the data of

these third parties such as the complainant in this case.

43. Provided it is validly invoked, the legal basis for consulting the data

“household composition” (and its history) of the person concerned (in this case the son of the

complainant) includes the consultation of the data included in this information, therefore including

members of his household, including the complainant. In the present case, the basis of lawfulness in support of which

the consultation of the history of the composition of the household of the complainant's son is carried out legitimately

potentially also access - even induced as described by the defendant and

the voluntary worker - to the data relating to the complainant according to which he was part of the household

of his son.

44. The Litigation Chamber recalls that in addition to the required basis of lawfulness (Article 6 of the GDPR),

personal data must, in accordance with the principle of minimization expressed in Article 5.1.c)

of the GDPR, be adequate, relevant and limited to what is necessary in relation to the purposes for

which they are processed (principle of minimization).

45. Finally, pursuant to Article 24 of the GDPR, it is the responsibility of the data controller to implement
implement the appropriate technical and organizational measures to ensure and be able
to demonstrate (as required by article 5.2. of the GDPR) that the processing it carries out complies with
to GDPR.
46. It follows from the foregoing that it is up to the Litigation Division to verify whether the consultation
(whose legality is disputed by the plaintiff) - by the voluntary intervener in her capacity as
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data controller - of the "household composition" data of the complainant's son, in
including the complete history of the latter, met in this case the processing conditions imposed
by the GDPR.
4.1. As to the basis of lawfulness and compliance with the principle of minimization
47. The Litigation Chamber notes that the defendant and the voluntary intervener rely on
Article 6.1.c) of the GDPR to legitimize the disputed data processing. Article 6.1.c) authorizes the
data processing necessary for compliance with a legal obligation to which the data controller
processing is submitted.7
48. The Litigation Chamber recalls, as it did in its recent decisions 37/2021 and
38/2021 that in its judgment Huber, the Court of Justice of the European Union (CJEU) has, with regard to
of this condition of necessity, specified that it was an autonomous notion of the right
community which must be interpreted in such a way as to fully meet the purpose of the
Directive 95/46/EC applicable at the time this judgment was delivered. 8
49. According to the conclusions9 that he submitted in this case, the Advocate General explains in this
regard that "the concept of necessity has a long history in Community law and it is well
established as an integral part of the proportionality test. It means that the authority which adopts
a measure which infringes a fundamental right in order to achieve a justified objective must
demonstrate that this measure is the least restrictive to achieve this objective. Furthermore,
if the processing of personal data may be likely to infringe the fundamental right to

privacy, Article 8 of the European Convention for the Protection of Human Rights

Rights and Fundamental Freedoms (ECHR) which guarantees respect for private and family life,

also becomes relevant. As the Court stated in the Österreichischer Rundfunk and Others judgment,

if a national measure is incompatible with Article 8 of the ECHR, this measure cannot

meet the requirement of Article 7(e) of the Directive. Article 8(2) of the ECHR

provides that an interference with privacy may be justified if it pursues one of the objectives set out therein

listed and “in a democratic society, is necessary” for any of these purposes. The courtyard

7 See. decisions 37/2021 and 38/2021 of the Litigation Chamber which explain what is meant by

necessary for compliance with a legal obligation: https://www.autoriteprotectiondonnees.be/publications/decision-

quant-au-fond-n-37-2021.pdf https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-

38-2021.pdf

8 CJEU, 16 December 2008, Heinz Huber v. Bundesrepublik Deutschland, C-524/06, ECLI:EU:C:2008:724, para.52.

9 Conclusions of Advocate General Poiares Maduro presented on 3 April 2008 in the context of the proceedings before

the CJU having resulted in the judgment cited in footnote 15 above (C-524/06).

European Court of Human Rights has ruled that the notion of “necessity” implies that a “need

imperative social "is in question".

50. This case-law, admittedly formulated with regard to Article 7(e) of Directive 95/46/EC, applies to

all the bases of lawfulness which retain this condition of necessity. She remains today

relevant even though Directive 95/46 has been repealed since this condition of necessity

is maintained under the terms of Article 6.1 b) to f) of the GDPR and therefore Article 6.1.c) invoked in

the species. Article 6.1 of the GDPR indeed repeats the terms of Article 7 of Directive 95/46/EC

of which it is the equivalent.

51. The Article 29 Group also referred to the case law of the European Court of

human rights (Eur. Court D.H.) to identify the requirement of necessity11 and concludes that the adjective

“necessary” thus does not have the flexibility of terms such as “admissible”, “normal”, “useful”,

“reasonable” or “appropriate”.12

52. More specifically with regard to the basis of legitimacy which is based on the legal obligation to which

held the data controller, the European Data Protection Board (EDPB –

EDPS) 13 set out the conditions under which this basis of lawfulness can be applied:

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-

the obligation must be imposed by law;

the legislation must fulfill all the conditions required to make the obligation valid and

binding;

-

the legislation must comply with applicable data protection law,

in particular the principles of necessity, proportionality and purpose limitation;

-

the legal obligation itself must be sufficiently clear about the data processing

of a personal nature that it requires;

-

and the controller should not have an unjustified margin of appreciation as to

how to comply with the legal obligation.

10 It should be noted that the only differences to be noted are the addition to article 6.1.d) of the GDPR of the vital interest of an

natural person as the data subject as well as the deletion in Article 6.1.e) of the GDPR of the “third party to which

the data is communicated”, the mission of public interest or falling within the exercise of the public authority in front of

be that of the sole data controller. In addition, a slight wording difference exists between the article

7.1. f) e Directive 95/46/EC and Article 6.1. f) of the GDPR without the scope of this provision being modified.

All these changes have no impact on the condition of necessity.

11 Article 29 Group, Opinion 06/2014 of 9 April 2014 on the notion of legitimate interest pursued by the controller

data processing within the meaning of Article 7 of Directive 95/46/EC, WP 217.

12 Eur. D.H., March 25, 1983, Silver and others v. United Kingdom, para 97.

13 European Data Protection Board (EDPB), Opinion 03/2019 concerning questions and answers on

the interaction between the Clinical Trials Regulation and the General Data Protection Regulation

(GDPR)

11):

https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_opinionctrq_a_final_en.pdf

paragraph

[item

January

(point

2019

point

70,

b)]

from

23

1,

Decision on the merits 54/2021-16/23

53. In the present case, the defendant and the voluntary intervener put forward several provisions

which, from their point of view, required them to carry out the disputed processing.

54. The Litigation Division notes the following in this regard:

- The granting of the social supplement in addition to the ordinary allowances is governed by the General Law

relating to family allowances (LGAF) of 19 December 1939, in particular Articles 51, 54 and

173quater. Article 173 quater explicitly provides that family allowance bodies and

the ministerial services, responsible for the execution of this law, are required to apply to the Register

national of natural persons to obtain the information referred to in Article 3, paragraphs 1 and 2,

of the Law of 8 August 1983 organizing a national register of natural persons. Among these

The data show the composition of the household and its successive modifications (i.e. the history). the

recourse to another source is only permitted insofar as the necessary information does not

cannot be obtained from the National Registry.

-

Competence in granting family allowances and the social supplement is regionalized

and the complainant's son was listed as residing in the Brussels-Capital Region at the time

consultation of the National Register denounced14. The Litigation Chamber notes in this regard

that Article 9 of the Ordinance of 25 April 2019 of the Brussels-Capital Region regulating the granting

family benefits15 specifies that the basic family allowance is increased by a supplement

under certain conditions, in particular when the annual income of the household does not reach

not a certain threshold. In other words, the granting of the supplement is conditioned by the income of the

housework.

- With regard to the granting of this social supplement, Article 10 of the Ordinance of 4 April 2019 provides

that “the united College sets the conditions under which the payment of social supplements is

carried out provisionally, pending tax data establishing the annual income of the

household allowing a final decision to be taken". As a result, the united College of the Commission

Communautaire Commune has set the conditions for granting social supplements and certain

supplements provided for in the General Law on family allowances in an Order of 24

October 2019.

14 The complainant states in this respect that his son has been living in Wallonia since a date well before that of this

consultation (i.e. since July 2018). The voluntary intervener and the defendant indicate that this change

residence had not been notified to them on the date of the P028 consultation and that now the voluntary worker

no longer manages the family allowance file of the complainant's son. The Litigation Chamber takes note of this.

15 M.B., 8 May 2019.

https://bruxelles.famifed.be/sites/default/files/uploads/20190509_ordonnantiegezinsbijslag_NLFR.pdf:

- In accordance with this Decree of October 24, 2019 mentioned above, the preparatory measures that the funds
family allowances had to be taken from 2019 in order to be able to establish, for each household
Brussels, the correct amount of family allowances to which he would be entitled from the 1st
January 2020, as well as the procedure to be followed for the granting of social supplements from
2020, were approved in Circular CO PF2 of July 5, 2019 relating to the procedure for granting
provision for social supplements in the Brussels-Capital Region from 1 January 2020.

-

The defendant and the voluntary intervener rely on this Circular of July 5, 2019 relating
the procedure for the provisional granting of social supplements in the Brussels-Capital Region to
from January 1, 2020, in particular on its articles 2.2 and 7 to legitimize their consultation of
the history of the complainant's son's household composition.

- This circular provides that the establishment of the right to a supplement in the Brussels-Capital Region
will be done in two phases, namely:

Phase 1: A decision on the provisional payment of the supplement is made in "time
real": in other words, it is automatically granted on a provisional basis if the conditions are met.
Also, the supplement can be granted on a provisional basis following a request from the household.
accompanied by supporting documents relating to the current gross income of the household.

-

Phase 2: Two years later, the taxable income of all households is verified using
of the tax flow and the definitive establishment of the right to the social supplement is made on the basis
tax data made available by the authentic source.

As for the notion of household adopted, the circular specifies that "this identification is made according to
the notion of household as described in article 2 of the decree of October 24, 2019. This decree
provides in its article 1 that it is to be understood by:

“1° member of the cohabiting household: any person who is neither related nor related

up to and including the third degree, with which the beneficiary cohabits and forms a

de facto household;

2° members of the household: the beneficiary and, where applicable, the spouse with whom he

cohabiting and/or any other member of the cohabiting household”

55. The Litigation Division concludes that, in other words, prior to granting the supplement

adequate social security from 1 January 2020, it went to the family allowance funds (including

the voluntary worker), to identify, in application of the various aforementioned texts, from July 2019,

recipients and their income, more particularly that of their household as this concept is

defined in article 2 of the decree of October 24, 2019.

56. This verification of the income condition of the household (and starting from who was part of it) is, in

the occurrence, passed by an identification of the household composition of the complainant's son via the

consultation of the National Register. It is also undisputed that the benefit funds

families, including the voluntary worker, were duly authorized to consult the National Register.

57. The Litigation Chamber notes that it is not clear from the legal texts invoked which

are the incomes that should be taken into account and therefore, depending on the phase in which

the consultation took place, what was the date of the household composition to be taken into

consideration (current calendar year, look back 2 years by analogy with the final calculation

which will take place two years later as mentioned by the defendants and the intervener

voluntary during the hearing (see articles 2.1. and 2.2. of the circular of July 5, 2019)?). This

precision would have been precious, it is also required by the principle of clarity and predictability of

the “law”, a principle required for a long time by the case law of the European Court of Human Rights

man, as well as of the CJEU.16

58. The Litigation Division considers that at most, this history of the “composition

household” of the complainant’s son could have been consulted going back to the date opening the

right to allowances / social supplement to these allowances and that in any case, the consultation

of the entire history of the complainant's son without a time limit was disproportionate

and not necessary for the voluntary worker to comply with his legal obligation.

59. However, as the complainant complains, the “P028 search” that was carried out takes

systematically consulting the history of the household composition in its entirety,

or since the birth of the person whose National Register is consulted. Access to this history

of the complainant's son was therefore disproportionate and the data consulted was not

relevant to the purpose pursued, namely the determination of the composition of

household at a time T which must be taken into account when granting family allowances

and the social supplement.

60. Therefore, the Litigation Chamber concludes that, even if it invokes that the TRIVIA application that it

had to use did not allow the consultation of a history limited in time

(see point 63), the voluntary worker did not carry out the processing necessary for her obligation

lawful and therefore cannot invoke Article 6.1.c) as a basis for lawfulness. The Litigation Chamber

therefore finds a breach of Article 6 of the GDPR on its part, in the absence of any other basis

of valid lawfulness and without prejudice to the obligation of the data controller to identify a basis

16 Eur. D.H., May 4, 2000, Rotaru v. Romania; CJEU, Joined cases C-511/18, C-512/18 and C-520/18,

La Quadrature du Net and others, ECLI:EU:C:2020:791, para 121.

lawfulness and not several depending on the circumstances17. The Litigation Chamber also concludes

also to a breach of Article 5.1.c) of the GDPR, the data of which the intervener has

taken into account during its illicit consultation (in the absence of a basis of lawfulness to legitimize it)

being therefore also irrelevant with regard to the purpose pursued.

61. As for the consultation that took place on April 21, 2020, the Litigation Chamber notes that the

defendant and the voluntary intervener rely on their legitimate interest (article 6.1.f) of the GDPR),

the consultation being justified in their view by the needs of the present procedure. Bedroom

Contentious recalls in this regard that it has already considered in the past that the defense in court

is a legitimate interest that can validly be invoked by data controllers 18 for

as far as the cumulative conditions of necessity of the processing for the realization of the interest

legitimately pursued and of proportionality (i.e. that the fundamental rights and freedoms of individuals

concerned do not prevail over the interest pursued) are met.

62. Without calling into question the fact that legal defense may indeed constitute an interest

legitimate within the meaning of Article 6.1.f) of the GDPR, the Litigation Chamber nevertheless concludes, for

the same reasons as those underlying its conclusion relating to the initial consultation (cf.

paragraphs 57-60), that this consultation during the procedure pending before the DPA was

also illegal.

4.2. Regarding the principle of accountability

63. The Litigation Chamber notes that the voluntary intervener declares on the one hand that she

is required to use the TRIVIA application and on the other hand that it is impossible for him to target in time

his request to consult the history of the “household composition in the Register

national. The Litigation Chamber is not insensitive to this and refers on this point to the measures

corrective measures that it decides to take as detailed in points 69 and s. (title 5).

64. Notwithstanding this last point, the fact remains that, in his capacity as responsible for

processing, the voluntary worker could not rely on Article 6.1.c) of the GDPR and did not have

as was concluded in points 60 and 62 above of no valid basis of lawfulness to access

to the complainant's data by consulting the complete history of the household composition

of his son.

17 See. Decision 38/2021 of the Litigation Chamber:

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-38-2021.pdf

18 See. Decision 03/2020 of the Litigation Chamber:

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-03-2020.pdf

65. The Litigation Chamber also finds a breach of Articles 24 and 5.2. from

GDPR on the part of the voluntary worker as soon as she has not been able to put

put in place the technical measures intended to implement the GDPR. Here again, the Chamber

Litigation is aware of the lack of control of the application by the voluntary intervener. This

circumstance is not, however, such as to eliminate any breach on its part.

given its status as data controller.

66. Indeed, the objective of the principle of accountability, or “principle of responsibility” in its translation

(article 5.2. of the GDPR), is to make data controllers responsible - whether

private companies or public authorities or bodies -, and to allow the authorities to

data protection control such as the DPA to verify the effectiveness of the measures taken in

applying it. Risks must be identified through the implementation of action plans and

control procedures and these organizations must be able to demonstrate without difficulty that they have

carried out an identification, an evaluation and a framework of the risks in terms of protection

of personal data with regard to the processing they carry out. This principle would be widely

undermined, or even emptied of all substance if it was enough for a data controller to invoke,

once confronted with a complaint brought before the supervisory authority, the fact that the application

computer used – even its use imposed by a third party – does not allow it to comply

to GDPR.

67. In application of its obligation of accountability and documentation, the voluntary worker

should therefore, at the very least, have alerted the relevant authorities to the overhang situation

in which the constrained use of the TRIVIA application placed it in relation to its obligations

arising from the GDPR.

68. The Litigation Division is also aware of the care taken by the defendant to respond to the

the complainant's questions and the contacts made with the Supervisory Authority in order to be able to explain to the

better the situation to the latter. But here too, these circumstances are not such as to

allow the Litigation Chamber to conclude that there is no breach. Bedroom

Litigation also noted that the intervener now undertook to contact

the supervisory authority.□

5. Regarding corrective measures and sanctions□

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

1° dismiss the complaint without follow-up;□

2° order the dismissal;□

3° order a suspension of the pronouncement;□

4° to propose a transaction;□

5° issue warnings or reprimands;□

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

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

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

9° order the processing to be brought into conformity;□

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

data recipients;□

11° order the withdrawal of accreditation from certification bodies;□

12° to issue periodic penalty payments19;□

13° to impose administrative fines20;□

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.□

70. It is important to contextualize the shortcomings noted by the Litigation Chamber with a view□

to identify the most appropriate corrective measures and sanctions.□

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

and explanations provided by the parties. The Litigation Chamber wishes in this respect

to specify that it is sovereignly up to it as an independent administrative authority -

in compliance with the relevant articles of the GDPR and the LCA - to determine the measure(s)

corrector(s) and appropriate sanction(s).21

72. Thus, it is not for the plaintiff to ask the Litigation Chamber to order such

or such remedy or sanction. If, notwithstanding the foregoing, the Complainant should

nevertheless ask the Litigation Chamber to pronounce one or the other measure and/or

19 https://www.autoriteprotectiondonnees.be/publications/politique-en-matiere-d-astreinte.pdf

20 The Litigation Chamber does not comment on the advisability of a possible administrative fine

against the defendant. Given the status of “public authority” of the latter within the meaning of

Article 5 of the Law of 30 July 2018 on the protection of natural persons with regard to processing

of personal data, read in conjunction with Articles 83.7. of the GDPR and 221 § 2 of the law of

30 July 2018 mentioned above, the Litigation Chamber is indeed not authorized to impose such a fine on him.

21 Litigation Chamber, Decision on the merits 81/2020:

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-81-2020.pdf

sanction, it is not the responsibility of the latter to justify why it would not retain one or

the other request made by the complainant. These considerations leave intact the obligation for

the Litigation Chamber to justify the choice of corrective measure(s) and/or sanction(s)

which it judges, (among the list of measures and sanctions made available to it by articles

58 of the GDPR and 95.1 and 100.1 of the LCA recalled above) appropriate to condemn the party

in question. The Litigation Chamber recalls here, as it mentioned in point 36 above,

that it is not competent to grant any compensation.

73. The Litigation Chamber found a breach of Articles 6, 5.1.c) as well as Articles 24

and 5.2. of the GDPR on the part of the voluntary intervener (points 60, 62 and 65).

74. In view of these shortcomings, the Litigation Chamber sends the voluntary intervener
a reprimand on the basis of article 100.1, 5° LCA22 which constitutes, in the light of the facts and
violations found, the effective, proportionate and dissuasive sanction as required by
article 83 of the GDPR which is essential. In this regard, the Litigation Chamber would like to point out that it
is not in a position to send a warning to the voluntary worker as soon as this
measure cannot be applied when a breach is noted. The warning applies
only when the planned processing operations are likely to violate the
GDPR provisions.
75. The Litigation Chamber is of the opinion that beyond the reprimand addressed to the intervener
voluntary, it is important that an adequate response be quickly found to the problem raised
by the complaint, in order to allow a limited consultation, respectful of the GDPR, of
the history of the “household composition” data item (as well as the history of other data from the
National Registry if applicable). The Litigation Chamber refers in this respect to the deliberations
of the Sectoral Committee of the National Registry (CSRN) of the former Commission for the Protection of Life
(OPC) under which NISA grants access to limited historical data
over time in accordance with Article 4 § 1, 3° of the Privacy Law which then set out the principle
proportionality (now the principle of minimization set out in Article 5.1, c) of the GDPR).23 The
Dispute Chamber is also challenged by the document entitled "Sheet - Description
functional specific to message P028" (in particular point 1.2.1.1.) highlighted by the
complainant under the terms of which it would have been waived to use an application more respectful of the
principle of minimization (see point 23).
22 See. article 58. 2 b) of the GDPR which provides for the sending of a reminder to the controller when
"the processing operations have resulted in a breach of the provisions of this Regulation".
23 See. taking as an example the deliberation of the Sectoral Committee of the National Register RN n° 20 of March 25, 2009.

76. For all these reasons, the Litigation Chamber will draw the attention of the APD Management Committee

on this issue. Where appropriate, DPA bodies could, in application of their
respective powers attributed to them by the LCA, decide to establish a dialogue with all
the authorities concerned and/or carry out an in-depth investigation with them on the issue
arising from the complaint leading to this decision.

77. The Litigation Division also decides to send a copy of this decision to the
services of the National Register as well as Famifed, Iriscare and the Crossroads Bank for Security
(BCSS) referred to by the complainant in the terms of his complaint.

6.

Transparency

78. Given the importance of transparency with regard to the decision-making process and the
decisions of the Litigation Chamber, this decision will be published on the DPA website
subject to the deletion of the direct identification data of the parties (either the defendant,
the voluntary intervener and the complainant) and the individuals named. On the other hand, the Chamber
Litigation considers that it has no other possibility, for the proper understanding of this
decision, than mentioning by name Famifed, Iriscare, the Crossroads Bank for Security
(BCSS) and the services of the National Register.

FOR THESE REASONS,

THE LITIGATION CHAMBER

Decided

- To pronounce against the voluntary worker a reprimand on the basis of article
100.1, 5° ACL.

Under Article 108.1 LCA, this decision may be appealed to the Court of
contracts (Brussels Court of Appeal) within 30 days of its notification, with
the Data Protection Authority as defendant.

(Sé) Hielke Hijmans

President of the Litigation Chamber