

Dispute room

Decision on the merits 105/2022 of 17 June 2022

File number : DOS-2019-05858

Subject : Use of personal data obtained through inspection of the criminal file

at the expense of the complainant for valuing customers of the complainant

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

chairman and Messrs Dirk Van Der Kelen and Jelle Stassijns, members;

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

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

Data Protection Regulation), hereinafter GDPR;

In view of the law of 3 December 2017 establishing the Data Protection Authority, hereinafter WOG;

Having regard to the internal 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;

Having regard to the documents in the file;

has made the following decision regarding:

The complainant:

Mr X, hereinafter referred to as “the complainant”;

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The defendant:

FPS Finance, General Administration of the Special Tax Inspectorate, King

Albert II-laan 33 box 48, 1030 Brussels, hereinafter referred to as “the defendant”.

## I. Facts and procedure

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1. On 18 November 2019, the complainant lodged a complaint with the Data Protection Authority against the defendant.

The subject of the complaint concerns the use by the General Administration of the Special

Tax Inspectorate (hereinafter: AABBI) of personal data obtained by accessing

the criminal file at the expense of the complainant, whereby in the context of a search with abandonment and network search

data

would

to be

copied

and taken, including

personal data of customers of the complainant's companies. The AABBI would

have used personal data to proceed to the valuation of those customers, as well as to

accuse them of fraud.

2. On March 17, 2020, the complaint will be declared admissible by the Frontline Service on the basis of the

Articles 58 and 60 of the WOG and the complaint pursuant to Article 62, §1 of the WOG is forwarded to the

Dispute room.

3. On August 12, 2020, the Disputes Chamber will decide on the basis of Article 95, §1, 1° and Article 98 WOG

that the file is ready for treatment on the merits and the parties involved are informed

of the provisions as stated in Article 95, §2, as well as those in Article 98 WOG. Also

they are, pursuant to Article 99 WOG

informed of the deadlines to

to file defences.□

The deadline for receipt of the defendant's statement of defense was thereby set□

laid down on September 25, 2020, this for the conclusion of the complainant's reply on October 16□

2020 and those for the defendant's reply on November 6, 2020.□

4. On August 18, 2020, the complainant electronically accepts all communication regarding the case,□

in accordance with article 98 WOG.□

5. On September 22, 2020, the Disputes Chamber will receive the statement of defense from the□

defendant in which an overview is given of the proceedings previously conducted by the□

complainant with regard to the defendant and the pending proceedings concerning the complainant and□

the complainant's customers. The defendant contests the jurisdiction of the Disputes Chamber both for□

as regards the temporal, as the material scope. In the alternative, the□

defendant that the processing on his behalf is a correct and permitted data processing□

respecting the principles of effectiveness and proportionality, as well as□

that they are processed within a secure framework and are protected from unauthorized□

access, unauthorized use, loss or unauthorized alteration.□

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6. On 16 October 2020, the Disputes Chamber will receive the statement of reply from the complainant in which□

it is explained that the Disputes Chamber has both temporal and material jurisdiction. According to the□

complainant, the complaint is manifestly well-founded and has the defendant, in carrying out his legal□

mandate as a tax authority, the rules arising from Articles 5.1 a), 5.1 c) and 6. 1 c) not□

complied with. The complainant also once again acknowledges all communication regarding the case□

accept electronically and wish to make use of the opportunity to be heard,□

in accordance with article 98 WOG. The complainant also requests an integral copy of the file□

(article 95, §2, 3° WOG).□

7. On November 5, 2020, the Disputes Chamber will receive the statement of reply from the defendant□

in which the argumentation is resumed as set out in the statement of defense.□

8. On 9 February 2022, the parties will be notified that the hearing will take place□

on May 9, 2022.□

9. On 9 May 2022, the parties will be heard by the Disputes Chamber.□

10. The minutes of the hearing will be submitted to the parties on 16 May 2022.□

11. On May 23, 2022, the Disputes Chamber will receive comments from the complainant, which he/she□

requests to be attached to the minutes of the hearing. The Disputes Chamber decides□

to include it in its deliberations.□

## II. Justification□

### I. Jurisdiction of the Dispute Chamber□

a) Collection of personal data from the complainant on 15 May 2013□

12. First of all, the Disputes Chamber emphasizes that it derives its competence from the GDPR, from□

applicable from 25 May 2018<sup>1</sup> and the law of 3 December 2017 establishing the□

Data Protection Authority, also entered into force on 25 May 2018<sup>2</sup>, more specifically□

<sup>1</sup> Article 99 GDPR.□

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. It shall apply from 25 May 2018.□

<sup>2</sup> Art. 110 WOG.□

This Act shall enter into force on May 25, 2018, with the exception of Chapter III, which shall enter into force on the date of publication.

published in the Belgian Official Gazette.□

The King may determine a date of entry into force for each provision thereof, with the exception of the provisions of Chapter III.

prior to the date stated in the first paragraph.□

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Article 4, §1 WOG<sup>3</sup>. With regard to the facts that occurred before that date, i.e. the□

processing of the data provided by the judicial authorities as a result of a□

search of the complainant's house were copied and taken away, which took place□

on May 15, 2013, the Disputes Chamber can only establish that it occurred well before the□

application of the GDPR have occurred and a complaint has only been lodged with the

Data Protection Authority on November 18, 2019, when the GDPR is already fully

was applicable. It follows from this that the Disputes Chamber has no jurisdiction

is to get over the

data collection dated 15 May 2013 to judge<sup>4</sup>. The Disputes Chamber can face these facts

nor declare competent on the basis of the transitional provision included in Article 112 WOG<sup>5</sup>,

as the complaint was not pending at the time of the entry into force of the aforementioned

Law of 3 December 2017. In this regard, the complainant specifies in his reply that his

complaint does not target the original data processing by the Public Prosecution Service, but it does

the subsequent processing (see below margin numbers 15 et seq.). Because the complainant himself indicates that the

original data collection by the Public Prosecution Service is not in dispute, constitutes

this is not a point on which the Disputes Chamber should go further.

13. For the sake of completeness, the Disputes Chamber adds that the mere fact that the complaint was

first-line service was declared admissible, in no way implies that the Disputes Chamber

is authorized to assess the complaint in its entirety. In accordance with Article 60(2) of the WOG

the Frontline Service only examines the formal admissibility conditions such as

included in this provision<sup>6</sup>. It is true that the First-line Service also checks in a global manner the

competence of the Data Protection Authority, which relates to the complaint in

its entirety, but this does not alter the fact that the Disputes Chamber itself determines the extent to which it is competent

3 Art. 4. §1. The Data Protection Authority is responsible for monitoring compliance with the fundamental principles of the

protection of personal data, within the framework of this law and of the laws containing provisions on the protection of

the processing of personal data.

Without prejudice to the powers of the Community or Regional Governments, of the Community or Regional Parliaments, of the

United College or of the United Assembly referred to in Article 60 of the special law of January 12, 1989 relating to the

Brussels institutions, the Data Protection Authority exercises this mission on the territory of the entire Kingdom, regardless of

which national law applies to the processing concerned.

4 See in that regard: Decision on the merits 19/2020 of 29 April 2020, Decision on the merits 124/2021 of 10 November 2021.□

5 Art. 112 WOG.□

Chapter VI does not apply to complaints or requests pending with the Data Protection Authority at the moment□  
of the entry into force of this law.□

The complaints or requests referred to in the first paragraph are handled by the Data Protection Authority, as the legal successor□  
for the protection of privacy, further handled according to the procedure applicable before the entry into force□  
of this law.□

6 Art. 60. The frontline service examines whether the complaint or request is admissible.□

A complaint is admissible when:□

- it is drawn up in one of the national languages;□
- contains a statement of the facts and the necessary indications for the identification of the processing to which it relates;□
- it falls under the competence of the Data Protection Authority.□

[...]□

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can define concretely. Well, for the facts that occurred specifically on May 15th□

2013, the Disputes Chamber is not competent for the reason set out above.□

b) Processing of personal data obtained through inspection of the criminal file and use□

of it in the valuation procedure against clients of the complainant after 25 May 2018□

14. The personal data that are the subject of the present complaint□

personal data collected in the context of a judicial investigation into tax□

fraud, tax forgery and use of false documents. Since the processing has□

carried out by a competent authority in the field of criminal law, in principle□

Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016<sup>7</sup> of□

application. It follows from Article 9.1 of Directive 2016/680/EU and Recital 34 of this Directive<sup>8</sup>□

that in case the personal data is collected for the purpose of prevention, investigation,□

investigation or prosecution of criminal offences, are passed on to a recipient, in this case□

the defendant, who processes the data in question for purposes other than those of the

Directive, the GDPR applies to the transmission of personal data. This is done by the

parties as such are not disputed.

15. Specifically with regard to the defendant's argument that the GDPR does not apply to

the processing of the data of the companies of the complainant's customers with

referring to recital 14 of the GDPR<sup>9</sup>, the Disputes Chamber points out that the proposed

argumentation ignores the definition of the term 'personal data' in Article 4.1) GDPR<sup>10</sup>.

7 Articles 1 and 2 of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of

natural persons in connection with the processing of personal data by competent authorities for the purposes of the prevention,

investigation, detection and prosecution of criminal offenses or the execution of criminal penalties, and concerning the free move

data and repealing Council Framework Decision 2008/977/JHA.

8 Recital 34 Directive (EU) 2016/680.

The processing of personal data by competent authorities for the purposes of prevention, investigation, detection or

prosecution of criminal offenses or the execution of penalties, including protection against and prevention of dangers

for public security must relate to an operation or set of operations on personal data

or a set of personal data for those purposes, whether or not performed by automated means or otherwise,

such as collecting, recording, organizing, structuring, storing, updating, modifying, retrieving, consulting, using, aligning,

combining, subjecting to processing restrictions, erasure or destruction of data. In particular, the provisions of this

Directive should apply to the transmission of personal data for the purposes of this Directive to a

recipient not covered by this Directive. Recipient is understood to mean a natural or legal person, a

public authority, agency or any other body to whom or to whom the personal data is lawfully provided by the competent authority

be published. Where the personal data was initially collected by a competent authority for one of the

purposes of this Directive, Regulation (EU) 2016/679 should apply to the transmission of those data for other

purposes other than those of this Directive, if such processing is permitted by Union or Member State law. More specifically to s

the provisions of Regulation (EU) 2016/679 to apply to the transfer of personal data for purposes not covered by

fall under this directive. Regulation (EU) 2016/679 should apply to the processing of personal data by a recipient

which is not the competent authority or which does not act as a competent authority within the meaning of this Directive and to which the data have been lawfully disclosed by a competent authority. When implementing this Directive, Member States should also apply the rules of Regulation (EU) 2016/679, provided that the conditions laid down therein are met.

9 Recital 14 GDPR. The protection afforded by this Regulation applies to natural persons, irrespective of their nationality or residence, in connection with the processing of their personal data. This Regulation does not concern the processing of data on legal persons and in particular companies established as legal persons, such as name and legal form of the legal person and the contact details of the legal person.

10 Article 4. For the purposes of this Regulation:

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If and to the extent that the data concerning a legal person are so characteristic of the identity of a natural person, which makes it identifiable, they do concern personal data within the meaning of Article 4.1) GDPR.

16. The processing referred to in the complaint concerns personal data of customers of the complainant which are processed by the defendant after May 25, 2018 in the context of instructions from tax evasion. Although this processing falls within the scope of the GDPR, but it should be emphasized that the personal data of the customers who rely on the complainant's services consisting of providing tax advice, cannot be qualified as personal data concerning the complainant himself. In that vision the Disputes Chamber then examines whether there is a sufficient interest in the complainant in order to be able to submit a complaint in this regard.

17. With regard to the interest of the complainant, the Disputes Chamber refers to Article 58 WOG in which it is stated that: "Anyone can submit a complaint or request in writing, dated and signed"

submit to the Data Protection Authority". In accordance with Article 60, paragraph 2

WOG "A complaint is admissible if it:

- is drawn up in one of the national languages;

- contains a statement of the facts, as well as the necessary indications for the identification of the



processing to which it relates;□

- it falls under the competence of the Data Protection Authority”.□

18. The preparatory work of the WOG determines: "The Data Protection Authority"□

can receive complaints or requests from anyone; natural persons but also□

legal persons, associations or institutions that commit an alleged infringement of the Regulation□

wish to sue. A complaint or request to the Data Protection Authority should be□

in writing, dated and signed by the authorized person. A request□

must be interpreted in the broad sense of the word (request for information or explanation, a□

request to mediate, ...)”11.□

1) 'personal data' means any information relating to an identified or identifiable natural person ('the data subject'); if□

identifiable is a natural person who can be identified, directly or indirectly, in particular by reference to a□

identifier such as a name, an identification number, location data, an online identifier or of one or more elements that□

characteristic of the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural□

person;□

[...]□

11 Par. doc., Chamber of Representatives, 2016-2017, DOC 54 2648/001, p.40 (comment to article 58 of the□

original bill).□

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19. The WOG thus does not exclude that a person other than the data subject or the person designated by the□

the person concerned is authorized, as referred to in Article 220 of the Act of 30 July 2018 on the□

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

can lodge a complaint with the Authority.□

20. While the GDPR approaches the 'complaint' from the point of view of the data subject, by the□

impose obligations on supervisory authorities when a person makes a complaint (see the□

Articles 57, 1., f) and 77 of the GDPR), the GDPR does not prevent national law from allowing persons other than□

gives the data subjects the opportunity to lodge a complaint with the national supervisory authority.□

The possibility of such a referral also corresponds to the orders  
assigned to the supervisory authorities by the GDPR. In that regard and in general  
taken, each control authority shall: monitor and enforce the application of  
the GDPR (Article 57, 1., a) GDPR), and the performance of all other tasks related to the  
protection of personal data (Article 57, 1., v) GDPR)<sup>12</sup>.

21. The Disputes Chamber rules in that regard that Article 58 WOG gives every person the opportunity to  
to make a complaint, provided that he has a sufficient interest in accordance with  
the aforementioned provisions of the GDPR<sup>13</sup>.

22. The condition is therefore that the complainant demonstrates a sufficient interest. In this regard,  
the Disputes Chamber to determine that the complainant merely mentions a commercial interest  
consisting of the loss of confidentiality of the customer data used by the  
defendant for valuation purposes aimed at the customers, with reputational damage on account of the  
complainant in which he indicates that in certain cases customers have blocked him  
pointed out.

23. The complainant clearly appears to be pursuing a commercial interest which cannot be considered sufficient  
are considered. After all, the mere pursuit of a commercial interest is not sufficient to  
demonstrate a sufficient interest, this in the absence of any concrete element that can be  
distinct from this self-contained commercial interest, which the complainant would  
may affect the data processing by the defendant with regard to the  
personal data of the clientele. The factual elements of the file do not show that the  
the complainant has a data protection interest that corresponds to the interest  
of the customers against whom a legal dispute procedure is still pending. From the pure  
fact that the data processing by the defendant relates to personal data of  
after all, it does not automatically follow from the complainant's customers that the complainant has ipso facto  
any interest in that data processing by the defendant. Contrary to what the

<sup>12</sup> In the same sentence: Decision on the substance of 30/2020 of 8 June 2020

13 See in the same sentence: Decision on the merits 80/2020 of 17 September 2020; Decision on the merits 63/2021 of 01 June 2021; Decision on the merits 117/2021 of October 22, 2021; Decision 49/2022 of April 5, 2022□

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the complainant, the customer data in no way becomes data relating to the complainant□

solely and solely because the customer data is processed by him in the context of his□

independent professional activity and originate from the original file, being the criminal file□

at his own expense. The complainant does not make it sufficiently plausible that there is a question of□

an interest that coincides with the interest of these customers, so that he does not complain on his own initiative□

can submit regarding the data processing relating to the customers. Moreover□

nor does he have any power of representation in this area for the concerned□

customers.□

24. In addition, the customers specifically mentioned in the complaint, in particular the married couple□

Z, already concluded an agreement with the defendant on May 8, 2020, whereby the investigation into them□

was terminated. In that regard, the Z couple have no complaint themselves regarding possible infringement of□

protection of their personal data.□

25. Consequently, the complainant's interest in doing so is non-existent, in view of the□

statement of approval from Mr and Mrs Z and the resulting lack of interest in□

on their behalf to lodge a complaint themselves with regard to the processing of their□

personal data by the defendant.□

26. Because the complainant fails to demonstrate the existence of a sufficient interest on his part□

in order to have his complaint handled by the Data Protection Authority, the□

Disputes Chamber to determine the non-conformity with the procedural rules by the□

declaration of admissibility of the complaint and the subsequent handling of the complaint.□

27. In view of the fact that the complainant does not demonstrate that he has an interest that is sufficient□

concrete to be able to submit a complaint, the Disputes Chamber also determines that the complainant□

also did not have the capacity to file a complaint and that the full□

procedure has therefore been compromised by the absence not only of importance, but also of capacity on the part of the complainant.

c) Processing of personal data concerning the complainant after 25 May 2018

28. The defendant agrees that the complainant's surname and first name appear in the preceding notifications of indications of tax evasion and the notice of amendment and in addition, his surname, first name, date of birth and address appear in the official reports from the criminal file attached to the messages from the defendant.

29. The aforementioned data fall under the notion of personal data as defined in Article 4.1) GDPR, which are processed within the meaning of Article 2. 1 GDPR. Not just any whole or in part automated data processing falls under the scope of the GDPR, but also any processing of personal data that is included in a file or is intended to be included therein. Although the defendant attempts to demonstrate that this information is not

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be part of a file as defined in Article 4.6) GDPR by stating that the notifications extending the investigation period, the requests for information nor the neither the notification of amendment nor the attachments in themselves constitute a structured set of personal data forms that are accessible via criteria, the Disputes Chamber must point out that the aforementioned documents are not only part of the initial criminal file against the complainant, but also are included in full in the valuation file managed by the defendant of which it is established that this is structured according to specific criteria, which therefore does constitute a file<sup>14</sup>.

After all, a public service such as the defendant by definition manages several files, whereby these files as well as each file in itself must necessarily be structured in such a way that they are accessible according to certain criteria. From this follows that the GDPR applies to the data processing concerning the complainant.

30. However, the file containing the documents containing the complainant's personal data included, was submitted for review by the defendant as being a party to the

pending tax proceedings in respect of some customers. The processing of the

The complainant's personal data must be placed in a broader context, to which

a tax dispute is based and of which the data processing is an integral part.

After all, the documents submitted by the parties in the proceedings are currently being assessed

to the court on the merits, which must thus be regarded as controller

with regard to the file containing all supporting documents sent to him

regarding the tax dispute between the parties, including the documents with

personal data concerning the complainant. In that regard, the Disputes Chamber rules that it

in accordance with Article 55.3 AVG<sup>15</sup> in conjunction with Article 4, § 2 WOG<sup>16</sup> cannot rule on a

sub-aspect that, although related to documents in which the personal data of the

be processed by the complainant, but which is already the subject matter as part of the main dispute

of pending legal proceedings<sup>17</sup>. To judge otherwise would result in the

<sup>14</sup> Recital <sup>15</sup> GDPR: "To prevent a serious risk of circumvention, the protection of natural persons should be

technology neutral and should not be dependent on the technologies used. The protection of natural persons should

apply to both automated processing of personal data and manual processing thereof if the personal data

are stored or intended to be stored in a file. Files or a collection of files and their covers, which

are not structured according to specific criteria should not fall within the scope of this Regulation."

A contrario, files or a collection of files that are structured according to specific criteria, do fall under the

scope of the GDPR.

See also the Judgment of the Council of State no. 91.531 of 11 December 2000 in the case A. 69.056/IX-2103, Dewinter v Belg

after all, almost all government documents are the subject of an automated or manual arrangement in "files"-in

the French "fichier" - which refer to it;

<sup>15</sup> Article 55. 3 GDPR. Supervisory authorities are not competent to supervise processing by courts in the exercise of  
their judicial duties.

<sup>16</sup> Article 4, § 2 WOG. The supervision organized by this law does not relate to the processing by the courts and  
courts as well as by the public prosecutor in the exercise of their judicial functions.

17 See in that sense the judgment of 24 March 2022 CJEU - case C-245/20 against the Dutch Data Protection Authority:□

“32. As the Advocate General noted in points 80 and 81 of his Opinion, it is apparent from the wording of recital 20□  
of Regulation 2016/679 itself, and in particular from the use of the word 'including', which defines the scope of the□  
of this Regulation to ensure the independence of the judiciary in the performance of its judicial□

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Litigation Chamber the independence of the judiciary in the exercise of its□

would jeopardize judicial tasks, in particular in decision-making<sup>18</sup>.□

It goes without saying that this can by no means be the intention.□

d) Professional secrecy and use of the accounting program□

31. The documents obtained by the defendant from the criminal file against the complainant are, according to the□  
complainant obtained by the defendant in violation of the professional secrecy to which the complainant is bound□  
held.□

32. The complainant argues that the customer data is covered by his professional secrecy and thus cannot be□  
are processed for valuation purposes with regard to the relevant customers. Based on this□  
the complainant relies on the decision of the Council of the□

Institute of Accountants and□

tax consultants (IAB) of 17 May 2016 stating that: "[...] if the tax□

administration in the event of an audit by a tax or accounting adviser in principle secret□

should discover data that he could avoid to incriminate third parties, he must□

renounce. In principle, this data is covered by professional secrecy and can only be used□

with regard to the taxpayer, being the member of the IAB. The Council continues□

to argue that the taxable person, in this case the complainant, has cooperated with the request for□

cannot refuse information purely on the grounds of its professional secrecy, but has the right to do so□

organize it in a way that reflects the identity of its clientele and the content of its□

protects work. According to the Council, the taxpayer may not fully□

invoke professional secrecy, but serve after anonymizing the client and the nature of the performance□

does indeed prove the probable nature of the publication, as requested by the

AABBI, to be delivered.

tasks cannot be limited to guaranteeing judicial independence in the establishment of a specific

court decision.

33. In general, preserving the independence of the judiciary presupposes that the courts

exercise judicial functions completely autonomously, without any hierarchical link and without being subordinate to or from anyone

receive orders or instructions, and are thus protected from outside interference or pressure that could affect the independence of

jeopardize the judgment of their members in disputes submitted to them. The respect for the rights under the

Safeguards of independence and impartiality required by EU law presuppose that rules exist that are suitable for

to dispel any legitimate doubt that the institution concerned is not influenced by external factors and

impartial to the interests involved [...].

34. The reference in Article 55(3) of Regulation 2016/679 to processing by courts 'in the exercise of their judicial

tasks' should therefore be understood in the context of this Regulation as meaning not only processing of

personal data by courts in the context of concrete cases, but in a broader sense relates to all processing by

courts in the exercise of their judicial activities, so that processing operations subject to supervision by the

supervisory authority may directly or indirectly influence the independence of their members or their decisions, outside the

competence of this authority."

18 Recital 20 GDPR. While this Regulation applies, inter alia, to the activities of courts and other

judicial authorities, Union or Member State law should regulate the processing and processing procedures relating to the

processing of personal data by courts and other judicial authorities can be further specified. The competence

of the supervisory authorities should not extend to the processing of personal data by courts in the context of

their judicial functions, in order to ensure the independence of the judiciary in the exercise of its judicial functions,

including decision-making. It must be possible to entrust the supervision of such data processing to specific

authorities within the judicial system of the Member State, which must in particular ensure compliance with the rules of this Regulation

ensure that members of the judiciary are more aware of their obligations under this Regulation, and complaints

with regard to those data processing operations. [Own underlining]

33. In that regard, the Disputes Chamber notes that the aforementioned decision of the Council of the ILO□  
was taken in response to the request of the AABBI under Article 334 WIB to□  
assess whether, and to what extent, the inquiry or production of books□  
and modesty is compatible with the observance of professional secrecy.□

34. Not only did the complainant refuse to itself provide the AABBI with the information requested,□  
provide after anonymization of the client and the nature of the services, but also tries to□  
decision of the Council of the ILO on professional secrecy to be extended to intelligence□  
obtained by the AABBI by any means other than through the stated inquiry that□  
was made to the complainant. It is undisputed that the defendant provided the data concerning the customers□  
has not obtained through the request for information made by the defendant to the□  
complainant and about which the defendant has obtained the advice of the IAB. The defendant is□  
did come into possession of information regarding the complainant's customers through inspection□  
of the criminal file on the basis of Article 327, §1 WIB in order to subsequently proceed with the valuation of the□  
concerning customers. The complainant uses the decision of the ILO to argue that the□  
professional secrecy was violated as a result of which the defendant would be unlawfully in possession□  
information concerning the complainant's customers. The Disputes Chamber can only□  
establish that the decision of the ILO on professional secrecy only relates to the□  
request information from the defendant addressed to the complainant himself. There is no determination□  
violation of professional secrecy regarding the way in which the defendant does□  
obtained through inspection of the criminal file. Since it is not up to the□  
Litigation Chamber is due to rule on whether or not the violation of the□  
professional secrecy following the inspection of the criminal file (Article 55.3 AVG in conjunction with Article 4,□  
§ 2 WOG19), it is also unable to assess whether or not the personal data thus obtained is□  
be processed lawfully by the defendant. Only if the judge on the merits of violation□  
of professional secrecy, the Disputes Chamber can then in turn□



review data collection on behalf of the defendant against the principles of the GDPR regarding lawfulness and minimum data processing requested by the complainant.

35. The complainant further argues that the defendant obtained the customer data from the criminal file on the basis of a file created by the complainant himself

accounting program to use accounting documents - of which the complainant exists

disputed - to produce on the basis of which the concerned customers are accused of fraud.

In this regard, the Disputes Chamber notes that the assessment of the evidential value of the

the data obtained through inspection by the defendant, its reliability and any

inferences that can be drawn on the basis of that data belong to the

19 See margin no. 30.

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main tax dispute and therefore revert to the court on the merits (Article 55, § 3 GDPR in conjunction with

Article 4, § 2 WOG20).

36. Finally, the Disputes Chamber notes that insofar as the complainant points out that the processing

of personal data concerning his wife is targeted, the complainant does not provide any information

showing that he has powers of representation in this regard. Consequently

the Disputes Chamber will not elaborate on this point.

III. Publication of the decision

37. Given the importance of transparency in the decision-making of the

Dispute room, becomes

this one

decision

published

on

the website

from

the□

Data Protection Authority. However, it is not necessary that the identification data□

of the complainant are disclosed directly. However, it follows from the nature of the complaint that ipso□

de facto that the identity of the defendant is known in such a way that it is identified as such□

stated in the decision.□

FOR THESE REASONS,□

the Disputes Chamber of the Data Protection Authority decides, after deliberation, to□

of Article 100, §1, 1° WOG, to dismiss the complaint in view of the fact that there is no infringement in this regard□

can be determined on the basis of the GDPR.□

Against this decision, pursuant to art. 108, §1 WOG, appeals must be lodged within a□

period of thirty days, from the notification, to the Marktenhof, with the□

Data Protection Authority as Defendant.□

(Get). Hielke Hijmans□

Chairman of the Disputes Chamber□

20 See above margin no. 30.□