Decision on the merits 66/2021 of 04 June 2021

Litigation Chamber

File number: DOS-2020-00818

Subject: Processing of personal data by the Federal Public Service

Finances - request for information, access, rectification and limitation of

processing

The Litigation Chamber of

the Data Protection Authority, made up of

Mr. Hielke Hijmans, chairman, and Messrs. Yves Poullet 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 Regulation

on data protection), hereinafter "GDPR";

Having regard to the law of 3 August 2012 laying down provisions relating to the processing of personal data

personnel carried out by the Federal Public Service Finance as part of its missions, hereinafter

"the law of 3 August 2012"1;

Having regard to the Law of 3 December 2017 establishing the Data Protection Authority, hereinafter

"LCA";

Having regard to the internal regulations as approved by the House of Representatives on

December 20, 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

1 As amended following the entry into force of the GDPR by the law of September 5, 2018 establishing the security committee o

information and amending various laws concerning the implementation of Regulation (EU) 2016/679 of the European Parliamen

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

personnel and the free movement of such data, and repealing Directive 95/46/EC, M.B. of 10 September 2018.

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made the following decision regarding:□

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- Mrs. X, hereinafter "the complainant", and□

-□

the Federal Public Service Finance (General Administration Department of the□

Special Tax Office), Boulevard du Roi Albert II, 33 box 49 - 1030 Schaerbeek, having□

company number 0308.357.159, hereinafter "the defendant".□

1. Facts and procedure□

1. On February 6, 2020, the complainant filed a complaint with the Authority for the Protection of□

given against the defendant.□

2. The subject of the complaint concerns a request for information, access, rectification and□

limitation of the processing of personal data addressed to the defendant by□

the complainant on July 18, 2019 and August 9, 2019. The complainant specified that she was□

employed as an accountant in the Grand Duchy of Luxembourg. She indicates that she has□

sent the aforementioned requests to the defendant following the mention of his name in□

various files concerning tax investigations at□

towards taxpayers,□

made by the defendant. The complainant more specifically indicates that she is mentioned□

wrongly as "nominee" in the files in question, where it would be question of fraud□

tax on the part of the taxpayers concerned. The complainant states that her□

request to exercise his rights was rejected by the defendant by letter from

October 28, 2019, following which she filed a complaint with the Authority for the Protection of

data.

3. On February 20, 2020, the complaint is declared admissible on the basis of article 58 juncto

article 60 of the LCA, the plaintiff is informed in accordance with article 61 of the

LCA and the complaint is forwarded to the Litigation Chamber pursuant to Article 62, § 1

of the ACL.

4. On March 23, 2020, the Litigation Division decides, pursuant to Article 95, § 1, 1° and

article 98 of the LCA, that the case can be dealt with on the merits.

5. By registered letter dated March 23, 2020, the parties are informed that the

complaint can be dealt with on the merits and, under section 99 of the LCA, they are

also informed of the deadlines for submitting their conclusions.

6. On April 24, 2020, the Respondent files its submissions in response.

7. In its submissions in response, the Respondent indicates that it received on January 4, 2018

information from abroad in the context of Common Reporting

Standards. He clarified that on the basis of the above information, an investigation

was opened in connection with which the agent concerned carried out searches in

internal and external databases, including Orbis, Luxembourg Memorial,

POW and Sitran.

8. The defendant specifies that the results of this pre-investigation as well as the opinion of the agent

dealing with were then included in a document which was filed in file X, where

the following data and opinions concerning the complainant were included:

“Ms. X is the founder and administrator of […] SA.

(…)

[…] SA has its registered office in […] It is therefore located in this […].

The foundation took place on […] by […] SaRL (represented by […]) and Mrs X […]).

The capital at the time of the foundation amounted to […] ([…]), of which […] and X hold

each 50% ([…]).

At the foundation (constitution), the following persons were appointed in

as administrators:

• […] SARL

• Mrs. X

• […] SARL

included.

[…] SA SPF became […] from […] (…)

Mrs. X is the founder and administrator of [...] SA.

She has Belgian nationality and was domiciled in Belgium until [...]

Since 2003, she has been domiciled at [...], at the address: [...]. She has mandates

in [...], but also in Belgium. (...)

- Director of […] since […];

- Director of […] ([…]) since […];

- Director (delegate) of […] (…) since […];

- Director of […] (…) since […].

Searching for X in Memorial Lux, we find [...], mainly

directorships.

(…)

By checking its mandates, we find that most of the companies in the [...]

located at these 3 addresses:

o […]

o […]

o […]

Ms. X is […] from various “SA SPF” companies at […]. She probably acts

as long as "..."

(…)

She owns.. […] real estate in Belgium (POW):

- […]

- 1/2 full ownership (with spouse) in 3 apartments at […]

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- […]

(…)

However, no case has yet been opened against Ms. X."

all the quoted passages of the file are free translations carried out by the Secretariat

General of the APD, in the absence of an official translation]

9. The defendant clarifies that on the basis of the pre-investigation, a tax investigation was opened

about Person Y but not about the Complainant herself.

10. Regarding the request for information, access, rectification and limitation

of processing brought by the Complainant on July 18, 2019, the Respondent states that a

access was granted on August 21, 2019 on the basis of advertising legislation

administration as well as on the basis of privacy legislation.

He points out that on that occasion, the complainant was told that no investigation

specific had been opened to him, which can also be read in the

pre-investigation report.

11. Respondent states that on August 8, 2019, Complainant made a similar request

to exercise his rights to the Data Protection Officer of the Security Service

information and protection of the defendant's privacy. The latter specifies that

this request was refused on October 28, 2019, since access had already been granted,

that the personal data had been collected solely for the purpose of

legitimate purpose determined and that the processing was necessary for the exercise of the

legal missions of the defendant.

12. In its submissions in response, the Respondent asks the Litigation Division to

declare the complaint lodged by the plaintiff unfounded and asserts to this effect the

following means:

• Ground 1: the words "nominee" or "presumed nominee" do not constitute

personal data

13. The defendant asserts that the law of 3 August 2012 laying down provisions relating to

processing of personal data carried out by the Federal Public Service

Finances within the framework of its missions does not define the notion of "personal data

personal". The defendant refers to the definition of this notion in the GDPR.

14. The Respondent states that what identifies the Complainant in the Pre-Investigation Report

in file X and in the letter to person Y, it is his name and national number,

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but that the mentions "nominee" or "probably acts as nominee" do not

do not constitute personal data within the meaning of the law or the GDPR.

He adds to this that it is a point of view or an opinion of the defendant concerning

the complainant's intervention in company Z.

15. The Respondent asserts that by virtue of its legal mission, it is empowered to take a position

concerning relevant tax data in order to ensure the fair perception of

tax and emphasizes that this stems from article 322, § 1 of the CIR 1992 which provides that:

"The administration may, with respect to a specific taxpayer, collect

written attestations, hearing third parties, carrying out investigations and requesting, in the

deadline it sets, this deadline may be extended for justifiable reasons, persons

natural or legal, as well as associations without legal personality,

the production of all information it deems necessary to ensure the

fair collection of tax."

16. The Respondent argues that it is therefore entitled to indicate, in a prior notice

indications of tax evasion with regard to person Y, that the complainant is suspected

to act as nominee and affirms that any further reading of the provision

mentioned above would not only be contrary to article 322 of the CIR92 but also to

the agent's freedom of expression within the meaning of Article 10 of the ECHR.

17. The Respondent indicates that it falls within the jurisdiction of the tax courts to

rule on disputes relating to tax law and therefore on the question of

whether or not the defendant was correct in calling the plaintiff a "nominee".

18. The Respondent adds to the foregoing that the Complainant cannot, under the pretext of

processing of personal data, prevent the agents of the defendant from

take a position on relevant tax data. The defendant repeats to

in this respect that the opinion he has formulated does not constitute personal data,

so that the complainant cannot request its rectification, limitation or

erasure.

19. The Respondent finally states that it should be noted that the pre-investigation report

where the agent's opinion on a certain tax issue appears does not constitute

not a processing of personal data contained or intended to appear

in a file (article 4, § 6 of the GDPR) and that the report does not in itself constitute a

structured set of personal data accessible via criteria.

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• Ground 2: the [respondent] provided sufficient information to [the complainant]

20. The Respondent asserts that the Complainant's right to information was respected and that

in accordance with Article 14 of the GDPR, sufficient information has been provided to him.

21. The Respondent emphasizes in this respect that "Article 11 of the Law of 3 August 2012 [specifies] a

derogation providing that the right to information may be limited in order to guarantee the

public interest objectives in the budgetary, monetary and fiscal spheres.

More specifically, it refers to the processing of personal data aimed at

the preparation, organization, management and follow-up of investigations carried out by AGISI, among others

and who can give

result in an administrative fine or sanction

administration.

In the event of a restriction of the right to information, these personal data

may be kept for a maximum of 1 year after the definitive cessation of

judicial, administrative and extrajudicial proceedings.

This limitation of the right to information applies (1) during the period during which the

data subject is the subject of (2.1.) a check or (2.2) an investigation or acts

preparations for these carried out in this case by the AGISI as well as (2) during the

period during which the documents are processed with a view to exercising the proceedings.

This limitation applies to the extent that the application of the law would harm the needs of the

control of

investigation or preparatory acts or risks violating

the

secrecy of the criminal investigation or the safety of persons".

• Means 3: the right of access has been respected

22. With regard to the complainant's request to exercise the right of access, the

defendant claims to have provided, on August 21, 2019, the necessary explanations concerning

the processing of the complainant's personal data and granting her a

access.

23. He adds that this was further supplemented by a statement from the Protection Officer

data indicating that no tax investigation was being conducted with respect to the

complainant but that an investigation had indeed been opened concerning a person Y, in the

which the complainant was named.

24. The Respondent clarifies that the Complainant was more specifically named in the report

of the pre-investigation, which was presented to him, as well as in the letter addressed to the

taxpayer concerned. With regard to this letter - which the complainant obtained

itself (exhibit 7) - the defendant asserts that he can invoke the ground of exception of

article 11/1 of the law of August 3, 2012.

25. The Respondent clarifies in this regard that it may indeed limit in whole or in part

the right of access when it is feared that the exercise of this right could have

adverse consequences for the investigation. He states that he is of the opinion that this right can

in particular be limited in the event of a risk of collusion and argues that this does not require

not to carry out a specific investigation with regard to the complainant, but only that

the latter is involved in the subject of the investigation.

• Means 4: the right of rectification and the right to limit the processing of

personal data does not apply

26. With regard to the request for rectification of personal data by

the complainant, the respondent first repeats that the opinion of the officer in question that

the complainant would probably act as a nominee is not given

of a personal nature within the meaning of the GDPR, so that the complainant cannot

request rectification.

27. The Respondent adds that the Complainant does not dispute the correct spelling of her

name and therefore the accuracy of the personal data, so that there is no reason

to carry out any limitation of the processing of personal data

complainant's staff.

28. In the alternative, the Respondent invokes the grounds for exception of Articles 11/2 and 11/3

of the law of August 3, 2012.

• Way 5: There is no reason to erase personal data from the□

complainant□

29. The Respondent claims to be entitled to refuse the request to erase the data□

as these fall within the scope of the exceptions in Article 17 of the GDPR.□

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30. The defendant specifies that under the tax provisions - including articles 317 and 322□

of the CIR92 -, it may use the personal data of third parties in the context of□

its tax investigation to ensure the fair collection of taxes. He asserts that the□

processing of the complainant's personal data meets the purposes of the□

GDPR and is sufficiently proportional.□

31. He states that whether or not the Respondent correctly describes the□

complainant as a (probable) nominee falls within the jurisdiction of the courts□

tax.□

32. The Respondent concludes that it therefore sees no reason to erase the Personal Data□

complainant's staff.□

33. Finally, on this ground, the Respondent also states that the erasure of the□

personal data would in this case hinder "official or□

legal proceedings and would have a negative effect on the prevention, detection, investigation or□

prosecution of criminal offences". He specifies that in this case, by erasing their data at□

personal character,□

data subjects could already erase□

their□

(possible) involvement in tax embezzlement during the investigation, which does not□

may not be the goal.□

• Means 6: The request for on-call duty is irrelevant□

34. Finally, the defendant argues that the plaintiff's request for a penalty payment is unfounded□

because he correctly provided the complainant with information regarding the processing of

his personal data and granted him access. He repeats that the requests

rectification, erasure and restriction of data processing are not

founded.

35. On May 8, 2020, the complainant filed her submissions in reply.

36. In her conclusions, the complainant indicates that she was mentioned without any reason

apparent as "nominee" in documents

Respondent's internal

concerning tax investigations relating to other taxpayers in which - for

this mention of the complainant - it is concluded that there are indications of tax evasion in

the head of these taxpayers. The plaintiff submits the proof.

37. Complainant further states that on July 18, 2019, she sent to Respondent

a request for access to the latter's administrative file, as well as a request

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information, access, rectification and limitation of the processing of its data to

personal character.

38. The Complainant alleges that no follow-up was given to the above-mentioned requests

within one month, as required by Article 12 of the GDPR.

39. The Complainant further asserts that the Respondent failed to comply with her requests

information, rectification and limitation of processing.

40. The complainant asks the Litigation Chamber to declare her request admissible

and founded and to consider that the defendant has violated articles 5, 12 to 18 inclusive, 21 and 23

of the GDPR as well as article 11 of the law of August 3, 2012 and to order that action be taken

to requests to exercise his rights, under penalty of a penalty of 1000 EUR per

day late.

41. On May 25, 2020, the Respondent filed its submissions in reply.

42. By email of May 3, 2020, the complainant asked to be heard, in accordance with

article 98, 2° of the LCA. In his pleadings, the defendant also asks to be

understood.

43. On January 18, 2021, the parties are heard by the Litigation Chamber,

in accordance with article 53 of the internal rules.

44. On January 29, 2021, the minutes of the hearing are sent to the parties, in accordance

in article 54 of the rules of procedure.

45. By e-mail of February 4, 2021, the complainant sent her comments concerning this

minutes.

2. Motivation

2.1.

The notion of "personal data" and the jurisdiction of the Chamber

Litigation

2.1.1. The notion of "personal data" (article 4.1 of the GDPR)

46. In its Reply and Reply submissions, the Respondent first argues

that the terms "nominee" and "probable nominee" do not constitute data to be

personal character within the meaning of the GDPR but that it is only a position taken

by the defendant vis-à-vis the complainant's intervention in certain companies.

The Respondent asserts that as a result, the Complainant cannot exercise her right

rectification and restriction of processing in this regard.

47. The defendant indicates that it is incumbent on the tax administration to take a position

regarding tax matters, in accordance with its legal competence, and that it

falls within the jurisdiction of the tax courts to decide on any disputes

relating to these positions. The defendant concludes that in this case, the Protection Authority

data is not competent to comment.

48. Article 4.1 of the GDPR defines the concept of "personal data" as being

"any information relating to an identified or identifiable natural person

(hereinafter referred to as "data subject"); is deemed to be a "natural person

identifiable" means a natural person who can be

identified, directly or

indirectly, in particular by reference to an identifier, such as a name, a number

identification, location data, an online identifier, or to one or more

specific elements specific to its physical, physiological, genetic,

psychological, economic, cultural or social". This definition therefore comprises four

constituent and cumulative elements:

i.

ii.

iii.

iv.

"any information"

"relating to"

"a physical person"

"identified or identifiable"

i.

"any information"

49. The Litigation Chamber underlines that, as explained in Article 4.1 of the GDPR, the

recital 26 of the GDPR as well as Opinion 4/2007 of the Article 29 Working Party on the

data protection and the case law of the Court of Justice, the notion of "data

of a personal nature" must be interpreted broadly and that it includes both

objective and subjective information, whether this information is correct or not

or proven or not2. The notion of "any information" used in Article 4.1 of the GDPR

must therefore be interpreted literally, whatever the nature, the

content or form of the information.

50. Recital 26 underlines this extensive explanation of the notion of "data to

personal nature" and indicates that "The principles relating to the

data protection to any information relating to a natural person

identified or identifiable".3

51. This has also already been confirmed by the Article 29 Working Party on the Protection

data in its Opinion No. 4/2007 on the concept of personal data,

in which he indicates in this regard: "From the point of view of the nature of the information, the

concept of personal data encompasses all kinds of information to be

about a person. "(...) it can also be "subjective" information in the form

opinions or assessments. (...) To be considered as "personal data

personal", it is not necessary that this information be true or proven."4 5

52. These elements have also been emphasized on several occasions by the Court of Justice of

the European Union. In its Nowak judgment of 20 December 2017, the Court specifies in this

respect :

"The use of the expression "any information" in the context of the definition of the concept

of "personal data" (...) reflects the objective of the EU legislator

to attribute a broad meaning to this notion, which is not restricted to information

sensitive or private, but potentially encompasses all kinds of information,

2 FOCQUET, A. and DECLERCK, E., Gegevensbescherming in de praktijk, Intersentia, Antwerpen, 2019, p. 6; C. DOCKSEY ar

HIJMANS, "The Court of Justice as a Key Player in Privacy and Data Protection: An Overview of Recent Trends" in Case Law a

the Start of a New Era of Data Protection Law, EDPL Review 2019, p. 302-304.

3 Emphasis by the Litigation Chamber.

4 Article 29 Data Protection Working Party, Opinion No. 4/2007, 20 June 2007, p. 6.

5 Emphasis by the Litigation Chamber.

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both objective and subjective, in the form of opinions or assessments, provided that

these "concern" the person in question.

53. The Article 29 Data Protection Working Party and the Court of Justice

specify that this information may relate both to the private life of the person

concerned only to his professional6 or public activities: "The expression "data

of a personal nature" includes information relating to private and family life

of a natural person, stricto sensu, but also information relating to his

activities, whatever they may be, as well as those concerning his working relationships

as well as its economic or social behavior. It is therefore information

concerning natural persons, regardless of their situation or their

quality (as consumers, patients, employees, customers, etc.).”7

54. More specifically, the Court of Justice held in its Nowak judgment that the assessment

and remarks of an examiner concerning an examination submitted by the person

concerned were to be considered as personal data in the

meaning of the current article 4.1 of the GDPR.

55. The Court underlined that not qualifying these data as being data to be

personal nature would have the effect of completely removing these

information on compliance with the principles and guarantees for the protection of

personal data, and more specifically respect for the rights of access,

rectification and opposition of the person concerned as well as the control exercised by

supervisory authorities.8

56. The Litigation Division finds on the basis of the foregoing that contrary to

what the Respondent asserts in its Reply and Reply Submissions, in

In this case, the information processed by the defendant falls within the scope of Article

4.1 of the GDPR and must be considered as personal data within the meaning

of the aforementioned article. The disputed documents mention the surname and first name of

the complainant as well as her National Register number on the one hand as well as the fact that

the plaintiff would act as a "nominee" on the other hand.

6 See ECHR 16 February 2000, no. 27798.

7 Article 29 Data Protection Working Party, Opinion 4/2007, 20 June 2007, p. 7. See also along the same lines

Opinion of Advocate General E. Sharpston of 12 December 2013 in joint cases C-141/12 and C-372/12 (Y.S.),

through. 45.

8 Nowak, para. 49.

ii.

"relating to"

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57. A second constituent element of the definition of the concept of "personal data

personal" of article 4.1 of the GDPR implies that the information must "relate to" a

natural person, the data subject. In its Opinion No. 4/2007, the Group of

work Article 29 on data protection points out that this may be the case

directly and indirectly to the extent that the data: "relates to the identity,

characteristics or behavior of a person or whether this information is

used to determine or influence how that person is treated or

assessed"9.

58. The Article 29 Data Protection Working Party clarifies in this regard that

information that does not relate directly to a natural person

may still be considered information "relating to" the

natural person concerned in the following two cases:

1) When the data is used or likely to be used for the purpose

to evaluate the person concerned, to treat him in a certain way or to influence

on his status or behavior; Where

2) When the use of the data is likely to have an impact on certain

people, regardless of whether the impact is high or low. The Working Group

Article 29 on data protection underlines in this respect that as long as the

there is a possibility that the data subject may, for example, be treated differently

as a result of the processing of the data in question, there will be talk of an impact on

the person.10

59. This is also confirmed by the Court of Justice which stated in this regard that this

second condition "is satisfied when, by reason of its content, its purpose or its

indeed, the information is linked to a specific person".11

60. In the present case, it should be noted that the processing of the data concerned -

i.e. the complainant's identification data combined with the qualification of

"(likely) nominee" - and the use of this data (e.g. their mention in the

9 Article 29 Data Protection Working Party, Opinion No. 4/2007, 20 June 2007, p. 10.

10 Article 29 Data Protection Working Party, Opinion No. 4/2007, 20 June 2007, p. 11-12.

11 CJEU, C434/16, Nowak, para. 35.

notifications) can undoubtedly be linked to the complainant and are likely

to have an impact on it.

iii.

"identified or identifiable"

61. A person is considered "identified" when that person stands out

other people within a given group, by means of one or more

identifiers.12

62. Considering the fact that in addition to being described as a "nominee" by the defendant, the

complainant is also cited by her first and last name in the documents concerned,

which also mention its national register number, the Litigation Chamber

finds that the complainant has indeed been identified and that in this case, the information

processed by the defendant relate to an "identified and identifiable person" at the

meaning of article 4.1 of the GDPR.

iv.

"Physical person"

63. The Litigation Chamber notes that, although the information processed by the

defendant also concern the companies of the plaintiff, it also turns out that they

relates just as much to the person of the complainant herself, since the latter

is explicitly mentioned in the documents concerned, as indicated above,

by mentioning his surname, first name and National Register number.

64. It must therefore be held that in the present case the fourth element

constituent is also present.

2.1.2. The jurisdiction of the Litigation Chamber

65. On the basis of the foregoing, it must be concluded that the disputed processing falls

indeed the scope of the GDPR and, consequently, the competence of

the Data Protection Authority, and in particular the Litigation Chamber.

66. The Litigation Division underlines in this regard that under Article 4, § 1 of the LCA,

the Data Protection Authority is responsible "for monitoring compliance with

12 Article 29 Data Protection Working Party, Opinion No. 4/2007, 20 June 2007, p. 13.

fundamental principles of the protection of personal data, in the

framework of this law and laws containing provisions relating to the protection

of the processing of personal data" and that therefore the control

of the law of 3 August 2012 also falls within its competence, since it concerns

full processing of personal data by the Public Service

Federal Finance.

67. The Litigation Chamber also draws attention to the fact that in the context of

this task aimed at exercising control of compliance with the provisions of the GDPR and the

laws containing provisions for the protection of the processing of personal data

personal character entrusted to him by the European legislator (article 58 of the

GDPR) and Belgian (article 4 of the LCA), it analyzed the facts alleged by the complainant to

both in the light of the provisions of the GDPR mentioned by the latter and the

other data protection laws mentioned in the

complaint form as well as in the light of the legal provisions the violation of which is

raised in the complainant's reply submissions.

68. The Litigation Chamber emphasizes - as it has already done in its decisions

19/2020 and 38/2021 - which indeed the complainant cannot be expected to

indicates in a precise and exhaustive manner in its complaint the legal provisions which have

(possibly) violated by the defendant. This task of qualifying the facts falls

to the Inspection Service and the Litigation Chamber of the APD.

69. If the Litigation Chamber refused to take into account the accusations made by the

complainant in the course of the proceedings, it would undermine the effectiveness of the law

of complaint referred to in Article 77 of the GDPR.

70. In the present case, the Litigation Division notes, however, that the complaint form

with annexes introduced by the complainant already included a very complete and

detailed facts as well as alleged violations of the GDPR and the law of August 3, 2012,

and that the rebuttal submissions contain no new concrete charges.

Consequently, the Litigation Chamber draws attention to the fact that the defendant

had the opportunity ab initio to oppose both in writing and verbally on the entirety

charges.

2.2.

Identification of the data controller (article 4.7 of the GDPR)

71. In accordance with Article 4.7 of the GDPR, the person responsible for the processing: the "natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of treatment".

72. The Court of Justice has on several occasions interpreted the concept of "responsible for treatment" broadly in its case law in order to ensure protection effective and comprehensive of those involved.13

73. In accordance with Opinion 1/2010 of the Article 29 Working Party on the protection of data, the capacity of the data controller(s) concerned must be concretely assessed.14

74. In the present case, the Litigation Division first notes that the defendant has carried out a processing of personal data within the meaning of article 4.2 of the GDPR, i.e. "any operation or set of operations whether or not carried out at using automated processes and applied to data or sets of personal data, such as the collection, recording, organization, structuring, storage, adaptation or modification, communication by transmission, dissemination or any other form of making available, the reconciliation or interconnection, limitation, erasure or destruction"15. The defendant has effect collected the personal data of the complainant (surname, first name, number of the National Register) and included them in the report of its pre-investigation as well as in the notification that was sent to the taxpayer(s).

75. Also according to Opinion 1/2010 of the Article 29 Working Party on the protection of data, the notions "ends" and "means" must be examined together inseparably and in this respect it is necessary to establish who determines the "why"

(the purposes) and the "how" (the means) of the processing.16

13 See in particular CJEU, 5 June 2018, C-210/16 - Wirtschaftsakademie Schleswig-Holstein, ECLI:EU:C:2018:388, recitals

27-29.

14 See Article 29 Working Party, Opinion 1/2010 on the notions of "controller" and "processor", 16 February

2010 (WP 169), as specified by the APD in a note "Update on the notions of data controller /

subcontractor with regard to Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 on th

personal data (GDPR) and some applications specific to the liberal professions such as lawyers".

15 Emphasis by the Litigation Chamber.

16 Article 29 Data Protection Working Party, Opinion 1/2010 on the concepts of "controller" and

"subcontractor", February 16, 2010, (WP 169), p. 15. This Opinion is superseded by EDPS Guidelines 7/2020.

76. The Litigation Division further notes that the Respondent de facto determined the

purposes and means of the processing of personal data concerned, given

that firstly, he initiated the processing by collecting the personal data

Complainant's staff via the aforementioned sources and characterizing the Complainant as

"nominee" and secondly, he decided to use the data collected in the

report of the pre-investigation as well as in the notification that was sent to the

taxpayer(s) concerned.

77. The defendant is also designated de jure as the data controller.

personal data in question and more specifically by Articles 2 and

3 of the law of 3 August 2012 laying down provisions relating to the processing of personal data

personal nature carried out by the Federal Public Service Finance within the framework of

its missions, which stipulate: "The Federal Public Service Finance is responsible for

processing of personal data referred to in this chapter" and "The Service

Federal Public Finance collects and processes personal data in order to

to carry out its legal duties. The data cannot be used by the Service

Federal Public Finances for purposes other than the performance of its statutory duties”.

78. Moreover, the defendant does not contest its status as data controller for

the personal data concerned.

79. Based on the foregoing, the Litigation Division concludes that the defendant must

be considered as data controller within the meaning of article 4.7 of the GDPR for

the processing of personal data that is the subject of the complaint. Seen the

principle of liability provided for in Articles 5.2 and 24 of the GDPR, it is therefore,

in this capacity, required to ensure compliance with the principles of the GDPR.

2.3.

With regard to the complainants' requests to exercise their rights.

2.3.1. Time limit for processing requests (article 12.3 of the GDPR and article 11 of the law of 3

August 2012)

80. “In accordance with Article 12.3 of the GDPR, the controller provides the

data subject information on the measures taken following a request

formulated pursuant to Articles 15 to 22, “as soon as possible and in any condition

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case within one month of receipt of the request.17 If necessary, this

deadline can be extended by 2 months, taking into account the complexity and the number of

requests. Where appropriate, the controller must inform the person

concerned of this extension within one month of receipt of

Requirement.

81. Section 12.4. provides that "if the controller does not respond to the

request made by the data subject, he shall inform the latter without delay and no later than

later within one month of receipt of the request for the reasons for his

inaction and the possibility of lodging a complaint with a supervisory authority and

to lodge a judicial appeal”.

82. The law of 3 August 2012 also specifies in its articles 11, § 3 (right to information),

11/1, § 3 (right of access), 11/2, § 3 (right of rectification) and 11/3, § 3 (right to restriction of

processing) that "The data protection officer of the controller

inform the data subject in writing, as soon as possible, and in any

cause within one month of receipt of the request, of any refusal

or any limitation to his right (...), as well as the reasons for the refusal or limitation. (...)

If necessary, this period may be extended by 2 months, taking into account the complexity and

number of requests." The controller informs the data subject

of this extension and the reasons for the postponement within one month of the

receipt of the request."

83. It appears from the documents in the file that the first request for access by the complainant

was introduced on July 18, 2019. On August 7, the Respondent informed the Complainant

that his request should be addressed to the Service de sécurité de l'information et de

Protection of private life. It appears from the documents in the file that the complainant sent

his request to the aforementioned service the following day, namely August 8, 2019.

On September 26, 2019, the Complainant sent a reminder to the Respondent regarding the

aforementioned request.18

84. In its decision of October 28, 2019, the Respondent responded to the request

of information, access, rectification and limitation of processing, introduced in the name

of the Complainant by her counsel, as follows:

17 Emphasis by the Litigation Chamber.

18 See exhibits 1-5 of the complainant's exhibits.

“It appears from the elements of the file that your client herself is not the subject of a

investigation by the [respondent]. No investigative duty was performed on the part of

your client. In the context of several tax investigations with regard to third parties, the

[defendant] instead sought to obtain information from public sources

about your client. Information that your client has

mandates in various companies come from public sources.

On August 7, 2019, explanations and access to your client's administrative file

have already been granted by the defendant under the law of April 11, 1994 concerning

government advertising. During this access, which took place on August 21, 2019, except

error on our part, you have already obtained the requested relevant data.

Your customer's personal data has only been collected for

a specific and legitimate purpose.

Finally, the right to erasure under Article 17(3)(b) GDPR does not apply

not because the processing is necessary for compliance with a legal obligation to

treatment of [respondent]."19

85. It appears from the foregoing that the Respondent did not process the request for the exercise of

its rights by the plaintiff within the period of one month prescribed by article 12.3 and 12.4 of the

GDPR and by the law of August 3, 2012 and that he did not inform the latter either within the

aforementioned deadline with regard to a possible extension of this deadline due to the

complexity of the request.

86. The Litigation Chamber draws attention to the fact that the access granted by the

defendant under the administration's advertising legislation does not

does not exempt from its obligation, under article 12.3 and 12.4 of the GDPR as well as the

law of 3 August 2012, to inform the plaintiff within the period provided for this purpose of the follow-up

has been reserved for the request to exercise its rights under the GDPR, which does not

incidentally concerned not only a request for access but also a request

information, rectification and limitation of data processing.

19 See exhibit 6 of the complainant's exhibits.

87. The Litigation Chamber therefore considers that the defendant committed a

violation of Art. 12.3 and 12.4 GDPR as well as Art. 11, § 3, 11/1, §3, 11/2, §

3 and 11/3, § 3 of the law of August 3, 2012.

2.3.2. With regard to the respondent's response to the complainant's requests

under Articles 14, 15, 16 and 18 GDPR

i.

The request for information (article 14 of the GDPR)

88. The Complainant first addressed to the Applicant, by means of her letter of 18 July

2019, a request for information pursuant to Article 14 of the GDPR, which contains

the information to be provided to the data subjects in the event that the

personal data in question were not collected from these

latest.

89. With regard to this request made by the complainant on the basis of Article 14

of the GDPR, the respondent first declares that it has provided sufficient information to

the interested party. The defendant refers in this regard to its published privacy policy

on the website https://finances.belgium.be/fr/sur_le_spf/vie-privee and declares that

this informs in extenso about the processing of personal data by the

respondent.

90. Second, the Respondent argues that it can, in this case, invoke the derogation

contained in article 11 of the law of August 3, 2012.

91. The article in question provides the following in its § 1:

"Notwithstanding Articles 13 and 14 of Regulation (EU) 2016/679 of the European Parliament

European Parliament and of the Council of 27 April 2016 relating to the protection of persons

physical with regard to the processing of personal data and to the free

movement of such data, and repealing Directive 95/46/EC (general regulation

on data protection), the right to information may be delayed, limited or

excluded with regard to the processing of personal data for which the Service

Federal Public Finance is the data controller to ensure the

objectives of public interest in the budgetary, monetary and fiscal field and for

provided that Article 14, paragraph 5, d), cannot be invoked in the case

of species".

ii.

The request for access (article 15 of the GDPR)

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92. The complainant also sent the applicant, by letter dated 18 July 2019, a

request for access in accordance with Article 15 of the GDPR:

"Our client also has the right (sic) to obtain access to personal data

which are processed as well as

following information

(to know

the right of access

pursuant to Article 15 of the GDPR):

-

-

-

the purposes of the processing;

the categories of personal data concerned;

the recipients or categories of recipients to whom the personal data

personal have been or will be communicated, in particular the recipients who are

established in third countries or international organisations;

-

where possible, the retention period of the personal data

envisaged or, where this is not possible, the criteria used to determine this

duration ;

-

the existence of the right to request from the controller the rectification or

the erasure of personal data, or a limitation of the processing of

personal data relating to the data subject, or the right to

object to this processing;

-

-

the right to lodge a complaint with a supervisory authority;

when the personal data is not collected from the person

concerned, any information available as to their source;

-

the existence of automated decision-making, including profiling, referred to in Article

22, paragraphs 1 and 4, and, at least in such cases, useful information concerning the

underlying logic, as well as the significance and intended consequences of this

processing for the data subject.

On the basis of the aforementioned processing of personal data which has been

noted, our client requests to obtain information on the personal data

personnel processed as well as access to the documents in which it is mentioned.

It also wishes in particular to obtain from your Administration information on

the purposes of the processing, the recipients of this information as well as any information

available on the source of the personal data. (...)”20.

20 Exhibit 1 of the complainant's exhibits.

93. In its submissions in response, the Respondent states with respect to this

request for access that he granted access to the complainant on August 21, 2019 and

has provided the necessary explanations concerning the processing of personal data

staff in question.

94. In relation to this right, the Respondent also invokes the derogations provided for in

Article 11/1 of the law of August 3, 2012 (see point 80 above), and this in particular

concerning the document that the complainant obtained herself from third parties21 and

to which the respondent has not granted access. The defendant argues that it can limit

totally or partially the right of access when he fears that this will prejudice his

investigation and states that in this case he feared collusion. The defendant states in

apart from the fact that it is not necessary for the data subject himself to be subject

of an investigation so that he can validly invoke the aforementioned derogations.

iii.

The request for rectification (article 16 of the GDPR)

95. The complainant also sent a request for rectification to the applicant.

Under Article 16 of the GDPR, the data subject has the right to "obtain without delay

of the controller the rectification of the personal data the

concerning which are inaccurate".

96. The complainant invokes the aforementioned right because she considers that the data to be

personal character dealt with by the defendant - and more particularly the qualification

of the complainant as a "nominee" - are incorrect and are not justified by

the defendant. In this respect, the complainant draws attention to the fact that as

controller, the respondent has an obligation under Article 5.1(d) of the

GDPR, to ensure that the personal data processed is "accurate and, if

necessary, kept up to date" and to take "all reasonable measures (...) so that

inaccurate personal data, having regard to the purposes for which they are

are processed, erased or rectified without delay (“accuracy”)”.

97. In its Reply and Reply submissions, the Respondent states that in this case, the

right of rectification does not apply because 1° the term "nominee" cannot be

considered as personal data within the meaning of Article 4.1 of the GDPR and

21 Exhibit 7 of the complainant's exhibits.

2°, in the alternative, the defendant may invoke the ground of exception set out in Article

11/2 of the law of August 3, 2012 (see point 80 above).

iv.

The request for restriction of processing (Article 18 of the GDPR)

98. Finally, the Complainant also addressed to the Respondent a request for limitation of the

processing on the basis of Article 18.1 a) of the GDPR which provides that:

"The data subject has the right to obtain from the controller the restriction

processing where one of the following applies:

a) the accuracy of the personal data is disputed by the person

concerned, for a period allowing the controller to verify

the accuracy of personal data; (…)"

99. In its Reply and Reply submissions, the Respondent states that in this case, the

right to restriction of processing also does not apply because 1° the term "nominee"

cannot be considered as personal data within the meaning of

Article 4.1 of the GDPR and 2°, in the alternative, the defendant may invoke the reason

exception mentioned in article 11/3 of the law of August 3, 2012 (see point 80 above).

v.

Analysis by the Litigation Chamber concerning points i to iv inclusive

100. Based on Article 23 of the GDPR, the defendant therefore invokes the limitations on the rights

data subjects provided for in the law of 3 August 2012 governing in detail the

processing of personal data by the defendant. These exemptions are

more specifically set out in Articles 11, § 1 (right to information), 11/1, § 1 (right

of access), 11/2, § 1 (right of rectification) and 11/3 § 1 (right to limit processing).

101. As regards (in particular) the rights exercised by the complainant, Article 23 of the

GDPR provides that:

"Union law or the law of the Member State to which the controller or

the subcontractor is subject may, by means of legislative measures, limit the scope

of the obligations and rights provided for in Articles 12 to 22 and in Article 34, as well as in Article

5 insofar as the provisions of the law in question correspond to the rights and

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obligations provided for in Articles 12 to 22, when such a limitation respects the essence of the

fundamental rights and freedoms and that it constitutes a necessary and

proportionate in a democratic society to ensure: (...)

(d) the prevention and detection of criminal offences, as well as the investigation and

prosecution in this regard or the execution of criminal penalties, including the protection

against threats to public security and the prevention of such threats;

(e) other important objectives of general public interest of the Union or of a Member State,

particular an important economic or financial interest of the Union or of a State

member, including in the areas of monetary, budgetary and fiscal matters, health

Public and Social Security; (...)".22

102. By virtue of this provision23, the Belgian legislator has provided for the derogations contained

in the aforementioned articles.

103. In accordance with the aforementioned Article 23 of the GDPR, as explained in recital 73 of the

GDPR, the rights of data subjects may however be limited to

conditions and within the limits set out in this provision, which is based on Article 52

of the Charter of Fundamental Rights of the Union and which must be read in the light of the

case law of the Court of Justice of the European Union as well as Article 8 of the

European Convention on Human Rights (ECHR).

104. These limitations must in particular be necessary to guarantee an interest

economic or financial significance and must be legitimate and proportionate.

Article 23 specifies in this respect, in accordance with Article 52 of the Charter, that the

limitations in question must respect

the essence of

freedoms and rights

fundamentals.

105. The Litigation Division notes, however, that the limitations set out in the law

of August 3, 2012 are worded very broadly and go further than what is

provided for by Article 23 of the GDPR. First of all, this law makes it possible not only

that the rights of data subjects are limited, but it also makes it possible to

exclude them completely and deny any right to the data subject ("the right (…)

22 Emphasis by the Litigation Chamber.

23 Namely former Article 13 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the

protection of natural persons with regard to the processing of personal data and the free movement of such

data.

may be delayed, limited or excluded")24. Furthermore, there is no time limit attached

to this total exclusion of the rights of data subjects.25

106. The former Commission for the Protection of Privacy (hereafter: CPVP) recommended that

this regard in its Recommendation No. 02/2012 of 8 February 2012 and in its Opinion

n° 11/2012 of April 11, 2012 that "with regard to the suspension of the rights of the

data subject, namely the right to information, the right of access and the right

of opposition, we exercise the necessary caution" and indicated that it "[issued]

therefore the greatest reservation as to the lack of criteria for determining the

time from which a tax investigation begins and ends (period during

which the interested party is deprived of his right to information and his rights of access and

of opposition)". The CPVP further underlined that "These rights indeed constitute a

extremely important protection mechanism" and added that the deprivation of

rights of data subjects raised questions since an investigation

tax can take a long time.

107. In its opinion26 on the preliminary draft law of 21 May 2012, the Council of State pointed out

also the (too) significant limitation of the rights of data subjects and

stated more precisely that Article 11 "results in depriving any taxpayer of his

right to information and their rights of access and opposition/rectification" whereas "the

Directive 95/46 of the European Parliament and of the Council of 24 October 1995 'relating to the

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

personnel and the free movement of such data'27, that the law of 8 December 1992

above transposed into Belgian law, sets out in its article 13 the only exceptions and

limitations it authorizes to the rights of information, access and rectification".

108. Although the foregoing cannot be blamed on the Respondent, the Chamber

Contentious emphasizes that the derogations provided for by the law of August 3, 2012, which

contain a limitation to the fundamental right to data protection, must

be interpreted restrictively by the latter and be applied in accordance

to the above rights standards, in particular article 23 of the GDPR, which is not the case

in this case (see below).

24 See § 1, first paragraph of articles 11, 11/1, 11/2 and 11/3 of the law of 3 August 2012.

25 The provisions in question of the law of 3 August 2012 only specify that the duration of the preparatory acts cannot

exceed one year from receipt of a request to exercise rights by a data subject. However, no delay

maximum is provided for the closure of the control or investigation (and at the end of which the rights can again be exercised).

26 C.E., Opinion No. 51-291/2 of May 21, 2012 https://www.dekamer.be/FLWB/PDF/53/2343/53K2343001.pdf, 20.

27 Current Article 23 of the GDPR.

109. Thus, article 11, § 2 of the law of 3 August 2012 specifies - with regard to the right to information (see Art. 11/1, § 2, 11/2, § 2 and 11/3, § 2 respectively for the right of access, rectification and the right to limit processing) - that the derogations referred to in the first paragraph "are valid during the period during which the person concerned is the subject of an inspection or an investigation or of acts preparatory thereto. these carried out by the aforementioned services as part of the performance of their missions as well as during the period during which the documents coming from these services, with a view to taking legal action in this area".28 It follows from the provision cited above that the derogations in question can only be invoked in the case where the data subject himself is the subject of a control, investigation or preparatory acts of the defendant.

110. This also emerges from the preparatory acts of the law of 3 August 2012, where it is clearly stated in the Explanatory Memorandum that the provisions in question "[consecrate] an exception to the right to information, access and rectification by a natural person when he is the subject of an inspection or an investigation"29 and that "there However, there can be no question for the administration to empty the principle of these rights of its substance by invoking the possibility of control. Access cannot be denied only if an inspection or investigation is already underway or if preparations for this have already been started.".30

111. With regard to the limitation ratio in question, the Explanatory Memorandum adds although the exercise of the defendant's duties could be undermined "by the exercise of the right of access of anyone who specifically seeks to evade tax and could, thanks to access to data knowing the elements in the possession of the administration".31

112. The fact that limitations to the rights of data subjects under Articles 11

et seq. of the law of 3 August 2012 must be interpreted restrictively a

also confirmed by

judgment 51/2014 of

the Constitutional Court of

March 27, 2014, which partially canceled this former article 11 because it judged that it

violated the principles of equality and non-discrimination insofar as: "it allows the

responsible for data processing to refuse the exercise [of rights] with regard to the

personal data of the taxpayer which are foreign to the subject of the investigation or the

control in progress and, on the other hand, in that it does not provide for a time limit

28 Emphasis by the Litigation Chamber.

29 Doc 53 2343/001, p. 3 and p. 9-10 (emphasis by the Litigation Chamber).

30 Doc 53 2343/001, p. 12.

31 Chamber, Doc 53 2343/001, p. 11.

the possibility of making exceptions to

the application of these rights

justified by

the performance of acts preparatory to an inspection or an investigation".32

113. In the present case, however, it appears from the documents in the file that it was not the complainant

but third parties - in other words other taxpayers - who were the subject of the investigations

in connection with which the personal data of the complainant were

however, been processed. The defendant clearly indicates this in the documents in dispute33

and also communicates it to counsel for the complainant via her letter of

October 28, 2019 where he declares:

"It appears from the elements of the file that your client herself is not the subject of a

investigation by the [respondent]. No investigative duty was performed on the part of

your client. In the context of several tax investigations with regard to third parties, the

[defendant] instead sought to obtain information from public sources

about your client."

114. Articles 11 e.s. of the law of August 3, 2012 also provide in their § 1 that the

derogations from the exercise of the rights described above may be applied if the

data subject is the subject of "preparatory acts" in connection with an investigation

or control to which the data subject is or will be subject. The documents in the file

not make it possible to know - for obvious reasons - whether this was the case in this case.

115. However, article 11 of the law of 3 August 2012 (as well as articles 11/1, 11/2 and 11/3 in

regarding the right of access, rectification and the right to limit processing)

now specifies in its § 2 that the duration of the aforementioned preparatory acts during

which a derogation from the aforementioned rights listed in Articles 14 to 18 of the GDPR

can be applied "cannot exceed one year from the receipt of a request

[to exercise rights]".

116. Whether or not preparatory acts were underway with a view to opening a

investigation with regard to the complainant at the time when the derogations contained in the law

of 3 August 2012 have been invoked, it is therefore appropriate to conclude on the basis of what

foregoing that the defendant can no longer invoke the derogations

above, given that the period of one year after receipt of the request to exercise

rights by the complainant has expired.

32 Const. 51/2014, March 27, 2014, p. 15.

33 See point 8 above.

117. During the hearing, it further emerged that the Respondent did not inform the Complainant

regarding this lifting of the derogations invoked, as required by Articles 11,

11/1, 11/2 and 11/3, § 2 juncto § 3 of the law of August 3, 2012. The aforementioned provisions

indeed state that "The duration of the preparatory acts, referred to in paragraph 2, subparagraph

2, during which articles 13 and 14 of the general regulation on the protection of

data are not applicable, cannot exceed one year" and that "When the Service

Federal Public Finance made use of the exception as determined in paragraph

1, paragraph 1, and with the exception of the situations referred to in paragraphs 6 and 7 of paragraph 334,

the rule of the exception is lifted immediately after the closure of the control or

investigation. The data protection officer of the controller in

inform the person concerned without delay." In this case, however, the one-year period has already

been largely exceeded without the complainant having been informed of the lifting of the

waivers invoked.

This must be considered not only as a violation of the provisions in

question but also as a violation of Article 12.2 of the GDPR, which imposes on the

controller the obligation to facilitate the exercise of the rights of individuals

concerned.

118. The Litigation Chamber also finds, on the basis of the declarations of the

defendant during the hearing that the latter does not seem to have a procedure

internal allowing to have a complete overview of all character data

of a data subject, in this case the complainant, whom he is dealing with. At the time of

hearing, the Respondent indeed stated that [the Respondent] "has many

different sections" and that "all documents drawn up by all officials

concerned cannot be examined or indexed in order to verify whether the name of the

complainant or other personal data were used". The Chamber

Contentious, however, draws attention to the fact that, as responsible for the

processing of the personal data concerned, in accordance with the principle

liability, set out in Articles 5.2 and 24 of the GDPR, and the principle of protection

data from the design stage, included in Article 25 of the GDPR, the defendant has the obligation

to "[implement] appropriate technical and organizational measures, [...]

which are intended to implement the principles relating to data protection,

for example the minimization of data, in an effective way and to match the treatment

guarantees necessary to meet the requirements of this Regulation and

protect the rights of the data subject" and must also be able to prove it.

34 i.e. when a file is transmitted to another service of the Federal Public Service Finance or to the institution competent to

rule on the conclusions of the investigation".

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The controller must therefore ensure that it is technically

possible to request personal data in all systems within

of its organization, in particular when it processes personal data

in large scale. The Litigation Chamber emphasizes that this principle of liability

constitutes one of the cornerstones of the GDPR and that as a public service, the

defendant must lead by example in terms of compliance with the principles of

Data protection.

119. The Litigation Chamber considers, on the basis of the foregoing, that the defendant

has committed a violation of Articles 11, § 1, 11/1, § 1, 11/2, § 1 and 11/3, § 1 of the law of 3

August 2012 and therefore Articles 12.2 juncto Articles 14, 15, 16 and 18 of the GDPR.

Conclusion as to Respondent's Violations

120. Based on the foregoing, the Litigation Chamber decides that:

-

Respondent failed to notify Complainant in time - ie. within one month - from

the follow-up given to requests for information, access, rectification and

restriction of processing under Articles 14, 15, 16 and 18 of the GDPR that it had

filed on July 18, 2019 and that he therefore committed a violation of Articles 12.3 and 12.4

of the GDPR as well as Articles 11, § 3, 11/1, § 3, 11/2, §3 and 11/3, §3 of the law of 3 August 2012;

and

- with regard to the aforementioned requests addressed to it by the

plaintiff, the defendant can no longer invoke the derogations provided for in Articles 11,

11/1, 11/2 and 11/3 of the law of August 3, 2012 and that it is therefore required to process the

requests for the exercise of rights by the complainant, in accordance with the aforementioned articles.

In this respect, the Respondent did not inform the Complainant of the lifting of the derogations

invoked, as required by Articles 11, 11/1, 11/2 and 11/3, § 2 juncto § 3 of the law

of August 3, 2012 and has thus committed a violation of the aforementioned provisions as well as

than Article 12.2 of the GDPR juncto Articles 14, 15, 16 and 18 of the GDPR.

121. The Litigation Division therefore considers it appropriate to order the defendant

to follow up on the complainant's requests to exercise her rights, more specifically

the right to information and access (articles 14 and 15 of the GDPR and articles 11 and 11/1 of the law

of August 3, 2012). The Litigation Chamber orders the defendant to give more

specifically to the complainant, in accordance with Articles 14.1 and 15.1 of the GDPR, at least:

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i)

information about the personal data processed and more

precisely the purposes of the processing, the recipients of the data to

personal character in question as well as any information available on the

source of data;

ii)

access to all mail and/or communications where the complainant

is mentioned and for which it is no longer possible to invoke the derogations

provided for in the law of 3 August 2012.

122. With regard to the request to exercise the right of rectification (Article 16 of the GDPR

and article 11/2 of the law of August 3, 2012) by the complainant, the Litigation Chamber

points out that the plaintiff's characterization of the plaintiff as a "nominee" -

contrary to what the latter asserts - must be considered as data to be

personal character (see points 46-65 above). This data cannot

therefore not be exempt from data protection and is also subject

at

the provision relating to the rights of data subjects.35 The Chamber

Contentious, however, draws attention to the fact that - unlike, for example, the

name of the person concerned - this is "subjective" information because it

constitutes a conclusion or qualification by the controller. In

its Nowak judgment, the Court of Justice pointed out, with regard to this type of data

of a personal nature, that the scope of the rights must be assessed according to the

purposes for which the purposes were processed and that the legislation relating to the

data protection is not intended to guarantee the correctness of a process

decision-making.

123. The Article 29 Data Protection Working Party has in turn underlined in

its Opinion 4/2017 that the rules on data protection do take into account

fully aware of the possibility that such subjective information may be incorrect

and give the data subject the possibility of accessing this data and

rectify. In this regard, he draws attention to the fact that in this case the rectification is

possible by adding comments a contrario or by resorting to legal remedies

appropriate as recourse mechanisms.

124. Bearing in mind that in the present case the personal data in question

is subjective information about the complainant, of which the latter states

that they are erroneous and which the Litigation Division does not have the possibility of verifying

the accuracy and cannot in this respect replace the defendant,

bedroom

35 Nowak judgment, paragraph 49.

36 Article 29 Data Protection Working Party, Opinion 4/2007, 20 June 2007, p. 7.

Litigation orders

their rectification in

leaving

the complainant add a

a contrario comment in the files concerned, by which the latter

indicate that you contest the accuracy of the information in question. In compliance with Article

19 of the GDPR juncto article 16 of the GDPR, the Litigation Chamber also considers

appropriate to order the defendant to inform any addressee of this rectification at

who the personal data concerned has been provided. The application of

Article 19 derives in this respect from the application of Article 16 of the GDPR.

125. The Litigation Chamber emphasizes that the defendant has an obligation

pursuant to Article 5.1 d) of the GDPR to ensure that the personal data

processed are "accurate and, where necessary, kept up to date;" and that "all

reasonable steps [are] taken to ensure that the personal data

inaccurate, having regard to the purposes for which they are processed, are erased or

corrected without delay (“accuracy”)”.

126. Next, in addition to this corrective measure, the Litigation Division considers it appropriate

to issue a reprimand, in accordance with Article 58.2 b) of the GDPR and

Article 100, § 1, 5° of the LCA. In this regard, the Litigation Chamber takes into account the

fact that the defendant is a public service which must set an example at the level of the

compliance with the legislation on the protection of personal data and

which, as a tax department, processes a large amount of personal data

staff. In accordance with the "lead by example" principle, the latter must

therefore always ensure that you comply with this legislation and in particular with the

above-mentioned essential provisions of the GDPR concerning the exercise of rights

by the persons concerned.

Publication of the decision

127. Given the importance of transparency regarding the decision-making process of the Chamber

Litigation, in accordance with Article 95, § 1, 8° of the LCA, this decision is

published on the website of the Data Protection Authority, mentioning the

identification data of the defendant, given the public interest of this decision on the one hand,

and the unavoidable re-identification of the defendant in the event of pseudonymization, on the other hand.

FOR THESE REASONS,

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

- to formulate, on the basis of Article 58.2 b) of the GDPR and Article 100, § 1, 5° of the

LCA, a reprimand against the defendant for violations of Articles 11, 11/1, 11/2

and 11/3 § 2 juncto § 3 of the law of August 3, 2012 and articles 14, 15, 16 and 18 of the GDPR

(the complainant's lack of information concerning the lifting of the exemptions invoked

and failure to respond to requests to exercise the data subject's rights);

- to order the controller, pursuant to Article 58.2 c) of the GDPR and

article 100, § 1, 6° of the LCA, to comply with the complainant's requests

to exercise their rights, more specifically the request for information and access (art. 14 and

15 of the GDPR), and this within a period of one month from the notification of this

decision and to inform the Litigation Chamber within the same period of the follow-up reserved

to this decision;

- to order the defendant, pursuant to Article 58.2 c) of the GDPR and Article 100, § 1,

6° of the LCA, to comply with the plaintiff's request to exercise her rights, plus

precisely his right of rectification (art. 16 of the GDPR), and this within a period of one month from

count from

notification of

this Decision and to inform

bedroom

Litigation within the same period of the action reserved for this decision; The

In this respect, the Chamber orders the Respondent to more specifically authorize the Complainant

to add an a contrario comment to the files concerned with regard to the

qualification of "nominee"; and

- to order the controller, pursuant to Article 58.2 c) of the GDPR and

article 100, § 1, 10° of the LCA, to inform any recipient to whom the data to be

personal character concerned have been provided of the aforementioned rectification

(art. 19 of the GDPR juncto art. 16 of the GDPR), and this within a period of one month from the

notification of this decision and to inform the Litigation Division within the

same deadline for the action reserved for this decision.

Under article 108, § 1 of the LCA, this decision may be appealed within a period

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

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data as a defendant.

(Sr.) Hielke Hijmans

President of the Litigation Chamber