1/45

Litigation Chamber

Decision on the merits 81/2020

from December 23, 2020

File number: DOS-2019-02751

Subject: Decision relating to two data controllers acting successively

noting various breaches of the principles of the GDPR (lawfulness, minimization,

accountability) and the rights of data subjects (information, access, facilitation

Rights)

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

Hijmans, President, and Messrs J. Stassijns, C. Boeraeve, members, taking over the matter in this

composition;

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

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

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

data protection), hereinafter GDPR;

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

Having regard to the internal regulations as approved by the House of Representatives on December 20

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

Considering the documents in the file;

Made the following decision regarding:

The complainant:

X

Decision on the merits 81/2020- 2/45

The first defendant: Y;

Having as counsel, Maîtres Frédéric Dechamps and Nathan

Vanhelleputte, lawyers.

The second defendant:

Z;

Having for counsel Mr. S. Parsa, lawyer.

Hereinafter also referred to together as “the defendants”;

1. Feedback from the procedure

Having regard to the complaint filed on May 15, 2019 by the complainant with the Data Protection Authority

(hereinafter APD);

Having regard to the decision taken by the Litigation Chamber during its session of July 12, 2019 to seize

the Inspector General on the basis of articles 63, 2° and 94, 1° LCA and the referral of the latter to this

same date;

Having regard to the report and minutes of the Inspector General's investigation sent on January 6, 2020 to the

Litigation chamber;

Having regard to the letters of January 21, 2020 and February 18, 2020 from the Litigation Chamber informing the

parties of its decision to consider the file as ready for substantive processing on the basis

of article 98 LCA and communicating to them a timetable for the exchange of conclusions;

Having regard to the main conclusions of the second defendant filed by its counsel, received on March 12

2020;

Considering the conclusions of the complainant, received on March 27, 2020;

Having regard to the additional and summary submissions of the first defendant filed by its counsel,

received on April 14, 2020;

Having regard to the second defendant's additional and summary submissions filed by its counsel,

received on April 14, 2020;

Having regard to the request made by the defendants in the terms of their pleadings to be heard by

the Litigation Chamber pursuant to Article 51 of the DPA's internal rules;

Having regard to the invitation to the hearing sent by the Litigation Chamber to the parties on June 16, 2020;

Having regard to the information sent on June 25, 2020 to the Inspector General regarding the holding of the hearing on the date

of July 13, 2020 pursuant to Article 48.2. the internal regulations of the DPA;

Having regard to the hearing during the session of the Litigation Chamber of July 13, 2020 in the presence of the

plaintiff, [...], of the first defendant represented by one of his counsel, Maître Van

Helleputte as well as the second defendant represented by her counsel Maître S. Parsa;

Having regard to the minutes of the hearing and the observations made thereon by the respective counsel

of the defendants which have been attached to these minutes;

Having regard to the reaction form against a planned administrative fine sent on 18

November 2020 to the first defendant. Under this form, the Litigation Chamber

communicates to him that it is considering a fine against him as well as the reasons for which the

breaches of the GDPR justify the amount of the fine;

Considering the reaction of December 9 of the first defendant to this form;

Having regard to the reaction form against a planned administrative fine sent on 18

November 2020 to the second defendant. Under the terms of this form, the Litigation Chamber

communicates that it is considering a fine against him as well as the reasons for which the

breaches of the GDPR justify this amount of fine;

Considering the reaction of December 10, 2020 of the second defendant to this form.

2. The facts

1.

The first defendant is a company specializing in “street parking”.

It carries out parking control in the municipalities for which it is the concessionaire of the missions

of public interest. The first defendant employs [...] people. It is also part of the

Group [...].

2.

The first defendant manages, under the municipal regulations of the City of [...], the

parking lot of certain streets of this municipality.

3.

The second defendant is a firm of judicial officers located in […] which deals, in

within the framework of its legal prerogatives defined in article 519 of the Judicial Code, in particular of the

amicable recovery and judicial recovery of debts of its customers. The first one

Decision on the merits 81/2020- 4/45

defendant is one of his clients. The study deals on its behalf with the management of the

amicable recovery, then, if necessary judicial, of unpaid debts such as royalties

parking.

4.

On January 2, 2019, the complainant parked her vehicle on one of the streets of [...]

first defendant is responsible for managing the parking lots. The first defendant

states that the complainant was parked in a blue zone in which parking is limited to

thirty (30) minutes. In the absence of a blue disc affixed by the complainant to her windshield and to

lack of a parking permit which it would have held, the first defendant indicates

have, pursuant to article [...] of the applicable municipal regulations [...], placed an invitation to

pay [...] euros on the windshield of the complainant's vehicle. This amount corresponds to the amount

of the "Tariff 1" fee of the municipal regulations. The complainant, for her part, denies having found

any invitation to pay on his windshield.

5.

The first defendant indicates that it sent a payment reminder to the plaintiff on 24

January 2019, reminder which increases the initial debt by five (5) euros in accordance with article [...] of the

municipal regulations already mentioned. The complainant also denies having ever received such a reminder.

6.

In the absence of payment received within 15 days of the sending of the said reminder of January 24, 2019, and

in accordance with article [...] of the applicable municipal regulations, the first defendant transmitted

the file to its bailiff, or to the second defendant, so that the latter takes charge

recover the amount owed by the complainant.

7.

On February 25, 2019, the complainant received a formal notice from the second

defendant in order to recover the amount due pursuant to article [...] of the municipal regulations

already cited. To the initial debt, as announced in the reminder letter of January 24, 2019 (point 5 below)

above) are added costs in accordance with the Royal Decree of 30 November 1976 setting the tariff for

acts performed by the judicial officers in civil and commercial matters to which the article refers

[...] of the municipal regulations. The complainant indicates that she received this formal notice on March 1

2019.

8.

On March 3, 2019, the plaintiff wrote to the second defendant to receive explanations,

indicating that she never received an invitation to pay or a reminder. She also opposes the payment

of the fee. By the same letter, the plaintiff questions the second defendant as to the

legal bases which allow him to access the Vehicle Registration Department (DIV) of the

SPF Mobilité and in the National Register. Still according to this letter, the complainant exercises

also his right of access to his personal data recognized by the GDPR (article 15

GDPR).

Decision on the merits 81/2020- 5/45

9.

On the same date, the plaintiff sent the same requests to the first defendant.

10.

On March 4, 2019, the first defendant refers the plaintiff to the second defendant

in these terms: "Make an arrangement with the bailiff".

11.

On March 29, in the absence of a response received from the second defendant, the plaintiff

writes to him again indicating that the legal deadline of one (1) month to respond to his request for access is on the
about to expire.

12.

On April 2, 2019, the second defendant wrote to the plaintiff in response to her letter of April 3
March (point 8 above) and provides it with a certain amount of information on the one hand on the data
that it processes in response to its request for access and information relating to the legal bases used
as well as on the other hand, some information on the processing carried out by his client (the first
defendant). There followed an exchange of correspondence between the complainant and the office of bailiffs.
justice (second defendant) under which photos – difficult to read according to the complainant –
are communicated.

13.

On April 8, 2019, the complainant asked the second defendant to communicate to her the
proof of sending the reminder letter of January 24, 2019 (point 5 above).

14.

There also followed a request of April 29, 2019 from the plaintiff to the first defendant
to be provided with proof of the sending of this reminder letter of January 24, 2019. In response,
the first defendant sends a copy of the reminder letter and refers the plaintiff to the
bailiffs for the remainder.

15.

On May 15, 2019, the complainant filed a complaint with the DPA against both the first
defendant than the second defendant. The complainant will bring an addendum to her complaint in
dated June 6, 2019.

16.

The complainant also sent a request for access to the DIV. From the response received by
the complainant on May 17, 2019, it appears that the first defendant consulted the data of the
complainant on January 3, 2019 at 10:03 p.m., i.e. the day after the finding (January 2, 2019 – see

point 4 above) of the alleged breach of the parking rules.

17.

In June 2019, the plaintiff wrote again to both the first and second defendants

to obtain details of the offense with which he is charged.

Decision on the merits 81/2020- 6/45

18.

On July 11, 2019, the second defendant responds to the plaintiff's request for clarification

indicating that he is accused of not having affixed a valid parking ticket

on his windshield. The first defendant criticizes the plaintiff for having omitted

affix the required parking disc in the blue zone.

3. The subject of the complaint lodged by the complainant

19.

By the terms of her complaint, the complainant requests that her complaint against the first and

of the second defendants be declared admissible and founded and that, consequently, the

defendants be ordered to comply with the GDPR and Belgian laws, within the time limit

that the Litigation Chamber deems reasonable and this, under penalty of penalty.

20.

In this regard, the plaintiff considers that the defendants are guilty of:

As to the first defendant:

-

-

a breach of his right to information (articles 12 and 14 of the GDPR)

a breach of his right of access (article 15 of the GDPR)

- a breach of Article 28 of the GDPR with regard to the quality of subcontractor of the second

defendant

- a breach of Article 5 of the GDPR (compliance with the principle of necessity with regard to the

consultation of the IVD)□

- a breach of the principles of proportionality and illegal reuse of data□

(articles 5 and 6 of the GDPR) with regard to the communication of its data to the second□

defendant□

- a breach of the principle of minimization (Article 5 of the GDPR) with regard to the taking of□

photograph of his vehicle when the violation of the rules of□

parking□

As for the second defendant□

-□

-□

a breach of his right to information (articles 12 and 14 of the GDPR)□

a breach of his right of access (article 15 of the GDPR)□

- a breach of Article 28 of the GDPR with regard to its quality of subcontractor□

- a breach of the principles of proportionality and illegal reuse of data□

(articles 5 and 6 of the GDPR) communicated to it by the first defendant even□

that it would not be validly based on it□

- a breach of the principles of data minimization and the use of consent□

forced (Articles 5 and 6 of the GDPR) with regard to the form attached to the formal notice to pay.□

Decision on the merits 81/2020- 7/45□

21.□

The plaintiff also asks that the defendants be sentenced to a sanction□

proportionate to the seriousness of the facts, taking into account the purpose and scale of their activity□

professional that affects a large number of citizens.□

22.□

Finally, the plaintiff requests that the defendants be condemned for non-anonymized advertising□

of the decision of the Litigation Chamber so as to inform the public of illegal practices in□

management of parking fees against which they can claim the

compliance with their data protection rights.

4. The inspection report of January 6, 2020

23.

According to his report, the Inspector General makes the following observations:

24.

Finding 1:

It does not appear from the elements of the file and the answers provided by the

first defendant that the lawfulness of the processing carried out by the first and second

defendants in order to recover the regulatory parking debt

communal can be questioned.

25.

Finding 2:

The information provided to data subjects on the website of the

first defendant is deficient.

The privacy statement appearing on the site of the first defendant does not [...]

not the personal data that it processes on the occasion of the control, the sending of the reminder and

the transmission of the file to the bailiff (second defendant). The contact details of

the privacy officer of the first defendant in charge of processing the requests

right of access of data subjects are not mentioned in this statement. The

first defendant therefore fails to fulfill its obligation to provide information

easily accessible, in particular by electronic means to the persons concerned, prescribed in

section 12.1. of the GDPR.

26.

Finding 3:

The complainant's right of access to the data concerning her processed by the

first defendant was not complied with, in contravention of Article 15 of the GDPR.

The only response to her request for access was that the complainant was twice referred to

the bailiff [read the second defendant] and a copy of the payment reminder that she

disputed having received was provided to him. In this respect, it appears that there is no procedure in place

so that the customer service department of the first defendant in charge of complaints sends the

requests relating to the exercise of the rights of the data subject to the protection of life officer

deprived of the first defendant.

Decision on the merits 81/2020- 8/45

27.

Finding 4:

Access to the DIV by the first defendant was made the next day

control of the complainant's vehicle. Personal data concerning him

(surname, first name and address) were processed unnecessarily during the period during which the

person concerned has the possibility of paying the fee before sending a reminder sent to his

name and address, which does not comply with the principle of data minimization provided for

in article 5.c [read article 5.1 c)] of the GDPR. According to article [...] of the fee by-law of the City of

[...] of [……..], this period is 10 days. The first defendant argues that in this case

a technical error was encountered in the automated access to the DIV. She joins an exchange of emails

of November 14 and 22, 2019 with its supplier from which it appears that the DIV data is

then received after 48 hours for all of its sites.

28.

The Litigation Chamber notes that in the context of its investigation, the response letters

to the questions put to the second defendant by the Inspector General are signed by the group [...].

5. The hearing of July 13, 2020

29.

Of the hearing of July 13, 2020 - the minutes of which have been established - are, in addition to the arguments

developed in terms of conclusions, the following elements emerged:

-

-

the status of data controller of each of the defendants;

the changes decided by the first defendant to the procedure put in place with the

second defendant for the exercise of the data protection rights of the

persons concerned and more particularly, the decision to retain internal management

requests for the exercise of their rights by the persons concerned;

-

the work of compliance with the GDPR carried out by the judicial officers from the 25

May 2018, in particular the adoption of a detailed privacy policy available on its website;

-

the appointment of a data protection officer (DPO) by both the first and the

second defendants;

-

the request for publication of the decision of the Litigation Chamber in a form

anonymized formulated by both the first and the second defendants, reasoned in particular

by the image of the function of judicial officer (second defendant) as well as the fear of

see, given the number of people whose personal data is processed by

both defendants, multiply the number of complaints against them.

confirmation that the first defendant is part of the group [...].

-

PLACE

6. Structure of the decision

Decision on the merits 81/2020- 9/45

30.

By way of introductory remarks, the Litigation Division will formulate a certain number of

details as to its competence (7.1.), as to the reference error of the basis of lawfulness of the

treatment spontaneously raised by the first defendant (7.2.) as well as with regard to the quality of

the first and second defendants with regard to the data processing concerned (7.3.).

These clarifications are a necessary prerequisite for the consistency and good understanding of what follows.

of this decision.

31.

Then, in Title 8, the Litigation Chamber will successively examine the breaches

which may be held against the first defendant on the one hand (heading 8.1.) and against the

second defendant on the other hand (heading 8.2).

32.

Finally, in Title 9, the Litigation Chamber will justify the corrective measures and sanctions

that it decides to impose on the first defendant on the one hand (section 9.1.) and on the second defendant

on the other hand (title 9.2.).

7. Introductory remarks

7.1. As for the sovereign assessment of the Litigation Division notwithstanding the findings of the

inspection report and the terms of the complaint

33.

On several occasions in its pleadings, the second defendant demonstrates that

given that the inspection report did not find any breach in its regard, no

breach could not be held against him by the Litigation Chamber.

34.

The Litigation Division recalls in this respect that recourse to the Inspectorate is not

systematically required by the ACL. Indeed, it is up to the Litigation Chamber to determine at the

following the filing of a complaint, whether or not an investigation by the Inspectorate is necessary (article 63, 2° LCA

– art. 94, 1° ACL). The Litigation Chamber may also decide to deal with the complaint without having

seized the inspection service (art. 94, 3° LCA).

35.

When seized, the findings of the Inspection certainly enlighten the Chamber

Litigation on the factual elements of the complaint, on the qualification of these facts with regard to the

data protection regulations and can support either

shortcomings retained in fine by the Litigation Chamber under the terms of its decisions. However, the

Litigation Chamber remains free, in support of all the documents produced during the procedure

and the arguments developed in the context of the adversarial debate following its decision to deal

the substance of the case (article 98 LCA) - if necessary after recourse to the Inspectorate -, to conclude

substantiated manner to the existence of shortcomings that the inspection report would not have raised.

Decision on the merits 81/2020- 10/45

36.

As for the terms of the complaint, they constitute both for the Inspection and for the Chamber

Litigation a starting point. The Litigation Chamber recalls that on several occasions already, it

ruled that during the procedure following the complaint, it has the possibility of changing the

legal qualification of the facts submitted to it, or to examine new facts related to the complaint,

without necessarily calling on the intervention of the Inspectorate, in particular by asking questions

to the parties or taking into account new facts or qualifications invoked by way of

conclusion, and this, within the limits of the adversarial debate, namely, insofar as the parties have

had the opportunity to discuss these facts or legal qualifications in a manner consistent with the rights of

defense 1.

7.2.

As to the basis of lawfulness

37.

According to its conclusions, the first defendant specifies that it must correct

a mistake. It specifies that the municipal regulations of [...] on which the legality of the

processing and whose legitimacy is recognized through the investigation report applies in the case of

parking fees in the event of non-payment via a parking meter.

38.

In the present case, the first defendant points out that the fee owed by the plaintiff is due

due to the absence of a blue disc affixed. It is therefore the municipal regulation of [...] relating to the

blue zone parking must apply.

39.

The first defendant indicates that however, since the two municipal regulations

are worded identically – at least as regards the relevant articles in the

context of this dispute – it is simply necessary to adapt the references made.

40.

In her conclusions, the complainant raises the fact that the municipal regulations of the [...]

this time by the second defendant at the bottom of the formal notice that it sent to him on February 25

2019 (point 7 above) expired on [...], i.e. before the said formal notice was sent and

before the date of the offense with which he is charged (January 2, 2019). It immediately concludes that there is no legality

of the treatment. In its pleadings and in its file of exhibits, the second defendant relies,

contrary to the reference appearing at the bottom of the said formal notice, on the municipal regulations

of [...] relating to parking in the blue zone.

See

Bedroom

Litigation,

1

33)

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-17-2020.pdf; 41/2020 (full

12 and points 14-15) https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-41-

2020.pdf and 63/2020 (points 16 to 22): https://www.autoriteprotectiondonnees.be/publications/decision-quant-

au-fond-n-63-2020.pdf available on the APD website.

Decisions

17/2020

(points

26

at

Decision on the merits 81/2020- 11/45

41.

The Litigation Division concludes from the foregoing that the defendants agree to

consider that the basis for the lawfulness of their processing finds, at least in part, its source in

the communal regulations of [...] relating to parking in the blue zone.

42.

However, the Litigation Chamber can only observe great confusion around

the identification of this basis of lawfulness. However, this element is now part of the elements

information listed in Articles 13.1 c) and 14.1 c) of the GDPR of which persons should be informed.

concerned (see below). Similarly, without being mandatory, this information may also appear

in the Register of processing activities which must be regularly updated (Art. 30 GDPR).

Errors such as that which occurred on the part of the defendants could perhaps be thus

avoided2.

43.

In this case, the Litigation Division is of the opinion that the error in the identification and

communication of the basis of lawfulness is not synonymous with the absence of a basis of lawfulness within the meaning of

GDPR Article 6. As for the obligation to inform - of the basis of lawfulness in particular (Articles 13.1

c) and 14.1 c) of the GDPR) - and, more generally, as to the effective implementation of Article 24 of the

GDPR in this respect, the Litigation Chamber refers to points 8.1.1 and 8.1.4. below.

7.3.

As to the qualification of the first and second defendants

44.

The plaintiff notes that the first defendant states that it has put in place a procedure

management of complaints with the second defendant. Under it, the second defendant

manages all claims or complaints from the moment the file relating to them has been sent to it

transmitted and takes care of the recovery of the amount due. The complainant believes that "if one must

understand that the second defendant acts as a subcontractor of the first

defendant", the provisions of Article 28 of the GDPR must apply and therefore, the defendants

must be able to demonstrate their effective application.

45.

The Litigation Chamber, under the terms of the hearing of July 13, 2020 (heading 5 above), took

note that both the first defendant and the second defendant refer to themselves as

controller each for the processing that they operate and which they determine

ends and means respectively.

2 See. Privacy Commission, Recommendation 06/2017 of 14 June 2017 relating to the Register

from

recommendation

https://www.autoriteprotectiondonnees.be/publications/recommandation-n-06-2017.pdf

processing

activities

(item

point

See.

30).

42

of

of

the

the

46.

Regardless of the qualification given by the parties, which does not bind it3, the

Litigation Chamber is of the opinion, on the basis of the description given by the defendants of the

collaboration set up between them, that each of them is responsible for processing. Their

interventions in the context of the amicable recovery of debts follow one another in this capacity. The

The Litigation Chamber notes in this respect that this collaboration is based, according to the statements of the

defendants, on the sole basis of the municipal regulations, with the exception of any other document

supporting their collaboration.

47.

The Litigation Chamber also rejects any qualification as co-responsible for

processing within the meaning of Article 26 of the GDPR between the defendants. Indeed, joint responsibility

requires a joint determination of both the purposes and the means of the processing identified,

which is not the case here.4 Each of the defendants successively carries out processing

3 European Data Protection Board (EDPB), Guidelines 07/2020 on the concepts of controller and

processor in the GDPR, version 1.0. dated September 2, 2020. These guidelines currently exist only in

English. They have been submitted for public consultation and are subject to change.

https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_202007_controllerprocessor_en.pdf

4 Idem above points 50-55 in particular and the references cited:

50. The overarching criterion for joint controllership to exist is the joint participation of two or more entities in

the determination of the purposes and means of a processing operation. Joint participation can take the form of

a common decision taken by two or more entities or result from converging decisions by two or more entities,

where the decisions complement each other and are necessary for the processing to take place in such a manner

that they have a tangible impact on the determination of the purposes and means of the processing. important year

criterion is that the processing would not be possible without both parties' participation in the sense that the

processing by each party is inseparable, i.e. inextricably linked. The joint participation needs to include the

determination of purposes on the one hand and the determination of means on the other hand. (…)

55. It is also important to underline, as clarified by the CJEU, that an entity will be considered as joint controller

with the other(s) only in respect of those operations for which it determines, jointly with others, the means and

the purposes of the processing. If one of these entities decides alone the purposes and means of operations that

precede or are subsequent in the chain of processing, this entity must be considered as the sole controller of this

preceding or subsequent operation.

Free translation by the ODA Secretariat

50.

The overall criterion determining the presence of joint controllership is the participation

of two or more entities in determining the purposes and means of a processing operation.

Joint participation can take the form of a joint decision taken by two or more entities, or

result from converging decisions emanating from two or more entities, when these decisions complement each other

mutually and are necessary for the performance of the processing operation in such a way that they have a

tangible impact on the determination of the purposes and means of processing. An important criterion is that the

processing would not be possible without the participation of both parties, in the sense that the processing by each

part is inseparable, that is to say that these treatments are inextricably linked. Joint participation must

include the determination of ends, on the one hand, and the determination of means, on the other.

55.

It is also important to underline, as clarified by the CJEU, that an entity will only be considered

as joint controller, with one or more other entities, only with respect to operations for

which it determines, together with the other entities, the purposes and means of the processing. If one

of these entities alone decides on the purposes and means of prior or subsequent operations in the chain

of treatment, this entity must be considered as the only responsible for the treatment of this operation

anterior or posterior.

on data which are certainly identical up to a certain stage of the procedure (the second

defendant receiving a number of data from the first defendant) without however

determine the purpose and means of the processing(s) jointly. On the contrary, each

of the defendants determines, at the start of the mission assigned to it (at the end of the concession

public which was recognized for the first defendant; at the end of the law for the second

defendant), the purpose and the means of the processing which it is incumbent upon it to carry out, admittedly

successively, but distinctly.

48.

The Litigation Chamber nevertheless shares the impression of confusion and the lack of

clarity with regard to the persons concerned relayed by the complainant. This is evidenced in particular by the

response provided by the second defendant to a request to exercise its rights in relation to

data protection addressed by the complainant to the first defendant (points 10 and

14 above and 75 below).

49.

Nevertheless, the second defendant is neither the subcontractor of the first defendant, nor

joint manager with her. Therefore, their relationship should not be governed by a subcontract.

processing and no breach of Article 28 of the GDPR can be blamed on them. Their relationship

must not be framed by an agreement between them as required by article 26 of the GDPR in

joint liability case.

8. As to breaches

8.1. As to the shortcomings on the part of the first defendant

8.1.1. Regarding the breach of the obligation to inform (Articles 12 and 14 of the GDPR)

50.

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

implements Articles 12, 13 and 14 of the GDPR and to be able to demonstrate this effective implementation

(articles 5.2. and 24 of the GDPR).

51.

Under Article 12.1 of the GDPR, the onus is on the first defendant to take

appropriate measures to provide any information referred to in Articles 13 and 14 of the GDPR in a way

concise, transparent, understandable and easily accessible in clear and simple terms,

in writing or by other means, including electronically.

52.

In the present case, with regard to data which were not collected directly from the

plaintiff, the first defendant was required to provide it with information with regard to the

Decision on the merits 81/2020- 14/45

data processing carried out concerning it in the context of the collection of the fee due.

As for the content of this information, in accordance with the case law of the Litigation Chamber,

the elements listed in both § 1 and § 2 of Article 14 had to be communicated to it.5 The Chamber

Litigation has already specified above that these elements include the exact identification of the database

lawfulness of the processing (Article 14.1 c) of the GDPR) (point 42 above).

53.

The Litigation Chamber is of the opinion that, in light of the amount of information to be provided to

data subject, data controllers such as the defendants should adopt a

multi-level approach. On the one hand, the data subject must from the outset have a

clear, accessible information on the fact that information on the processing of his data to

personal character (privacy policy) exist and of the place where it can find them in

their entirety.

54.

On the other hand, without prejudice to the accessibility of the privacy policy in its

completeness, the data subject must, from the first communication from the controller

with it, to be informed of the details of the purpose of the processing concerned, the identity of the person in charge
of the processing and the rights available to it. The importance of providing this information in advance
derives in particular from recital 39 of the GDPR. Any additional information needed to
allow the person concerned to understand, from the information provided to this first
level, what will be the consequences for her of the treatment in question must be added 6.

55.

According to his inspection report of January 6, 2020, the Inspector General, as he has
been reminded in title 3, notes, with regard to the privacy policy, that:

“The privacy statement appearing on the site of the first defendant does not concern [...]
indeed not the personal data that it processes on the occasion of the control, the sending
the reminder and the transmission of the file to the bailiff (second defendant). The
contact information for the first defendant's privacy officer in charge
to process requests for right of access from data subjects are not mentioned
in this statement. The first defendant therefore does not fulfill its obligation to
provide easily accessible information, in particular electronically, to people
concerned, prescribed in Article 12.1. of the GDPR".

5 Article 29 Group, Guidelines on Transparency within the meaning of Regulation (EU) 2016/679, WP 260,
revised version of April 11, 2018 (taken over by the European Data Protection Board):
https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=622227 (item 23).

6 Idem (points 35-38).

56.

In other words, the First Defendant's privacy policy does not cover
data processing questioned by the complainant. Indeed, the Inspector General details in
its report that the privacy policy available on the site of the first defendant when
of its consultation, exclusively concerned the way in which the processing of data "that you

transmit to us through the site and/or otherwise" was carried out (step 5 of the report

inspection).

57.

The Litigation Division also notes that the first reminder letter sent by

the first defendant to the plaintiff on January 24, 2019 (point 5 above) contains the clause

next :

PRIVACY

Your personal data in our possession will only be processed within the framework

of this reminder and, if applicable, of future exchanges between you and our services at

about the payment of the relevant fee. These data will only be kept for

the duration corresponding to this regulation. In accordance with Regulation (EU) 2016/679 of

European Parliament and of the Council of 27 April 2016 on the protection of personal data

personal character and on the free movement of such data, and repealing Directive 95/46/EC

(General Data Protection Regulation), you can freely exercise your rights

and questions by sending a request to [...] or by e-mail [...]. The protection officer of

privacy will contact you to confirm your identity and take action

to respond to your request.

58.

The said letter also mentions the Internet site of the first defendant without

reference, however, to the privacy policy in general nor a fortiori, to the relevant provisions

in view of the reminder sent (especially since as mentioned above this privacy policy

does not relate to this type of treatment). The Litigation Division is of the opinion that this clause cannot

to fill in the lack of information on the elements of §§ 1 and 2 of Article 14 of the GDPR (therefore

that as already mentioned, the confidentiality policy of the first defendant does not aim

the treatments in question).

59.

As to the lack of mention of the contact details of the privacy officer

generally also noted by the investigation report, the Litigation Chamber is of the opinion

that the communication of contact details of the DPO or any other contact address dedicated to the exercise

of the rights of data subjects is part of the obligation of data controllers to

facilitate the exercise of the rights of data subjects (Article 12.2. of the GDPR)7.

7 During the hearing of July 13, 2020, the first defendant specified that its protection officer

privacy is indeed a Data Protection Officer (DPO) within the meaning of Article 37 of the GDPR.

60.

In the terms of its conclusions, the first defendant indicates that it “can only

take note of the conclusion of the investigation report which states that “the information provided to

data subjects on the [...] website is deficient". It also states that it acknowledges that

the Inspector considers that the information “is not easily accessible” to the persons concerned

(point 41 of the conclusions of the first defendant) and makes a number of commitments

vis-à-vis ODA to remedy this (see below in section 9.1. relating to the discussion on the measures

corrections and sanctions).

61.

As for the time of the information, article 14.3 of the GDPR specifies that the elements listed in

§§ 1 and 2 must be provided within a reasonable time after being obtained but at the latest

within one month of this obtaining in view of the particular circumstances in which the data

of a personal nature are processed.

62.

In this case, the plaintiff and the first defendant are in disagreement on the question of

whether this information was provided in a timely manner. The first defendant maintains

that information can be found on the invitation to pay sent to the complainant as well as in her

reminder letter (points 4 and 5 above). The complainant states that she never received either a butterfly or

reminder letter and notes the absence of proof of the communication of these documents – and therefore of
information on data protection – by the first defendant. The first one
defendant also refers to the information provided on its website, while
admitting that it is incomplete (point 60 above).

63.

It is not for the Litigation Chamber to determine how the breach
parking rules must be brought to the attention of offenders (flyer, reminder by
regular mail, registered mail). The fact remains that the information on the
data processing that takes place both in the context of the observation of the violation and the management
of the recovery of the amount resulting therefrom, must be communicated within the time limit
prescribed in article 12.3 of the GDPR and this, in a useful way (taking into account for example the deadline for
given payment), or, depending on the context, without waiting for the expiry of the said period.

64.

In support of the above findings and the obligation to inform that weighs on the first
defendant, the Litigation Chamber finds a breach of Article 14.1-2 of the GDPR therefore
that the confidentiality policy of the first defendant does not relate to the processing of
data operated in this case (amicable recovery of debts). The “Privacy” clause appearing on its
reminder letter, insufficient in terms of its content, is not likely to remedy this. This breach
is also combined with Article 12.3 of the GDPR. The Litigation Chamber is in this respect of the opinion that
if the information is not given or is incomplete, a fortiori it was not provided within the time limit
Decision on the merits 81/2020- 17/45
required. Finally, these breaches are combined with a breach of Article 12.1 of the GDPR (default
accessibility of DPO contact details in the privacy policy).

8.1.2. Regarding the breach of the right of access (Article 15 of the GDPR)

65.

Pursuant to Article 15 of the GDPR, the data subject has the right to obtain from the controller

processing the confirmation that personal data concerning him are or are not

not processed and, when they are, access to said personal data as well as the

items of information listed in letters a) to h) of Article 15.1. of the GDPR.

66.

In this case, according to his report, the Inspector General makes the observation in this regard

following :

“The right of access of Mrs X (read the complainant) to the data concerning her processed by

[...] (read the first defendant) was not complied with, in contravention of section 15

of the GDPR.

As the only response to her request for access, Mrs. X (read the complainant) was indeed

referred twice to the bailiff (read the second defendant) and a copy

of the payment reminder that she disputed having received was provided to her. In this regard, it appears

that there is no procedure in place so that the customer service of [...] (read the first

defendant) in charge of complaints sends requests relating to the exercise of

rights of the data subject to the Privacy Officer of […] (read the

first defendant)”.

67.

According to its conclusions, the first defendant describes that, having regard to the nature of

its activities, it faces a significant number of claims and complaints. In practice, she

describes (and confirms during the hearing of July 13, 2020) that as soon as it is found that the offender

has not paid its fee within the required time, the file is transferred to the second defendant who

is responsible for collecting the amount due. The first defendant specifies that any request

carried out after the transmission of the file to the bailiff must be processed

directly with the bailiff to avoid contradictory information being transmitted

to the complainant. What it exposes as being an organized procedure with the second defendant

is however, apart from the municipal regulations to which the defendants both refer

during the hearing, not governed by a precise and detailed written procedure between them (point 46 below).

above).

68.

As for the management of requests to exercise their rights with regard to the protection of

given by the persons concerned, the first defendant explains that their separate management of

that of complaints management described in point 67 above, requires that an email be sent to a

e-mail address dedicated to this type of request, i.e. the address [...].

Decision on the merits 81/2020- 18/45

69.

The first defendant notes in this regard that the complainant did not correspond with it

via this specific email. The complainant therefore (point 67 above), as its only response, was

referred to the second defendant as in the case of a claim unrelated to the application

data protection rights of data subjects: “Please contact

to the bailiff”; and this since his request was subsequent to the communication of the file to the

second defendant.

70.

As noted by the Inspector General in his report, the Litigation Chamber notes

that while the complainant's request raised data protection issues, there is no

no internal referral to the First Defendant's Data Protection Officer. This

manner of proceeding appears contrary to the "Privacy" clause appearing on the formal notice of the

first defendant which indicates that for the exercise of their rights in terms of protection

of the data, the debtors are invited to contact the first defendant (first interlocutor

"natural" after all), which suggests that it is indeed the first defendant who

will examine their request (point 57 above).

71.

The second defendant, on behalf of the first defendant, replied to the plaintiff by

letter of April 2, 2019, i.e. according to the first defendant, within the period of one month required by Article

12.3. of the GDPR. According to this letter, the second defendant provides him with a certain number

information regarding the processing carried out by the first defendant.8 It also attaches the

photographs (point 12) and the reminder letter of January 24, 2019.

72.

Moreover, in this same letter, the second defendant also communicates to the

complainant of the elements relating to the request for access which is addressed to him directly with regard to his

own processing (see below point 8.2.2.).

73.

The Litigation Chamber is of the opinion that the implementation of internal procedures and

standardized procedures dedicated to the exercise of the rights of data subjects with regard to the protection of

data is essential and likely to contribute to the effective application of these rights. It facilitates

certainly their exercise as required by Article 12.2. of the GDPR. In a structure like

first defendant, given the volume of data processed, the Litigation Chamber judges it

8 Extract from the letter of April 2 from the second defendant: “As for our client, he is mandated by the city of

[...] to recover unpaid parking charges. He is registered with the

Commission for the Protection of Privacy and, for this purpose, has received the attached document authorizing it to receive

DIV data for the sole purpose of collecting unpaid royalties. As part of its mandate, our

customer obtains surname, first name and address in order to send a reminder letter. Subsequently if the file is not

paid, it is transmitted to the study as provided for by the municipal regulations. According to him, this data is deleted

upon receipt of payment.

essential. However, the persons concerned cannot be blamed for using another channel.

of communication to address their requests. No harmful consequences for the person

concerned cannot be drawn from the fact – even in the event that it would have been correctly

informed – that she would not have used the appropriate form or would have contacted the person in charge of

processing by another means, for example via an incorrect e-mail address. Overwhelmingly, the

Litigation Chamber is of the opinion that in this case, the distinction between "complaint" and "exercise of a right

access to his data" in the context of a request for payment of a

Moreover, parking is not easy to operate for any citizen.

74.

The Litigation Chamber therefore notes that in any event, the first defendant does not

could take refuge behind the "error" that she invokes on the part of the complainant to consider

that it itself would have been exempted from its obligation to respond to the request to exercise the right

complainant's access.

75.

In this case, each of the defendants being a separate person responsible (and not

joint controllers as already explained in section 7.3. above), it is their responsibility to give

following the exercise of the rights of data subjects with regard to the processing they carry out

each respectively. The Litigation Division can only exclude in fact, without being or

subcontractors, nor joint controllers, controllers agree among themselves that

one responds to the request to exercise the rights of data subjects on behalf of the other who

mandate to do so. If this were to be the case, the procedure put in place should be perfectly

clear and understandable for the persons concerned who must have been informed of it. Indeed,

this way of proceeding is highly likely to lead to confusion about the role of each. In

case, this led the plaintiff to believe that the second defendant was the subcontractor of

the first defendant. In this case, the primary interlocutor for the debtor of the fee is, eu

given the facts and in the absence of other clear information, of course the first defendant. The

Litigation Chamber notes in this respect that the first defendant indicated to the Chamber

Litigation now favor a reorganization of procedures that would retain internal

management of complaints relating to the data processing it operates.

76.

Nor can the first defendant consider that since the second

defendant replied to the complainant on April 2, 2019, she herself would have been exempted from doing so

except to consider that the second defendant, mandated by the first, would have responded in a manner

complete, transparent and in accordance with Article 15 of the GDPR with regard to the processing carried out by the

first defendant, which is not the case. The second defendant certainly provides a certain

number of elements but these do not entirely meet the requirements of the article

15.1 GDPR.

Decision on the merits 81/2020- 20/45

77.

The Litigation Chamber notes superabundantly that the first defendant does not dispute

not his lack of response, a fortiori within the period required by Article 12.3. of the GDPR.

78.

The Litigation Division concludes from the foregoing that the first defendant did not

granted the complainant's access request satisfactorily and that there has been a breach in

its chief to Article 15.1 of the GDPR, combined, a fortiori, with Article 12.3. of the GDPR. The first one

defendant also failed in its obligation to facilitate the exercise of the rights of

data subjects required by Article 12.2. of the GDPR.

8.1.3. As to the breach of the principle of minimization (article 5.1 c) of the GDPR)

8.1.3.1.

With regard to the consultation of the DIV

79.

The plaintiff criticizes the first defendant for having consulted the DIV in such a way

premature on January 3, 2019, i.e. before the expiry of the deadline given to him to fulfill

spontaneously of the amount of the fee claimed. This consultation, according to her, therefore took place

in violation of the principle of minimization according to which "the personal data

must be: c) adequate, relevant and limited to what is necessary in relation to the purposes for

which they are processed (data minimization)" (article 5.1 c) of the GDPR).

80.

According to his report, the Inspector General concludes in this regard that "data to be

personal character the [being the complainant] concerning (surname, first name and address) were processed without

necessity in the period during which the person concerned has the possibility of paying the

fee before sending a reminder sent to his name and address, which does not comply

with the principle of data minimization provided for in Article 5.c [read Article 5.1 c)] of the GDPR. Following

article [...] of the By-law fee of the City of [...] on the parking meter 2019, this

period is 10 days.

81.

The first defendant does not dispute that this consultation of the DIV took place on 3

January 2019 at 10:03 p.m., the day after the complainant's parking offense on January 2

2019. She explains that as soon as she was informed of what she describes as an "error", she

immediately requested an adaptation of the system so as to take into account the delays

imposed by the various municipal regulations and thus put an end to this practice of consultation

immediately from the IVD. The first defendant further adds that when it sent this request

to her IT service provider, the latter informed her that the system had been corrected as soon as

August 26, 2019.

82.

The Litigation Chamber recalls that access to the DIV is strictly regulated given

the sensitivity of this database and that only authorized authorities are authorized to

to access. It was the responsibility of the first defendant to organize this access in accordance with the principles

data protection by design and by default (article 25 of the GDPR) in order to put

effectively implements the data minimization principle.

83.

The Litigation Chamber can only note, in support of the documents produced in the file

and the finding of the Inspector General, that there was a breach of the principle of minimization provided for in

Article 5.1 c) of the GDPR on the part of the first defendant.

8.1.3.2.

With regard to the communication of the complainant's data to the second defendant

84.

As regards the transfer of the complainant's data by the first defendant to the

second defendant, the Litigation Chamber insists that this communication does not intervene

only when it is necessary, failing which it would contravene the principle of minimization. Thereby,

the data subject should be given the time allotted to him to pay the fee

before going to the bailiff. The second defendant is not justified in intervening and

therefore to be provided with the data of debtors such as the complainant, that in the absence of payment within

the period provided for by the municipal implementing regulations.

8.1.3.3.

With regard to the taking of photographs and their conservation for the purposes of establishing

the offense

85.

According to its conclusions, the plaintiff also alleges that the first defendant

to process (including storing) a certain amount of personal data

concerning in violation of the principle of minimization and this, for the purposes of establishing the lack of

payment of the fee due. Thus, the complainant considers, for example, that the photographs of her

vehicle (including his professional card placed on the passenger compartment, the name of his garage)

do not provide any element of a nature to specify the offense with which he is charged and are therefore without

relevance. The same goes for the photograph of her license plate which she wonders about

on the necessity of the processing (including storage).

86.

The first defendant indicates in its submissions that its agents collect

such data in the context of establishing the offence. It must, pursuant to Article 870

of the Judicial Code and taking into account the case law of the courts and tribunals, to provide evidence

of the offense it alleges before the competent courts in the matter. She finally adds:

"that by taking the photos making it possible to ensure with certainty that no ticket or disc of

parking is shown on the windshield of the vehicle, that the car is parked in a

place where parking is paid for and/or in the blue zone on a date when the person concerned

must pay for this parking, the claimant does not violate the principle of minimization" (page

14 of the conclusions of the first defendant).

Decision on the merits 81/2020- 22/45

87.

The Litigation Chamber recalls that it was for the purpose of securing the necessary proof

of a breach of a parking rule, the data controller is required to comply with

all of the obligations incumbent upon it pursuant to the GDPR throughout the duration of the

processing (collection, communication, storage, etc.) of personal data. It does not emerge from

the primary competence of the Litigation Chamber to determine what would be the evidence

sufficient and relevant to present to the competent courts. The fact remains that

since this evidence constitutes personal data – including images

as in the present case – processed for the purpose of establishing the alleged facts, these data must be

relevant to the purpose pursued. Without finding a breach of the principle of

minimization on the part of the first defendant in this case, the Litigation Chamber invites

the latter to pay attention to it in the future and to raise awareness among its employees who make the findings on the

ground to act with discernment in this regard. The Litigation Chamber also recalls the principle

that personal data cannot be kept for a period not exceeding

that necessary for the purposes for which they are processed (article 5.1 e) of the GDPR).

8.1.4. As for breaches of Articles 5.2. and 24 GDPR

88.

Article 24.1 of the GDPR, which oversees Chapter IV of the GDPR devoted to the obligations of controllers (and subcontractors) and which translates the principle set out in Article 5.2. from GDPR, provides that "taking into account the nature, scope, context and purposes of the processing as well as risks, of varying likelihood and severity, to the rights and freedoms of natural persons, the controller implements the technical and organizational arrangements to ensure and be able to demonstrate that the processing is carried out in accordance with these regulations. These measures are reviewed and updated if necessary. »

89.

Section 24.2. of the GDPR specifies that when this is proportionate with regard to the activities of processing, the measures referred to in Article 24.1. of the GDPR above include the implementation appropriate data protection policies by the controller.

90.

The Litigation Chamber is of the opinion, in view of what has been noted above in headings 8.1.1., 8.1.2. and 8.1.3. , that the first defendant was at the material time in default of implementing the appropriate technical and organizational measures required by Article 24.1 and 2 of the GDPR to guarantee not only an effective exercise of the rights of data subjects such as the complainant – in particular his right to information and his right of access - as well as respect for the principle of minimization when consulting the IVD.

91.

With regard more specifically to the rights of data subjects, the Chamber Litigation insists on the fact that the municipal regulations, which certainly describe the succession of interventions by the first and second defendants in the context of the amicable recovery parking fee, cannot on its own constitute an adequate measure within the meaning of Article

24 GDPR. It does not allow the first defendant to ensure that the processing is carried out

in accordance with the GDPR or to demonstrate it. The Litigation Division nevertheless takes note of the

undertakings made by the first defendant to comply with its obligation in this regard (see.

below title 9.1.).

8.1.5. Conclusion as to the breaches of the first defendant

92.

In conclusion, the Litigation Chamber finds the following shortcomings on the part of

the first defendant:

-

a breach of its obligation to inform (article 14.1-2, combined with article 12.3 and 12.1.

GDPR)

-

a breach of its obligation to follow up on the exercise of the complainant's right of access

within the legal period allocated to it to do so (article 15.1 combined with article 12.3. of the

GDPR as well as in article 12.2. GDPR (duty to facilitate the exercise of rights)

a breach of the principle of minimization during premature consultation of the IVD

(article 5.1 c) of the GDPR)

a breach of its obligation to put in place the technical measures and

organizational arrangements required for the implementation of Articles 5.2 and 24.1-2 of the GDPR.

-

-

8.2. As to the shortcomings on the part of the second defendant

8.2.1. Regarding the breach of the obligation to inform (Articles 12 and 14 of the GDPR)

93.

The plaintiff criticizes the second defendant for not having informed her in accordance

to the requirements of Article 14 of the GDPR during its first contact with it, either by means of the setting

formal notice that it sent to him on February 25, 2019 (point 7 above).

94.

The second defendant, for its part, considers that the exception provided for in Article 14.5. c) of

GDPR applies to it. In this regard, it relies on article [...] of the municipal regulations of [...]

reproduced below9: [……]

9 It should be noted that in its formal notice of February 25, 2019, the second defendant refers to a settlement

council (erroneous – see title 7.2. above) only in these terms: “any collection costs

amicable agreement charged to the user are in accordance with article [...] of the municipal regulations of [...] the

municipality of [...] relating to the parking fee”.

95.

The Litigation Chamber notes that under the terms of Article 14.5.c) of the GDPR, the person responsible

processing is exempted from its obligation to inform when and insofar as "obtaining

or communication of the information is expressly provided for by Union law or the law

of the Member State to which the controller is subject and which provides for measures

appropriate to protect the legitimate interests of the data subject”.

96.

The Litigation Chamber notes a difference in language between the French version and, for

example, the Dutch and English versions of this provision. Indeed, while the version

French of Article 14.5.c) mentions “when and insofar as the obtaining or communication

information is expressly provided for by Union or Member State law”, the versions

Dutch and English versions of the text use the following terms respectively: “wanneer en voor

zover het verkrijgen of verstrekken van de gegevens uitdrukkelijk is voorgeschreven bij Unierecht of

lidstaatelijk recht” and “where and insofar obtaining or disclosure is expressly laid down by Union or

Member State law”. The Litigation Chamber is of the opinion that it is indeed the obtaining and

communication of data which must be provided for by national law and this notwithstanding the terms of

the French version of article 14.5.c) of the GDPR.

97.

The Litigation Chamber considers that the second defendant cannot rely on the

exemption from information provided for in Article 14.5 c) of the GDPR in this case for the reasons described below.

98.

What is provided for in Article 14.5. c) GDPR constitutes an exception to the right to information.

Failing to be informed that data processing concerning him/her is being carried out, the person

concerned is deprived of information which is in principle spontaneously provided to him by the person in charge

of treatment and which facilitates the exercise of its other rights of which it is also informed of

the existence and methods of exercise (Article 13.2 b), c) and d) and 14.2 c), d) and e) of the GDPR).

99.

This exemption must be interpreted in a restrictive manner since it constitutes a

exception to the information obligation provided for by the fundamental right to data protection11 and

all the more so since, as already mentioned, it deprives the data subject of information about

the existence and terms of exercise of his other rights which are NOT subject to

with the same exception “in the event of obtaining or communication expressly provided for by law”. As

example, the right of access (Article 15 of the GDPR) - which in turn opens the way to the exercise of other

10 It is the Litigation Chamber which underlines.

11 The Litigation Chamber recalls the consistent case law of the Court of Justice of the European Union which

restrictively interprets the exceptions to the fundamental right to data protection: see. through

example: C. Docksey and H. Hijmans, The Court of Justice as a Key Player in Privacy and Data Protection, EDPL

Review (2019), pp. 300-316, and the case law cited (in particular, p. 309).

rights such as the right to rectification, opposition or deletion in particular – does not know

this exception (Article 15.4. of the GDPR).

100.

The Litigation Chamber finds that in this case, as already noted, the municipal regulations
invoked by the second defendant describes the sequence of interventions by the first and the
second defendants in the management of the collection of parking fees (as well as
increases due in default/or in the event of late payment). In other words, the regulation
municipality on which the second defendant bases its waiver of information does not inform as to
to the data processing carried out in execution thereof. At most, it allows us to deduce that
information will be exchanged between the first and second defendants in the context
of a violation of the parking rules in order to recover the fee due. We design
Of course, these interventions will involve obtaining and communicating personal data. Those –
however, these are not expressly provided for, at most they can be implicitly deduced.

101.

Moreover, this exception can only be invoked if appropriate safeguards aimed at
protect the legitimate interests of data subjects are provided for by said regulations. The
Litigation Chamber considers that in this case, these guarantees must consist of a set
minimum information relating to the processing of data which must appear in the act
regulation in execution of which the communication of information takes place.

102.

The Litigation Chamber is of the opinion that, at a minimum, the following items of information -
inspired by article 23.2. of the GDPR - should have been included: purpose of processing, categories of data
of a personal nature processed, identity of the data controller, retention period and a
reference to the rights of data subjects.

103.

These guarantees must of course be provided for by national law. The absence of guarantees
appropriate is certainly not attributable to the second defendant. The fact remains, however, that
GDPR, it is up to the data controller to verify whether he can legitimately
invoke the exception provided for in Article 14.5.c) of the GDPR. The Litigation Chamber recognizes that in

depending on the specific case and in particular on the quality of the data controller, this examination may

not be easy, in particular as regards the existence of appropriate safeguards. However, in this case,

the municipal regulations that the second defendant relies on in support of its dispensation does not address

the data protection aspects in any way, which left little room for doubt as to

the question of whether he could legitimize a waiver of information. The legal framework for

profession of bailiffs and the respect due to their ethical rules are not enough in themselves

to constitute appropriate safeguards in terms of data protection within the meaning of Article 14.5.c)

of the GDPR.

Decision on the merits 81/2020- 26/45

104.

In conclusion, the Litigation Division finds that the second defendant, relying on

wrong on the exemption provided for in Article 14.5 c) of the GDPR (since the municipal regulations do not provide

not expressly obtaining and communicating data and in the absence of guarantees

otherwise appropriate) has breached its obligation to inform, thus contravening Article 14.1-2

combined with Article 12.3. of the GDPR.

105.

According to its submissions, the second defendant indicates to the Litigation Chamber

what does it say “if the exception should not apply, it has taken note that the reference to its website

appearing on his letters of formal notice does not allow, at first sight at the very least,

to inform the persons concerned that they can obtain information directly on the website of the

conclusive” (page 9 of the main conclusions of the second defendant). She proposes

to add to the reference appearing on its model a specific mention concerning the protection of life

linking to its privacy information document available on its website.

106.

The Litigation Chamber is indeed of the opinion that the mere mention of a website

on a mail - site on which a declaration of confidentiality can be consulted - does not constitute

not information that complies with the requirements of the GDPR. At a minimum, a "protection of

data" containing the essential elements of the processing concerned and an explicit reference to the

privacy policy (relevant part if any) available on the site for the surplus shall

To be scheduled. The Litigation Division reviews in this respect what it indicated above with regard to

the "Privacy" clause of the first defendant (points 57 and following).

107.

The Litigation Chamber also wishes to clarify the following. As part of his

argument, the second defendant concludes that the GDPR does not require the controller to

processing to communicate to the persons concerned the references of the normative act in support

which he considers to be exempted from his obligation to inform. However, in the absence of any

information in this respect, it is an illusion to think that the persons concerned will seek (and

will find) the normative act in question containing the required guarantees and allowing them to

get informed. The Litigation Chamber considers that it would be, when this dispensation of information can be

invoked (quod non in this case), it is good practice to communicate this reference.

8.2.2. Regarding the breach of the right of access (Article 15 of the GDPR)

108.

As the Litigation Chamber recalled above with regard to the obligations of the

first defendant, the data subject has the right to obtain from the controller the

confirmation that personal data relating to him are or are not being processed and,

when they are, access to said personal data as well as the elements

information listed in letters a) to h) of Article 15.1. of the GDPR.

Decision on the merits 81/2020- 27/45

109.

The complainant reports a fragmented response to the request for the right of access that she

addressed to the second defendant. She is of the opinion that she was not fully informed

relative to the data source.

110.

The second defendant points out that on page 3 of its reply letter of April 2, 2019,

she specified that she was mandated by the first defendant who had communicated to her the

data of the complainant and of the file.

111.

In support of the documents produced, the Litigation Chamber is unable to conclude that

a breach of Article 15 of the GDPR on the part of the second defendant.

8.2.3. Regarding the breach of the principles of proportionality and unlawful reuse of data

(articles 5 and 6 of the GDPR) communicated to it by the first defendant even

that it would not be validly based on it

112.

The Litigation Chamber notes that the plaintiff considers that the second defendant

carries out illegal data processing when it collects and stores data relating to

his vehicle (photos of the windshield and general photo of the vehicle sent to him by the

first defendant). The Litigation Chamber refers in this respect to the considerations it has

set out in Title 8.1.3.3. above with regard to this grievance also alleged against the first

defendant.

113.

The Litigation Chamber does not find any breach in respect of the second

defendant in this regard.

8.2.4. As for the payment request form and the obtaining of a forced consent (article

6.1 a) GDPR – Article 5.1 c) GDPR)

114.

On February 25, 2019, the complainant was sent by the second defendant a warning

remains to pay the amount of the fee of […] euros ([…] +5) plus the costs of summons

and a collection fee, bringing the amount claimed to the sum of […] euros (point 7 above).

115.

A form was attached to this formal notice, entitled “Form to return to us”

printed in larger letters, framed and immediately followed by the following statement, in bold

underlined: “Only this duly completed form and its annexes will be taken into account for the

processing your request for payment or your dispute”.

116.

The following data is requested under this form: surname, first name, date of

birth, address, postal code and locality, telephone number, mobile phone number, e-mail address.

Decision on the merits 81/2020- 28/45

Three choices in terms of payment proposals are also mentioned under which

the debtor

(1) undertakes to pay the full amount on a date to be mentioned, or

(2) requests a clearance plan or

(3) indicates that it is unable to pay the amount.

-

-

-

117.

As a preliminary point, the Litigation Chamber notes that the complainant denounces the use of this

form by the second defendant without it being established that it completed it itself. There is

therefore, strictly speaking, there was no "processing of personal data" of the complainant

through this form. Refusal to complete a form that proves to be contrary to the law (as will be

demonstrated below), cannot, however, result in a situation in which the Chamber

Litigation could not exercise the missions and powers conferred on it by Articles 57 and 58 of the

GDPR and the LCA with regard to a practice that involves data processing subject to the GDPR.

The Litigation Chamber is therefore, independently of the question of whether there is a breach

with regard to the plaintiff, empowered to examine this grievance in respect of which the second defendant has
also had the opportunity to defend themselves.

118.

The complainant considers that given the wording of the form, its presentation,
its content and the fact that it constitutes an appendix to a formal notice of payment, it cannot be
considered that the consent of the person concerned to provide the data mentioned on this
form would be free. The complainant is also of the opinion that the collection of data via this form
ignores the principle of minimization.

119.

The second defendant argues, a contrario, that this form allows persons
concerned to voice their objection or their wish to benefit from a clearance plan.
The second defendant adds that the purpose of the form is clearly stated in the implementation.
residence of which it constitutes an annex and that no obligation for the person concerned can
be deduced from this formulation. Therefore, it can legitimately rely on Article 6.1 a) of the
GDPR to collect said data and carry out subsequent processing. The notice
states that consultation of the file and requests for clearance and/or payment online may
be done via the site or by e-mail and that additional information can be obtained via
the form.

120. As to the principle of minimization, the second defendant explains that the form allows,
by offering data subjects different options (postal address, phone number,
telephone, mobile phone number, e-mail address) to choose the mode of communication and
the contact data necessary for this purpose without there being any obligation to complete the form
Decision on the merits 81/2020- 29/45
(point 119 above), nor – in the event that the debtor wishes to make use of it – obligation to
provide data for each of the sections of the said form.

121.

The Litigation Chamber recalls that Article 4.11. of the GDPR defines the consent of the
person concerned as being "any expression of will, free12, specific, informed and
unequivocal by which the person concerned accepts, by a declaration or by a clear positive act,
that personal data relating to him are processed. the
consent which is the basis for data processing pursuant to Article 6.1. a) of the GDPR must
meet all the qualifications required by this definition.

122.

The adjective “free” implies real choice and control for the people concerned. the
consent can only be valid if the data subject is genuinely able
to exercise a choice and if there is no risk of deception, intimidation, coercion or
significant negative consequences (e.g. significant additional costs) if it does not give
his consent. Consent will not be free when any element of coercion, pressure
or inability to exercise genuine choice will be present. Consent will therefore not be
not considered to be freely given if the person concerned is unable to refuse
or withdraw consent without prejudice. The controller must also
demonstrate that it is possible to refuse or withdraw consent without prejudice
(recital 42 of the GDPR).13

123.

When determining whether consent is freely given, it is therefore necessary to take
account of any imbalance in the balance of power between the data subject and the person responsible
treatment. Recital 43 of the GDPR makes it clear that authorities are not likely to
public can rely on consent for the processing of personal data,
since when the data controller is a public authority, there is often a
manifest imbalance in the balance of power between the controller and the person
concerned.

124.

However, power imbalances are not limited to public authorities (and

to employers with whom this imbalance also most often exists). These imbalances

may also exist in other situations in which, as mentioned above (point

12 It is the Litigation Chamber which underlines.

13 European Data Protection Board, Guidelines 05/2020 on consent within the meaning of the

regulation (EU) 2016/679 (points 121-123):

https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_202005_consent_en.pdf

122), there is deception, intimidation, coercion or any significant negative consequence if the person

concerned refuses to give consent.

125.

In this case, the Litigation Chamber notes that the form attached to the formal notice

is entitled “Form to return to us” and mentions that only the form duly completed as well as

that its annexes will be taken into account for the processing of requests for payment or

disputes.

126.

The Litigation Chamber is of the opinion that the use of terms such as "only the form"

"duly completed", combined with the title of the form and the fact that it comes from a bailiff's office

of justice and is attached to a formal notice under which it is specified that failure to

payment within the deadline an increase in the amount will be applied, can reasonably give to

think that there is no alternative to the debtor providing the requested information. The fact

that among the payment proposals, the latter be invited to mention the date on which he will make

the payment is such as to suggest that the form must be completed in any event

(and not only in the event of a request for payment by installment or dispute). The

mention in the letter of formal notice already quoted "If you wish to obtain information

additional information, we invite you to use the attached form” does not invalidate

the above.

127.

In support of the foregoing, the Litigation Chamber finds that the consent as

requested by the second defendant cannot be qualified as free and this, in contradiction with the article

4.11 GDPR. Consequently, the second defendant cannot, as it stands, rely on it as a

basis of lawfulness (article 6.1 a) of the GDPR). The Litigation Chamber also notes that the "Policy

Privacy" of the second defendant does not list the consent under the bases of lawfulness

used (Article 6 of the GDPR).

128.

In conclusion on this point, the Litigation Chamber finds a breach of Article 6

of the GDPR. The Litigation Chamber does not rule on the existence of any other basis

lawfulness which could legitimize the processing of all or part of the data covered by the form

by the second defendant. It is indeed up to the data controller who undertakes

personal data processing activities (i.e. in this case the second defendant) to examine,

before starting the processing activity in question, what would be, among the 6 lawfulness bases listed

in Article 6 of the GDPR, the appropriate legal basis for the intended processing. Bedroom

Contentitieuse insists in this regard on the fact that if a data controller chooses to rely

on consent, he must be prepared to respect that choice. In other words, the controller

cannot switch from consent to another legal basis. For example, it is not allowed to use

retroactively the legal basis of legitimate interest (Article 6.1 f) of the GDPR) in order to justify the

Decision on the merits 81/2020- 31/45

processing when issues are encountered or raised regarding the validity of the

consent14. Therefore, without affirming or denying the existence of any other basis of lawfulness

admissible, the Litigation Division can only, in this case, conclude that there is no basis for legality

valid - the consent used cannot be withheld as demonstrated above - and therefore

a breach of Article 6 of the GDPR on the part of the second defendant.

129.

The Litigation Chamber also recalls that Article 7.2 of the GDPR requires that when the consent of the data subject is given in the context of a written declaration which also concerns other matters, the request for consent is presented in a form which clearly distinguishes it from these other questions, in a form that is understandable and easily accessible, and formulated in clear and simple terms.

130. Similarly, the Litigation Chamber recalls that to be valid, the consent must also be enlightened. For consent to be considered informed, the controller provides certain information to the data subject, in a form understandable and easily accessible. Recital 42 of the GDPR requires that the data subject has, at least, knowledge of the identity of the data controller and the purposes of the processing for whom this personal data is intended.

131.

The Litigation Chamber considers that other elements are also crucial for the data subject can make an informed decision and that his or her consent is valid. The data controller should provide information on the type of data concerned by the planned processing, on the existence of a right to withdraw consent (Art. 7.3 of the GDPR), on the possible use of data for automated decision-making (Art. 22.2 c) GDPR) and, where applicable, on the risks associated with the transfer of data to a country that does not offer protection adequate and in the absence of appropriate safeguards (Art. 49.1 a) of the GDPR)15.

132.

The Litigation Chamber is of the opinion that, whatever the basis of lawfulness on which the second defendant intends to rely in the future, the formal notice should include a information in the form of a specific clause containing both the elements required for a informed consent where appropriate, and brief information that is directly useful with regard to the processing(s) concerned (point 106 above).

14 European Data Protection Board, Guidelines 05/2020 on consent within the meaning of the

regulation (EU) 2016/679 (points 121-123):

https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_202005_consent_en.pdf

15 European Data Protection Board, Guidelines 05/2020 on consent within the meaning of the

Regulation 2016/679 (point 3.3. pp. 17 et seq. of the French version):

https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_202005_consent_en.pdf

Decision on the merits 81/2020- 32/45

133. With regard to compliance with the principle of minimization (Article 5.1 c) of the GDPR), the Chambre

Litigation also notes that with regard to the various data requested under "Your

contact details", no asterisk or other mention indicates that the person concerned is free to

choose one of the communication methods (telephone number, mobile phone number, e-mail address) and

that some data is therefore optional. Taken in isolation, these data appear relevant

and not excessive but here too, the presentation and the wording used suggest that there is no

there is no alternative to collecting all the information under each heading of the table.

134.

The Litigation Chamber therefore finds a breach of Article 5.1 c) of the GDPR in

the head of the second defendant.

8.2.5. As for compliance with articles 5.2. and 24 GDPR

135.

In support of the breaches identified above (8.2.1. and 8.2.4.), the Litigation Chamber is

of the opinion that the second defendant is in default of having implemented the technical measures and

appropriate organizational measures to ensure and be able to demonstrate that data processing

data that it operates are, taking into account in particular their nature, the context and the

purposes they pursue, carried out in accordance with the GDPR.

136.

The Litigation Chamber therefore finds a breach of Articles 5.2. and 24. 1-2 of

GDPR on the part of the second defendant.

8.2.6. Conclusion as to the breaches of the second defendant

137.

In conclusion, the following shortcomings are noted with regard to the second

defendant:

-

a breach of its obligation to inform (article 14.1-2, combined with article 12.3. of the

GDPR)

-

a lack of legal basis for the collection of data under the form

accompanying the formal notice to pay (article 6 of the GDPR) and a breach of

principle of minimization (article 5.1 c) of the GDPR) taking into account the excessive nature of

requested data.

-

a breach of Articles 5.2. and 24.1-2 GDPR.

9.

Regarding corrective measures and sanctions

138.

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

1° dismiss the complaint without follow-up;

Decision on the merits 81/2020- 33/45

2° order the dismissal;

3° order a suspension of the pronouncement;

4° to propose a transaction;

5° issue warnings or reprimands;

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

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

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

9° order the processing to be brought into conformity;

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

data recipients;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

13° to impose administrative fines;

14° order the suspension of cross-border data flows to another State or an organization

international;

15° forward the file to the public prosecutor's office in Brussels, who informs it of the follow-up

data on file;

16° decide on a case-by-case basis to publish its decisions on the website of the Authority for the protection of

data.

139. As to the administrative fine which may be imposed pursuant to Article 83 of the GDPR

and articles 100, 13° and 101 LCA, article 83 of the GDPR provides:

“Article 83 GDPR

1.

Each supervisory authority shall ensure that the administrative fines imposed in

under this article for breaches of this Regulation, referred to in paragraphs 4,

5 and 6 are, in each case, effective, proportionate and dissuasive.

2.

Depending on the specific characteristics of each case, the administrative fines are

imposed in addition to or instead of the measures referred to in point (2) of Article 58

a) to h), and j). To decide whether to impose an administrative fine and to decide

of the amount of the administrative fine, due account shall be taken, in each case,

of the following elements:

(a) the nature, gravity and duration of the breach, taking into account the nature, scope or

the purpose of the processing concerned, as well as the number of data subjects affected

and the level of damage they suffered;

b) whether the breach was committed willfully or negligently;

c) any action taken by the controller or processor to mitigate the

damage suffered by the persons concerned;

Decision on the merits 81/2020- 34/45

d) the degree of responsibility of the controller or processor, taking into account

the technical and organizational measures they have implemented pursuant to Articles

25 and 32;

e) any relevant breach previously committed by the controller or the

subcontracting;

f) the degree of cooperation established with the supervisory authority with a view to remedying the breach

and to mitigate any negative effects;

(g) the categories of personal data affected by the breach;

h) how the supervisory authority became aware of the breach, including whether, and

the extent to which the controller or processor notified the breach;

(i) where measures referred to in Article 58(2) have previously been ordered

against the controller or processor concerned for the same purpose,

compliance with these measures;

(j) the application of codes of conduct approved under Article 40 or mechanisms

certificates approved under section 42; and

k) any other aggravating or mitigating circumstance applicable to the circumstances of

the species, such as the financial advantages obtained or the losses avoided, directly or

indirectly, as a result of the violation.

140.

It is important to contextualize the breaches of which each of the defendants has surrendered

responsible in order to identify the most appropriate corrective measures and sanctions.

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

the case, including - within the limits that it specifies below - the reaction communicated

by each of the defendants to the amount of the proposed fine communicated to it (point

I – retroacts of the procedure)16. In this respect, the Litigation Division specifies that the said form

expressly mentions that it does not imply a reopening of the debates. He continues as if alone

purpose of obtaining the reaction of the defendants on the amount of the proposed fine. Concerning

to new documents produced attesting to changes made or planned since

the hearing, the Litigation Chamber will take it into account under the commitments - moreover

already formulated by each of the parties via their conclusions - to comply (points

160 and 179 below) without, however, analyzing its content at this stage.

142.

The Litigation Chamber also wishes to specify that, with the exception of the approach mentioned

above (point 141), it is sovereignly incumbent upon it as an administrative authority

16 See. in this regard: Court of Appeal of Brussels (19th chamber A – Court of Markets), judgment of February 19, 2020,

2019/AR/1600 and Brussels Court of Appeal (19th Chamber A – Market Court), judgment of September 2, 2020,

2020/AR/329 (only available in Dutch).

independently - in compliance with the relevant articles of the GDPR and the LCA - to determine the

corrective action(s) and appropriate sanction(s).

143.

Thus, it is not up to the plaintiff to ask the Litigation Chamber to order

such or such corrective measure or sanction. If, notwithstanding the foregoing, the Complainant

nevertheless had to ask the Litigation Chamber to pronounce one or the other measure

and/or sanction, it is therefore not for the latter to justify why it would not retain

not one or the other request made by the complainant. These considerations leave intact

the obligation for the Litigation Chamber to justify the choice of the measures and sanctions to which

it judges, (among the list of measures and sanctions made available to it by articles 58 of the

GDPR and 95.1 and 100.1 of the ACL) appropriate to condemn the party in question.

144.

In the present case, the Litigation Division notes that the plaintiff seeks in particular

Litigation Chamber that it orders compliance under penalty of penalty. Without

prejudice to the foregoing, but since it has just published its policy in this regard, the

Chambre Litigation refers on this point to the publication now available on its website

Internet17.

145.

With regard to the administrative fine, the Litigation Chamber emphasizes that its purpose is

effectively enforce GDPR rules. Other measures, such as the order of

compliance or the prohibition to continue certain processing operations, for example, allow

them to put an end to a breach noted. As can be seen from recital 148 of the GDPR,

sanctions, including administrative fines, are imposed in case of serious violations,

in addition to or instead of the appropriate measures that are necessary. Therefore, the fine

administrative can certainly come to sanction a serious breach to which it would have been

remedied during the proceedings or which is about to be. The fact remains that

the Litigation Division will take into account whether it has been terminated or is in the process of being

to be remedied for the said shortcomings in setting the amount of the fine.

9.1. As to the first defendant

146.

The Litigation Chamber found a breach of Articles 14. 1-2 combined with Article

12.1 and 12.3, 15.1 combined with article 12.3 and article 12.2., 5.1 c) and 5.2. 24. 1-2 GDPR (item 92

above).

17 See. on the DPA website, under the Authority – Organization – Litigation Chamber:

https://www.autoriteprotectiondonnees.be/citoyen/l-autorite/organisation

and

https://www.autoriteprotectiondonnees.be/professional/l-autorite/organisation

Decision on the merits 81/2020- 36/45

147.

Given the observation of these shortcomings, the Litigation Chamber sends to the first

defendant a reprimand on the basis of article 100. 1, 5° LCA.

148.

The Litigation Division also takes note of the fact that the first defendant has, without

wait for the decision of the Litigation Chamber, from its conclusions and during the hearing, take a

certain number of commitments to remedy the shortcomings noted by the Inspector General in

his report. The Litigation Chamber is of the opinion that a certain number of modifications and measures

must indeed, as soon as possible, be brought by the first defendant to

comply with its obligations under the GDPR. Therefore, the Litigation Chamber

imposes a detailed compliance order on the device pursuant to article 100. 1, 9° LCA

(see in this regard the clarification in point 141 above).

149. In addition to this reprimand18 and this compliance order, the Litigation Chamber is

of the opinion that, in addition, an administrative fine is justified in this case for the following reasons.

150. As to the nature of the violation, the Litigation Chamber notes that with regard to the

breach of Article 5.1 c) of the GDPR, it constitutes a breach of one of the principles

founders of the GDPR (and data protection law in general), or the principle of

minimization devoted to Chapter II “Principles” of the GDPR.

151. As regards breaches of Article 14.1-2 combined with Article 12.3 and 12.1 of the GDPR, Article

15. 1 of the GDPR (combined with Article 12.3 and Article 12.2. of the GDPR), they constitute infringements

the rights of data subjects. These information and access rights have also been strengthened

under the GDPR, which demonstrates their particular importance. Protection Authority

of data has, in this perspective, listed compliance with them as a priority in its plan

strategy 2020-2025.19 Appropriate corrective action/sanction is nonetheless determined

case by case.

152.

Finally, as to the breach of Article 5.2. and 24. 1-2 of the GDPR, it also constitutes a

breach of the key principle of accountability, introduced by the GDPR.

18 The Litigation Chamber intends here to clarify the distinction between warning and reprimand: the warning

is intended to alert a controller or processor to the fact that the processing operations

envisaged are likely to violate the provisions of the GDPR (article 58.2 a) of the GDPR, article 95.1, 4° and article

100.1, 5° ACL). The reprimand (or call to order) aims to call to order a data controller or a

processor when the processing operations have led to a violation of the provisions of the GDPR (article

58.2 b) of the GDPR and article 100.1, 5° LCA).

19 Data Protection Authority (DPA), Strategic Plan 2020-2025:

https://www.autoriteprotectiondonnees.be/publications/plan-strategique-2020-2025.pdf

153.

Pursuant to Article 83.5(a) of the GDPR, breaches of all of these provisions may

amount up to 20,000,000 euros or in the case of a company, up to 4% of turnover

annual global total of the previous financial year. The maximum amounts of fine that can be applied

in the event of violation of these provisions are higher than those provided for other types of

breaches listed in Article 83.4. of the GDPR. As regards breaches of a fundamental right,

enshrined in Article 8 of the Charter of Fundamental Rights of the European Union, the assessment of

their seriousness will be, as the Litigation Chamber has already had the opportunity to point out, in support of

Article 83.2.a) of the GDPR, independently20.

154

It has already been noted that in the context of the inspection, the letters in response sent to

Inspector General were signed by the group […]. During the hearing on July 13, 2020, the first

defendant confirmed to be part of this group.

155 In determining the amount of the fine, the Litigation Division takes into account the

notion of business (article 83. 5 of the GDPR). The Litigation Chamber also takes into account

the opinion of the European Data Protection Board, of which it particularly retains this

following:

“In order to impose effective, proportionate and dissuasive fines, the supervisory authorities

will rely on the definition of the concept of undertaking provided by the CJEU for the purposes of

the application of Articles 101 and 102 of the TFEU, namely that the concept of undertaking must

be understood as an economic unit that can be formed by the parent company and all

the subsidiaries concerned. In accordance with Union law and case-law, it is necessary

to understand by enterprise the economic unit engaged in commercial activities or

economic, regardless of the legal person involved (recital 150). »21

156. As to the number of concerned persons affected by the violations, the Chamber

Litigation notes that the shortcomings noted concern, beyond the sole complainant, a

large number of people. Indeed, the first defendant is the holder of concessions of

parking in […] municipalities. The shortcomings noted are part of the practice

daily life of the first defendant and are consecutive to the absence of implementation of

20 See.

the Litigation Chamber

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-64-2020.pdf

Decision 64/2020 of

respect

this

at

(item 54):

21 European Data Protection Board, Guidelines on the application and setting of fines

for the purposes of Regulation (EU) 2016/679, WP 253, adopted 3 October 2017, p. 6, available on

www.edpb.europa.eu. See also, decision 37/2020 of the Litigation Chamber.

effective procedures for exercising rights in particular. The number of people concerned is therefore

raised.

157. As to the status of the first defendant, the Litigation Chamber recalls that in

previous decisions22, it has already retained the status of public agent of the person responsible for

treatment as an aggravating factor within the meaning of Article 83.2. k) GDPR. Without constituting a

public official in the strict sense of the term, the first defendant nevertheless exercises a

public competence entrusted to it by way of concession. As such, it must adopt a

exemplary behavior. The “offence” context in which the processing takes place

of data that it operates requires, in view of their purpose, also a particular respect

stringent rights of data subjects. Data processing also constitutes a

substantial part of the activity of the first defendant.

158. As to the criterion of duration, the Litigation Division finds that these breaches lasted

over time (Article 83. 1 a) of the GDPR), at least since May 25, 2018, except for

breach of Article 5.1 c) of the GDPR more limited in time.

159. As to the question of whether the breaches were committed deliberately or not (for

negligence) (art. 83.2.b) of the GDPR), the Litigation Chamber recalls that "not deliberately" means

that there was no intent to commit the breach, although the controller or the

subcontractor has not complied with the duty of care incumbent upon it under the law. In

In this case, the Litigation Division is of the opinion that the facts and breaches noted - even

serious - do not reflect a deliberate intention to violate the GDPR in the first instance

defendant.

160.

Finally, the Litigation Chamber notes that the first defendant cooperated with the DPA

throughout the procedure (article 83.2. f) of the GDPR), in particular with the Inspection, and admits that

the management of the complainant's case requires her to make substantial improvements to her

current operation with regard to the rights of data subjects. The first defendant has,

as already pointed out, has also made a number of commitments to comply with this

regard23.

the

See.

decision

22

12)

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-10-2019.pdf as well as its

decision 11/2019 (page 10) https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-

11-2019.pdf

Litigation

Bedroom

10/2019

(page

of

the

23 As regards information, the first defendant makes a number of commitments vis-à-vis ODA,

the terms of which are reproduced below (points 42 to 45 of the conclusions of the first defendant):

42. The concluding party became aware that the information provided was not sufficient with regard to the

obligations incumbent upon him. The concluding party therefore undertakes to provide the Protection Authority with

161.

The Litigation Chamber notes that the other criteria of Article 83.2. of the GDPR are not neither relevant nor likely to influence its decision on the imposition of an administrative fine and its amount.

162.

In conclusion, in view of the elements developed above specific to this case, the Litigation Chamber considers that the facts found and the breach of Articles 14.1-2 combined to article 12.1 and 12.3, 15.1 combined with article 12.3 and 12.2., 5.1 c) and 5.2. and 24.1-2 of the GDPR, justify only as an effective, proportionate and dissuasive sanction as provided for in Article 83 of the GDPR and taking into account the assessment factors listed in Article 83.2. of the GDPR and the reaction of the first defendant to the proposed fine form, a reprimand (article 100.1, 5° LCA) and a compliance order detailed below (article 100.1, 9° LCA) accompanied by a fine administrative proceedings in the amount of 50,000 euros (article 100.1, 13° and 101 LCA) be pronounced against the first defendant.

163. In setting this amount, the Litigation Division took into account that the first defendant is part of the group [...], of the annual turnover of this group and of the financial base of the last. It also took into account the information given by the first defendant in its reaction to the proposed fine form that the group is experiencing a clear decrease in revenue in the current context of the covid-19 virus pandemic.

164.

The amount of 50,000 euros remains, with regard to these elements, proportionate to the breaches reported. The Litigation Division is of the opinion that a fine of less than 50,000 euros would not meet, in this case, the criteria required by Article 83.1. GDPR according to which the administrative fine must be effective, proportionate and dissuasive. In his decision 01/2020 of 9 November 2020, the European Data Protection Board insists on this

Data, as soon as possible, an information document that will meet the requirements of Article 14

of the GDPR and which will appear on its website (Exhibit 41).

43. In addition, the applicant will ensure that this notice allows easy access to the information

relating to data protection by creating an explanatory note which will be in a single place

on his website.1

44. In addition, the concluding party will put in place a clear reference on the invitation to pay to ensure

that data subjects directly understand that all information is accessible

on its website. In addition, the concluding party will review, again, as soon as possible, the content

privacy message at the bottom of their reminder letter.

45. Finally, the concluding party undertakes to re-audit its entire website in order to put in place

all the documentation, details and references in the necessary forms so that the

data subjects can easily access complete information.

Decision on the merits 81/2020- 40/45

on the fact that the height of the amount of the fine contributes to the effective, proportionate and

deterrent that the fine must have24.

9.2. As for the second defendant

165.

The Litigation Chamber found a breach of Article 14.1-2 combined with Article

12.3, Article 6, Article 5.1 c) and Articles 5.2. and 24. 1-2 of the GDPR in the head of the second

defendant (paragraph 137 above).

166.

Given these shortcomings, the Litigation Division sends the second

defendant a reprimand on the basis of article 100. 1, 5° LCA.

167.

The Litigation Division also takes note of the fact that the second defendant has,

according to its conclusions and during the hearing, proposed to make certain changes in

his practice. The Litigation Chamber is indeed of the opinion that a certain number of modifications and

measures must indeed, as soon as possible, be taken by the second defendant

to comply with its obligations under the GDPR. Accordingly, the Chamber

Litigation imposes a detailed order for compliance with the device pursuant to Article

100. 1, 9° LCA (see in this regard the clarification in point 141 above).

168. In addition to this reprimand25 and this compliance order, the Litigation Chamber is

of the opinion that, in addition, an administrative fine is justified in this case for the following reasons.

169. As to the nature of the violation, the Litigation Chamber notes that with regard to the

breach of GDPR Article 6 (lack of legal basis – forced consent) and Article 5.1 c)

24 European Data Protection Board, Decision 01/2020 on the dispute arisen on the draft decision

of the Irish Supervisory Authority regarding Twitter International Company under Article 65(1) (a) GDPR

(available only in English)

See. § 199: https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_bindingdecision01_2020_en.pdf

“199 Following this, the EDPB considers that the fine proposed in the Draft Decision is too low and

therefore does not fulfill its purpose as a corrective measure, in particular it does not meet the

requirements ofArticle83(1) GDPR of being effective, dissuasive and proportionate.”

Free translation by the ODA Secretariat:

“199. Consequently, the EDPS considers that the amount of the fine proposed under the draft

decision-making is too weak and, for this reason, does not fulfill its role as a corrective measure. Specifically,

this amount does not meet the requirements of section 83.1. of the GDPR according to which the fine must be

effective, proportionate and dissuasive”.

25 The Litigation Chamber intends here to clarify the distinction between warning and reprimand: the warning

is intended to alert a controller or processor to the fact that the processing operations

envisaged are likely to violate the provisions of the GDPR (article 58.2 a) of the GDPR, article 95.1, 4° and article

100.1, 5° ACL). The reprimand (or call to order) aims to call to order a data controller or a

processor when the processing operations have led to a violation of the provisions of the GDPR (article

58.2 b) of the GDPR and article 100.1, 5° LCA).

Decision on the merits 81/2020- 41/45

of the GDPR, they constitute breaches of the founding principles of the GDPR (and of the law of the

protection of data in general), or to the principles of legality and minimization devoted to the

Chapter II “Principles” of the GDPR. Admittedly, the data collected at the end of the form are

mainly identification data and do not constitute sensitive data within the meaning of the

articles 9 and 10 of the GDPR. However, their processing takes place, as will be mentioned in point 176

below, in an “offending” context. The Litigation Chamber will take this

double consideration.

170. As for the breach of Article 14.1-2 combined with Article 12.3 of the GDPR, it constitutes a

infringement of the rights of data subjects - notwithstanding the existence of a privacy policy

moreover, what the Litigation Chamber is aware of and which it takes into account (point 179). the

right to information has been strengthened under the GDPR, which demonstrates its very importance.

particular. The Data Protection Authority has, in this perspective, enshrined respect for the rights

data subjects as a priority in its strategic plan 2020-202526. The measure

appropriate remedy/sanction is nonetheless determined on a case-by-case basis.

171.

Finally, as to the breach of Article 5.2. and 24. 1-2 of the GDPR, it also constitutes a

breach of the key principle of accountability, introduced by the GDPR.

172.

Pursuant to Article 83.5(a) of the GDPR, breaches of all of these provisions may

amount up to 20,000,000 euros or in the case of a company, up to 4% of turnover

annual global total of the previous financial year. The maximum amounts of fine that can be applied

in the event of violation of these provisions are higher than those provided for other types of

breaches listed in Article 83.4. of the GDPR. As regards breaches of a fundamental right,

enshrined in Article 8 of the Charter of Fundamental Rights of the European Union, the assessment of

their seriousness will be, as the Litigation Chamber has already had the opportunity to point out, in support of

Article 83.2.a) of the GDPR, independently27.

173.

According to the reaction it sent to the Litigation Chamber in response to the

envisaged fine form, the second defendant states that the health crisis linked to the

The covid-19 virus pandemic has hit the profession of judicial officer extremely hard.

The forced suspension of most of the activities of bailiffs (including enforcement measures) has led

the second defendant to have to put part of its staff on technical unemployment. The

Authority

26

https://www.autoriteprotectiondonnees.be/publications/plan-strategique-2020-2025.pdf

protection

data

(ODA),

Plan

from

of

strategic

27 See.

the Litigation Chamber

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-64-2020.pdf

Decision 64/2020 of

respect

this

at

2020-2025:

(item 54):

Decision on the merits 81/2020- 42/45

second defendant estimates that its future turnover for 2020 and 2021 will, moreover, be

disproportionate to that of past years.

174. As to the number of concerned persons affected by the violations, the Chamber

Litigation notes that the shortcomings noted concern, beyond the sole complainant, a

large number of people. The second defendant is certainly not a company

multinational but a Belgian SME. The second defendant is nonetheless a study

of reference judicial officers in Belgium, with an experience of […] years and which counts [

…] collaborators.

175.

Given that the shortcomings are part of the practice of the second

defendant, the number of people potentially concerned is equal to the number of

persons whose data the second defendant processes in the exercise of its missions

of amicable collection, i.e. a significant number, even if the amicable collection of

debts constitutes, as the Litigation Chamber is aware, only part of the activities of the

second defendant.

176. As to the status of the second defendant, the Litigation Chamber recalls that in

previous decisions, it retained the status of public agent of the data controller

as an aggravating factor within the meaning of section 83.2. k) GDPR28. The second defendant is

including a ministerial official with public authority, who may exercise

so-called "monopolistic" powers, which are conferred on it by law. As a liberal profession,

the judicial officer carries out some extrajudicial activities including the amicable collection of debts.

The function is regulated and the judicial officers are appointed by the King. Their number is limited.

In view of this status, the second defendant must adopt an exemplary attitude whatever

or the cap with which it carries out its missions. The “offending” context within the framework

which the data processing it operates also requires, in view of their

purpose, a particularly rigorous respect for the rights of the persons concerned. The treatment

data also constitutes a substantial part of the activity of the second defendant.

177. As for the criterion of duration, the Litigation Division finds that these breaches lasted

over time as long as they are part of the practices of the second defendant (Article 83.1

a) GDPR), at least since January 2019.

the

See.

decision

28

12)

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-10-2019.pdf as well as its

decision 11/2019 (page 10) https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-

11-2019.pdf

Litigation

Bedroom

10/2019

(page

of

the

Decision on the merits 81/2020- 43/45

178. As to whether the breaches were committed deliberately or by

negligence (art. 83.2.b) of the GDPR), the Litigation Chamber considers that they are not deliberate. She

also notes the fact that as of May 25, 2018, the second defendant had a policy of

clear and detailed confidentiality and has endeavored to comply with all the obligations

arising from the GDPR for which it is responsible, in particular the appointment of a DPO. She made contact with

specialized consultants for this purpose, notwithstanding the announcements made by the National Chamber
bailiffs who indicated that she was going to put in place concrete measures to
support and help with studies, which ultimately was not the case.

179.

Finally, the second defendant has shown itself to be cooperative and anxious to modify its
practices during the proceedings (under its conclusions and during the hearing). Bedroom
Litigation took note of this. (see in this regard the clarification in point 141 above).

180.

The Litigation Chamber notes that the other criteria of Article 83.2. of the GDPR are not
neither relevant nor likely to influence its decision on the imposition of an administrative fine
and its amount.

181.

In conclusion, in view of the elements developed above specific to this case, the
Litigation Division considers that the facts found and the breach of Article 14.1-2 combined with
Article 12.3, Article 6, Article 5.1 c) and Articles 5.2. and 24. 1-2 of the GDPR, justify that under
effective, proportionate and dissuasive sanction as provided for in Article 83 of the GDPR and account
taking into account the assessment factors listed in Article 83.2. of the GDPR and the reaction of the second
defendant to the proposed fine form, a reprimand (article 100.1, 5° LCA) and an order
of compliance detailed below (article 100.1, 9° LCA) accompanied by an administrative fine
of an amount of 15,000 euros (article 100.1, 13° and 101 LCA) are pronounced against the
second defendant.

10. As for transparency

182.

Given the importance of transparency with regard to the decision-making process
and the decisions of the Litigation Chamber, this decision will be published on the website of the APD
by deleting the direct identification data of the parties and the persons cited,

whether physical or moral.

183.

The Litigation Chamber is aware that the plaintiff requested the publication by name

of this decision. The Litigation Chamber is of the opinion that it is not for the plaintiff to seek

such measure. In this case, the Litigation Division nevertheless wishes to specify that in the context of

of the wide margin of appreciation on the application of article 100.1, 16 LCA which is its own, it decides

not to publish this decision by mentioning the data controllers in question.

Decision on the merits 81/2020- 44/45

When it decided to publish its decisions mentioning the identity of the defendant, the

Chambre Litigation motivated its decision by the fact that this publicity would guarantee

rapid compliance, would contribute to a decrease in the risk of repetitions and aimed to inform the public

taking into account the data controller in question. In addition, any pseudonymization of the name

of the defendant would have been in these few cases illusory29. She doesn't think it necessary

in this case.

FOR THESE REASONS

THE LITIGATION CHAMBER

After deliberation, decides to:

 With regard to the first defendant

-

Pronounce against the defendant a reprimand on the basis of article 100.1, 5°

ACL;

-

Pronounce a compliance order in terms of the implementation of rights

information and access for the persons concerned, on the basis of article 100.1, 9° LCA.

To this end, the first defendant is asked to communicate to the DPA both its

privacy policy applicable to the processing referred to in this decision that his/her

information clause(s) as well as the procedure put in place to respond to the exercise of

permission to access. This production of documents must take place within 3 months from the date

of the notification of this decision via the address litigationchamber@apd-gba.be

-

Order against the defendant an administrative fine in the amount of 50,000

euros pursuant to Articles 100.1, 13° and 101 LCA.

 With regard to the second defendant:

-

Pronounce against the defendant a reprimand on the basis of article 100.1, 5°

ACL;

-

Issue a compliance order in terms of information (privacy policy

and information clauses) and basis of lawfulness of the form attached to the formal notices of

See.

29

https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-37-2020.pdf

litigation

Bedroom

37/2020

decision

of

the

the

(point

183):

Decision on the merits 81/2020- 45/45

payment and this, on the basis of article 100.1, 9° LCA. To this end, it is requested from the second□

defendant to communicate to the DPA both its confidentiality policy applicable to□

processing covered by this Decision and its information clause(s) as well as the□

how it intends to respond to the shortcomings related to the aforementioned form. The□

communication of these documents must take place within a period of 3 months from the date of the□

notification of this decision via the address litigationchamber@apd-gba.be□

-□

Order against the defendant an administrative fine in the amount of 15,000□

euros pursuant to Articles 100.1, 13° and 101 LCA.□

Under Article 108.1 LCA, this decision may be appealed to the Court of□

contracts (Brussels Court of Appeal) within 30 days of its notification, with□

the Data Protection Authority as defendant.□

(Sec.)□

Hielke Hijmans□

President of the Litigation Chamber□