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Litigation Chamber

Decision on the merits 17/2020 of 28 April 2020

File number: DOS-2019-05450

Subject: Complaint by two customers against their bank following their request for communication

by return mail of all the personal data it had about them.

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

Hijmans, chairman, and Messrs Jelle Stassijns and Christophe Boerave, members, who takes over

the case in its present 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 law of July 30, 2018 relating to the protection of natural persons with regard to the processing

personal data (hereinafter the “Data Protection Law”);

Having regard to the internal rules of the Data Protection Authority as approved by the

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

Considering the documents in the file;

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Made the following decision regarding:

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the plaintiffs

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the defendant (controller)

1. History of the procedure

1. Having regard to the complaint filed on October 16, 2019 with the Data Protection Authority by  
the plaintiffs, through their counsel;
2. Having regard to the additional information provided by counsel for the complainants to the DPA on  
November 13, 2019.
3. Having regard to the decision of November 22, 2019 of the Frontline Service of the Protection Authority  
data (hereinafter "APD") declaring the complaint admissible and the transmission of the latter to  
the Litigation Chamber on the same date;
4. Considering the decision of the President of the Litigation Chamber considering that the file was ready for  
substantive treatment under Articles 95 § 1, 1° and 98 LCA, the President invited the  
parties to be concluded by registered letter of January 20, 2020, with a copy of the complaint and  
file inventory.
5. Having regard to the letter dated January 31, 2020, in which counsel for the defendant requested a  
copy of the documents in the file, which was sent to them by the Secretariat of the Chamber  
litigation on February 4, 2020.
6. Considering the conclusions of the defendant, received on February 21, 2020;
7. Having regard to the conclusions of the complainants, received on March 6, 2020;
8. Having regard to the Respondent's summary submissions, received on March 20, 2020.

## 2. Facts and subject of the complaint

The plaintiffs are clients of the defendant for bank accounts linked to their  
activities of managers of several companies. By letter dated September 10, 2019 sent by  
through their counsel, the plaintiffs asked the defendant to communicate  
by return mail of all the personal data it had. This application  
was formulated as follows: "my clients request that you communicate to them without delay

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and by return, the copy of all the personal data that you hold as well as all

additional information you have about them. This request was

formed in the context of a dispute relating to the closure by the defendant of the

plaintiffs' bank accounts.

10. In response, the defendant requested additional information by email dated 11

September 2019: "With regard to the Right of Access request, in order to be able to process

your request we need the following information: what right do you wish to exercise

And for what reason ? Please attach to your email a copy of the front of the identity card of

your customers and send it to ....".

11. The complainants did not consider that they had to respond positively to this request for a copy of

identity and precision card. By email of September 12, 2019, the complainants, by way of

their counsel, indicated that "the request made by letter of September 10, 2019 does not

suffered any ambiguity in knowing how to communicate a copy of all the personal data

staff that you have with regard to my clients", and that this letter caused the time limit to run

within which the requested information should be transmitted. In this email, the

plaintiffs' counsel also specified that his clients' request was of his opinion

based on the "Data Protection Law", more specifically, its article 38 § 1.

12. On October 16, 2019, the complainants lodged a complaint with the DPA, finding that

the defendant had not yet responded to their request for access to personal data

concerning them.

13. In their complaint, the complainants argued in particular that the defendant could not

make the processing of their request conditional on a clarification as to the right they wished

exercise, nor to the sending of a copy of the identity card of the complainants. The plaintiffs consider

in fact that their request for access to the data was clearly notified by letter dated 10

September and that the defendant had no reason to doubt their identity or the validity

information provided by their counsel as to their identity.

### 3. Conclusions exchanged following the complaint□

14. In its conclusions, the defendant explains that the absence of a response to the request for access□

within the time limits prescribed by the GDPR results from an exceptional combination of circumstances: the□

request was made in the context of a larger dispute and was not submitted□

according to the procedures provided by the defendant for this purpose in accordance with Article [X] of□

its Privacy Policy, namely, via an e-mail with a copy of the identity card, or via various□

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apps. According to the defendant, human error then led to a delay in the□

response: the plaintiffs' contact person at the defendant has re-addressed the request□

to an erroneous recipient and this person was then absent due to illness without a□

backup was planned.□

15. Finally, the defendant considers that the complaint is unfounded because it is based on an article of law□

erroneous: the plaintiffs indeed invoke provisions of the Data Protection Act,□

which concern requests for access to data processed by the authorities referred to in Article□

26, 7° of this same law, within the scope of which the defendant does not□

not find.□

16. In their reply submissions, the Complainants point out that their request for access to the□

personal data, which the defendant has with regard to them, was solicited in such a way□

sufficiently clear by letter of January 10, 2020. The plaintiffs object to the defendant□

to have transmitted to them the personal data requested late and partially, to□

find out 4 months later, and without providing any details as to the reason for which the□

defendant terminated its contractual relations (bank accounts) with the plaintiffs.□

The plaintiffs believe that the defendant could not have made such a decision without having□

"disposed and/or collected information on the basis of which she made the decision to break□

any commercial relationship" and that this information constitutes personal data,□

the defendant had to communicate them to the plaintiffs. Finally, the plaintiffs specify

that by failing to communicate this data, the defendant continues to undermine the

GDPR, and more particularly its article 15.

17. In its rejoinder submissions, the Respondent alleges that the Litigation Chamber did not

may take into account the legal basis that the plaintiffs invoked by way of conclusion

only. According to the defendant, it follows from Articles 94 and 95 LCA that the facts and grievances

invoked in the complaint must be specified either in the complaint or by means of a

investigation that the Litigation Chamber may request from the Inspection Service within 30

days of the admissibility of the complaint. According to the interpretation of the defendant, the qualification

of the facts described in the complaint must be fixed from the moment the Litigation Chamber

considers that the file is ready to be processed on the merits, under article 95 LCA.

The defendant refers in this case to the letter of January 20, 2020 by which the Chamber

litigation invited the parties to conclude and where the complaint is described as a request

of access to personal data formulated on the basis of Articles 36 § 4 and § 5 as well as 38

§ 1” of the Data Protection Act, in accordance with the legal provisions initially

invoked by the plaintiffs. In this respect, according to the defendant, it is “not permitted for

plaintiffs to change their tune during the proceedings and to invoke a new

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basis for their complaint, nor is it permitted for the Litigation Chamber once the

investigation phase closed to modify the scope of the procedure [...] allow such

modification of the wording after any possibility of involvement of the inspection service, even then

that the LAPD [LCA] does not contain any provision allowing the plaintiff or the Chamber

litigation to make such a modification, would invite the worst violations of the rights of the

defense of managers and subcontractors accused before the Litigation Chamber [...] If it

should have been the slightest doubt as to the legal qualification of a complaint and its

basis (e.g. for a complaint brought by an individual without the intermediary of a lawyer), it would be appropriate for the Litigation Chamber to ask the inspection service to DPA to clarify the issue". Thus, the plaintiffs believe that by not seeking a additional investigation by the inspection service and considering that the file could be dealt with on the merits without investigative measures, the Litigation Division clearly considered that the legal qualification chosen was the only relevant one to claim access to the personal data of complainants.

18. In the alternative, the defendant submits that the claim on the basis of Article 15 of the GDPR, alleging that it provided its response on January 10, 2020 to the complainants, that the longer than usual response time is due to human error combined with the illness of a key participant in the procedure. The defendant also presents the measures it has put in place to remedy these flaws in the future.

19.

With regard to the claim of the complainants as to the incompleteness of the data personal data provided by the defendant (lack of response on the reasons for the termination contract intervened), the defendant invokes the law of September 18, 2017 relating to the prevention of money laundering and terrorist financing and the limitation of the use of cash ("BC/FT" law), which prohibits him from communicating any reason for termination to any client, whether or not concerned by suspicions of money laundering, according to the defendant.

4. On the reasons for the decision

On the jurisdiction of the Litigation Chamber to assess the merits of the complaint on the basis of the legal qualification of the facts as rectified by the plaintiffs through conclusions and on the basis of a new grievance introduced by the complainants by way of conclusions

20. According to the legal basis invoked in their complaint, the complainants request access to the data

personal information held by the defendant, on the basis of the provisions of the Act□

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Data Protection included under Title 2 of this Act and which specifically apply□

to "competent authorities for the purposes of the prevention and detection of criminal offences,□

investigation and prosecution thereof or the execution of criminal penalties, including□

protection against threats to public security and the prevention of such threats and□

implements Directive 2016/680/EU 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□

personal character by these competent authorities" (the "Police Justice Directive")<sup>1</sup>.□

21. In this regard, the Respondent rightly observes in its submissions that as a□

company active in the provision of banking services, it is not concerned by the field□

application of Title 2 of the Data Protection Law.□

22. However, the defendant wrongly disputes the jurisdiction of the Litigation Chamber to□

examine the facts mentioned in the complaint – a request for access to data□

personal - in terms of the legal basis invoked by the complainants in their□

conclusions, namely, Article 15 of the GDPR, considering that only the Inspection service would be□

competent to reclassify the facts submitted in the initial complaint. Furthermore, the defendant□

wrongly disputes the fact that the Litigation Chamber would be competent to examine□

new facts or grievances raised by the complainants by way of conclusion (such as the fact that□

the answer given in the meantime to their request for access would be incomplete).□

23. The Litigation Chamber is an organ of the DPA, created under Article 4(1) of the LCA,□

enjoying a certain autonomy within the APD and taking its decisions in full□

independence in accordance with Article 43 of the LCA. The APD constitutes in Belgium the authority□

responsible for monitoring compliance with the GDPR within the meaning of Article 8 of the Charter of Rights□

of the European Union<sup>2</sup>, Article 16 of the Treaty on the Functioning of the European Union□

European Union<sup>3</sup> and Article 51 of the GDPR. This control by the DPA and its Litigation Chamber is an essential element of the protection of individuals with regard to the processing of personal data of a personal character, as organized in particular by the GDPR<sup>4</sup>.

24. Under Articles 51.1, 51.2 and 52.1 of the GDPR, Member States are required to entrust one or more independent public authorities with monitoring the application of the GDPR in order to protect the fundamental rights and freedoms of natural persons to

<sup>1</sup> Article 25 of the Data Protection Act. For an explanation of the scope of application of Title 2 of the law of July 30 2018 on the protection of individuals with regard to the processing of personal data, see the Opinion of the Commission for the Protection of Privacy No. 33/2018 of 11 April 2018 on the draft law relating to the protection of natural persons with regard to the processing of personal data, e.g. 59, no. 194.

<sup>2</sup> Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407.

<sup>3</sup> Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47–390.

<sup>4</sup> ECJ, 9 March 2010, European Commission/EDPS v Germany, C-518/07, para. 23.

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with regard to processing, and to facilitate the free flow of personal data within the Union.

These supervisory authorities must exercise their powers with a view to implementing effective implementation of European data protection law, including the GDPR.

Ensuring the effectiveness of European law is one of the main duties of the authorities of the Member States members under European Union law.<sup>5</sup>

25. It is their responsibility to facilitate the exercise of fundamental rights in the protection of personal data. Supervisory authorities should play an active role in this respect through the missions and powers vested in them under Articles 57 and 58 of the GDPR. Thereby for example, under Article 57.2 of the GDPR, each supervisory authority is required to “facilitate” the lodging of complaints lodged by a data subject or by a organization. Logically, the processing of this claim (or complaint) should facilitate



the exercise of rights and contribute to better control of citizens over their data□

personal.□

26. The right to lodge a complaint with the DPA was constructed by the legislator as a□

alternative to court proceedings (see Articles 77 to 79 of the GDPR). Introduction□

of a complaint must remain an easy process for the persons concerned whose data□

personal are processed. The conditions of admissibility of this complaint are moreover□

minimally defined in Article 60 LCA. In order to be admissible, a complaint□

submitted to the DPA must be written in one of the national languages, contain a□

"statement of the facts and the information necessary to identify the processing on which it□

door" and fall within the competence of the DPA (Article 60 of the LCA).□

27. Thus, plaintiffs are not required to invoke one or the other legal provision in order for them to□

their complaint to the DPA is admissible, provided that the DPA can determine that the□

complaint concerns a legal provision that it is responsible for monitoring. At the time□

to examine whether the complaint is well-founded, the Litigation Chamber must therefore assess not whether the□

plaintiffs invoked the correct legal provision in support of their claim, in the complaint□

formally introduced to the DPA, but if the facts related are constitutive of a□

violation of one of the legal provisions, compliance with which is subject to control by the DPA.□

28. Similarly, Complainants are not required to plead all relevant facts regarding□

the violation alleged in their complaint. The Litigation Chamber must be able to help them by asking□

questions directed so as to fully understand in fact and in law the potential infringement□

5 See Koen Lenaerts, Piet Van Nuffel, *Europees recht* (6th edition), Intersentia, 2017, pp 95-100, and, more specifically on the□

data protection authorities, Hielke Hijmans, *The European Union as Guardian of Internet Privacy*, Springer 2016,□

Chapter 7.□

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to a fundamental right that the complainant wishes to bring to his attention. Bedroom□

litigation may also take account of grievances subsequently developed by way of  
conclusion by the complainant insofar as it concerns facts or legal arguments related to  
the alleged infringement of which it was seized by way of complaint, and in respect of the rights of the  
defense.

29. During the procedure following the complaint, the Litigation Division therefore has the possibility of  
change the legal qualification of the facts submitted to it, or examine new  
facts related to the complaint, without necessarily calling on the intervention of the Inspection Service,  
including by asking questions of the parties or taking into account new facts or  
qualifications invoked by way of conclusion, and this, within the limits of the contradictory debate,  
that is, to the extent that the parties have had the opportunity to discuss these facts or  
legal qualifications in accordance with the rights of defence. If necessary, it belongs  
the Litigation Chamber to stimulate this debate either in its letter of invitation to conclude on  
foot of article 98 of the LCA, or later in the context of a reopening of the proceedings.

30. In this context, the fact of taking into account a new legal qualification invoked by  
the plaintiff does not prejudice the fairness of the proceedings and the equality of arms, has  
a fortiori insofar as the decisions of the Litigation Chamber are likely to be  
full jurisdiction appeal to the Court of Markets<sup>6</sup>.

31. The proceedings before the Litigation Division are therefore not strictly  
accusatory as is the case before the Belgian civil courts, and the Chambre  
litigation may, on its own initiative, modify the subject of the complaint in fact or in law.

32. This inquisitorial power that the Litigation Chamber grants itself on a case-by-case basis is justified and  
necessary in the context where the Litigation Chamber is responsible for monitoring the exercise  
rights forming an integral part of the fundamental right to data protection  
personal data, as part of the implementation of Article 8.3 of the Charter of Rights  
fundamentals of the European Union.

33. The Litigation Chamber refers in this respect to the judgment of the Markets Court of 9 October

2019, pronounced in the case between the APD and SA ING, where the Court specified that the exercise of a right provided for by the GDPR such as the right to rectification of personal data is not only not a simple subjective right on the part of the parties, but involves the exercise of powers conferred by the ODA competences on the basis of objective law and does not only concern the rights of the parties, insofar as the exercise of these rights is an integral part of the right to the protection of personal data and implements article 8.3 of the Charter of Fundamental Rights of the European Union.<sup>6</sup>

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of the APD on the basis of the objective right, and this, in the context where the right to rectification is an integral part of the fundamental right to the protection of personal data and implements Article 8.3 of the Charter of Fundamental Rights of the European Union<sup>7</sup>. The same reasoning applies to the right of access to personal data (Art. 15 GDPR) which makes the subject of the complaint submitted to the Litigation Chamber in the context of this dispute.

34. Thus, in this case, the request to exercise a right provided for by the GDPR, such as the right of access to personal data listed in its article 15, implies the exercise of the ODA competences on the basis of objective law and does not only concern the rights of the parties, insofar as the exercise of these rights is an integral part of the right to the protection of personal data and implements article 8.3 of the Charter of Fundamental Rights of the European Union.

35. The Litigation Division is therefore competent to examine the merits of the request as legally reclassified by way of conclusion and formed on the basis of GDPR article 15. The Litigation Chamber is also competent to examine the grievances developed by the defendants by way of conclusion about the incompleteness of the response given to his request for access, insofar as this grievance is related to the request of access which is the subject of the initial complaint.

On the merits of the request made on the basis of Article 15 of the GDPR

36. According to Article 15.1 of the GDPR, “the data subject has the right to obtain from the controller processing confirmation that personal data relating to him or her are or

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

as well as the following information:

- the purposes of the processing,
- the categories of personal data concerned,
- the recipients or categories of recipients to whom the personal data have been or will be communicated [...],
- where possible, the retention period of the personal data

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

- the existence of a right to request from the controller the rectification or erasure of personal data, or restriction of data processing

7 Brussels (NL), 9 October 2019, ING v APD, 2019/AR/1006, p. 16.

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of a personal nature relating to the person concerned, or the right to oppose this processing ;

- the right to lodge a complaint with a supervisory authority; when the data of a personal nature are not collected from the data subject, any information available as to their source;

- the existence of automated decision-making, including profiling, referred to in Article 22 paragraphs 1 and 4, and, at least in such cases, useful information concerning the underlying logic, as well as the significance and intended consequences of such processing for the person concerned. »

37. Information should also be provided regarding appropriate safeguards implemented, where applicable, when the personal data is transferred to a third country or to an international organization (Art. 15.2 GDPR).

38. Finally, Article 15.3 of the GDPR also provides that “the controller shall provide a

copy of the personal data being processed”, this copy being the

method prescribed for any response to a request for access.

39. The provisions of the GDPR are directly applicable to territorially defined processing

in its article 3, and this, with the exception of the provisions providing for a power of appreciation at the

benefit of the Member States with regard to the implementation of the GDPR<sup>8</sup>. Article 15 of the GDPR makes

part of the directly applicable provisions of the GDPR, and that it is open to complainants

to invoke in support of their requests for access to personal data concerning them

and which are processed as part of the activities of a data controller in the territory

Belgian.

40. In the present case, the Litigation Chamber must examine whether or not the defendant brought

infringement of Article 15 of the GDPR, which requires data controllers to take action

requests for access to their personal data. The GDPR does not impose any

procedural condition for the exercise of the right of access such as the invocation of a legal basis

specific.

41. From the point of view of the defense and the right to a fair trial, it is further incumbent on the

Litigation Chamber to examine whether the initial complaint was sufficiently understandable

as to its object to allow the defendant to identify it as a request for access

based on Article 15 of the GDPR. Failing this, it was up to the Litigation Chamber to

<sup>8</sup> Such discretion has, for example, been provided for with regard to the conditions applicable to the consent of

children in Article 8 of the GDPR, which allows Member States to specify by law the minimum age above which a

parental consent is not required.

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requalify the facts and allow a contradictory debate on this subject, either in his letter

invitation to conclude on the basis of Article 98 of the LCA, or subsequently in the context of a

reopening of the debates.□

42. In the context of the complaint submitted to it, the Litigation Chamber finds that the□  
defendant did respond to the request for access (although belatedly in view of the□  
one-month period imposed by Article 12 of the GDPR). The defendant's first response to□  
plaintiffs also explicitly refers to a “request for access” to data□  
personal data (email of September 11, 2019: "Regarding the request for the Right to□  
access, [...]").□

43. Accordingly, it is apparent from the facts presented by the plaintiffs and not disputed by the opposing party that the□  
request for access was formulated in a sufficiently clear manner for the defendant□  
identifies that it was a request to exercise the right of access provided for in Article 15 of the GDPR.□  
The Litigation Chamber therefore considers that it was validly seized by the complaint of the examination□  
of facts constituting a potential infringement of the right of access under Article 15 of the GDPR.□

44. The Litigation Division is therefore competent to take into account the grievances developed by□  
the complainant by way of conclusion, on the basis of Article 15 of the GDPR instead of Articles□  
36, § 4 and § 5 as well as article 38, § 1 of the law of July 30, 2018 (Data Protection Law).□

45. The Litigation Division also finds that the defendant was able to develop its□  
arguments by way of conclusion, albeit in the alternative, and put forward his grievances with regard to□  
concerns the complainants' request for access under Article 15 of the GDPR. The House□  
must therefore not reopen the debate on this point, and decides that it is competent to examine□  
and deal with the complaint and its two grievances, namely, the late and incomplete nature of the response□  
made by the defendant to a request for access to personal data, including□  
a request for a copy, submitted to it by the complainants.□

On the breach of the obligation to respond to a request for access to data□  
personal information within one month of receipt of this request□

46. Pursuant to Article 12.3 of the GDPR juncto Article 15 of the GDPR, the response to a request□  
access to personal data, must be provided within one month of the□

receipt of the request. This period can be extended by 2 months given the complexity□

and the number of requests, provided that the data controller informs the person□

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concerned of this extension and the reason for the postponement of the deadline within a period of one month□

from the receipt of the request (article 12.3 of the GDPR).□

47. The defendant, as controller of the personal data of the□

complainants, therefore had the obligation to respond to their request for access to their data□

personal data and at their request to receive a copy of this personal data within the month□

receipt of this request, unless this deadline is postponed for reasons to be communicated□

to complainants within a month. The Litigation Chamber finds that the defendant did not□

reacted to the request for access within the prescribed period and also did not give reasons within the month for the□

reason for the postponement of the communication of this information.□

48. The Litigation Division considers that this lack of response constitutes an infringement□

to Articles 15.1, 15.3 and 12.3 of the GDPR for the following reasons:□

49. First, the Litigation Division finds that the request for access was sufficiently□

clear as to the identity of the persons concerned, to allow the□

respondent to respond within one month. The defendant, in fact, did not give reasons□

the reason for which it requested additional information in order to identify the□

complainants, as permitted by Article 12.6 of the GDPR, which provides that the controller□

of the treatment “may request that additional information be provided to him for□

confirm the identity of the data subject” when “the controller has□

reasonable doubts as to the identity of the natural person making the request in question□

in Articles 15 to 21”, and this, within one month of receipt of the request□

(Art. 12.3 GDPR).□

50. The Respondent was therefore justified in requesting that the Complainants provide it with□

additional information (such as an identity card) to confirm their identity to

condition of having a reasonable doubt as to the identity of the natural person presenting

Requirement. In this case, the defendant has not explained how it could doubt the

mandate of their counsel, lawyer at the bar, to represent clients no more than she has

reasoned in what way she could doubt the statements of this lawyer with regard to the identity

of its customers, and this to justify its request to return a copy of the front of the identity card

client. The defendant also replied to the complainants by letter dated 9

January 2020 addressed to one of the complainants. This fact demonstrates that the defendant had no

ultimately no reasonable doubt as to the identity of this complainant. Without prejudging the question

to know whether, given the circumstances, the nature and the volume of the data it

draft, a banking institution like the defendant is, yes or no, justified in claiming

standard way a copy of the identity card of any person wishing to exercise a

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request for access to personal data, the Litigation Chamber finds that in

the case, the intervention of a lawyer registered with the Brussels Bar and a letter sent

with her letterhead could allow the defendant to validate the data

information transmitted by this lawyer concerning the identity of his clients.

51. It was the defendant's responsibility to provide all the personal data requested by

the plaintiffs, namely, according to the interpretation of the Litigation Chamber, all of the

personal data and information thereon referred to in Article 15 of the GDPR.

52. Secondly, the Litigation Chamber finds that the request for access and copy of the

personal data held by the defendant was as to its purpose formulated to

clear enough by the complainants to allow the defendant to respond to them

within one month. The Litigation Chamber also takes into account the fact that the

articles 15.1 and 15.3 juncto 12.3 of the GDPR did not allow the defendant to postpone



its response to the access request with a request for clarification about the “rights” that

the complainants would like to exercise following their request for access.

53. Admittedly, the Litigation Chamber understands that the defendant asked the plaintiffs

to specify which rights they wished to exercise, insofar as according to the case law of

the Court of Justice considered that to satisfy a request for a right of access, “it is sufficient

that this applicant is provided with a complete overview of this data in a form

intelligible, i.e. a form allowing this applicant to become acquainted

of the said data and to verify that the latter are accurate and processed in accordance with

to this directive, so that the applicant can, if necessary, exercise the rights granted to him

are conferred by that directive. »9. This case law (under the former Directive 95/46)<sup>10</sup>

is relevant insofar as it does not condition access requests to the condition

to indicate which right the data subject intends to exercise following his request for access. the

recital 63 of the GDPR specifies that the right to access personal data

must enable a data subject to “learn about the processing and

<sup>9</sup> ECJ, 17 July 2014, *YS v. Minister voor Immigratie, Integratie en Asiel and Minister voor Immigratie, Integratie en Asiel c.*

*M and S*, C-141/12 and C-372/12, recital 57: “While Directive 95/46 thus requires Member States to ensure that each

data subject can obtain from the person responsible for the processing of personal data the communication of

all the data of this type that it processes concerning it, it leaves it to these States to determine the material form

concrete that this communication must take, insofar as it is “intelligible”, that is to say that it allows the

person concerned to read this data and to verify that it is accurate and processed in a manner

manner in accordance with this directive, so that this person can, if necessary, exercise the rights conferred on him by

Articles 12(b) and (c), 14, 22 and 23 thereof (see, to that effect, judgment in *Rijkeboer*, EU:C:2009:293, paragraphs 51 and 52)”,

also the comments on this decision in C. de Terwangne and K. Rosier (eds.), *The General Protection Regulations*

(RGPD/GDPR): in-depth analysis, CRIDS, Larcier, Brussels, 2018, p. 432-443.

<sup>10</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of natural persons

with regard to the processing of personal data and on the free movement of data, OJ L 281, 23.11.1995, p. 31-

50.□

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verify the legality", without indicating that the controller can postpone his response□

pending information on the purposes of the access request.□

54. Recital 63 of the GDPR specifies, however, that it should be possible for the controller□

processing to defer the response to a right of access request to obtain information□

very specific additional information, namely "on what data or what□

processing operations his request bears", and this, when the data controller□

processes a large amount of data relating to the data subject. If applicable, it□

the data controller is responsible for "facilitating the exercise of the rights" of individuals□

concerned under Article 12.2 of the GDPR, which excludes the possibility of making such□

questions in an irrelevant manner and/or for dilatory purposes, especially since Article 8.2 of□

the Charter of Fundamental Rights of the European Union mentions the right of access,□

as one of the founding principles of the right to the protection of personal data□

staff.□

55. In this case, the only requests for additional information possible under the□

recital 63 of the GDPR<sup>11</sup> were not raised by the defendant, so that the Chamber□

litigation considers that the request for access made by the complainants was from the point of view□

of its content sufficiently clear to enable the defendant to respond to it within the□

legal period of one month from its receipt.□

56. Finally, for all practical purposes, the Litigation Division also recalls that the GDPR does not□

does not make the validity of a request for access subject to the invocation of a particular legal basis□

such as Article 15 of the GDPR. It suffices in this respect that the subject matter of the request is sufficiently□

clear, namely, access to and/or copying of personal data. In this case, the Chamber□

litigation finds that the request was sufficiently clear in this respect, and is against□

proof the fact that the defendant immediately identified the claim of the plaintiffs□

as a request for access to their data, which emerges from the wording of the first□

response that was given to this request by the defendant (email of September 11□

2019: “Regarding the request for the Right of access, ...”).□

57. In consequence, the Litigation Division finds an infringement of Articles 15.1, 15.3 and 12.3□

of the GDPR on the part of the defendant.□

Whether or not the response to the access request is complete□

11 Namely “what data or what processing operations his request relates to”.□

...□

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58. The Litigation Chamber decides to dismiss the grievance developed by the complainants□

by way of conclusion, namely, the incomplete nature of the response provided□

by the defendant with regard to access to any personal data relating to□

the reasons for the decision to terminate commercial relations between the parties.□

59. In this case, the Litigation Division considers that this request for access falls within a□

broader commercial challenge that it is open to a trial judge to decide if it is seized□

the following questions: whether or not the defendant had the right to break off□

business with complainants without cause, and is it correct that the anti-□

money laundering that it must apply exempt it from any duty to inform as to the reasons□

of this termination decision.□

60. The Litigation Chamber nevertheless intends to provide some clarifications as well as its□

assessment with regard to the extent of the information to be provided in response to□

requests for access made on the basis of article 15 of the GDPR. To the extent that the request□

of the complainants did not indicate what personal data or specific information□

relating to these data was requested among the various information provided for in Article□

15.1 of the GDPR data (e.g. retention period, origin of personal data, etc.), the□

Litigation Chamber considers that it was incumbent on the defendant to transmit within the time limit□  
minimum of one month a complete overview of the data or categories of data to be□  
personal character that is the subject of processing (Art. 15.1.b), including the purposes of this□  
processing (Art. 15.1.a), as well as the recipients or categories of recipients for each□  
category of data (Art. 15.1.c), where possible, the retention period or the□  
criteria used to determine this duration (art. 15.1.d), the source of the data when they□  
are not collected from the person concerned (art. 15.1.g), as well as the□  
information set out in articles 15.1.e, f and h and 15.2 of the GDPR. As for the shape□  
of this information, the Litigation Division considers that the information should allow□  
the person concerned to become aware of the data processing and to verify it□  
lawfulness, in accordance with the purpose of the right of access as explained in recital 63 of the□  
GDPR.□

61. If the data controller does not immediately provide all the information that the□  
data subject is likely to obtain by way of article 15 of the GDPR, the Chamber□  
litigation considers that it is up to him at least to specify in the response to the request□  
of access how the data subject can obtain this additional information□  
relating to the data processed, for example the Privacy Policy, insofar as□  
this document is sufficiently clear in this respect and that the reference to this document is□  
...□

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sufficiently precise to enable the data subject to easily find the□  
information referred to in Article 15.1 of the GDPR.□

62. The Litigation Chamber notes that the Respondent has an automated system□  
to respond to this type of request. The Litigation Chamber notes, however,□  
that the result of this automatic response does not include all the information referred to in□  
GDPR article 15.1. The Litigation Chamber observes that the response transmitted by the□

defendant to the plaintiffs contained in particular information on the categories of data processed, their origin and the purposes of the processing, as well as the choices operated by the complainants with regard to the processing of data for marketing purposes. For In addition, the applicant was invited to send any request for additional information to a bank email address.

63. Thus, the document does not provide any information on:

- the recipients or categories of recipients to whom the personal data have been or will be communicated, in particular recipients who are established in third countries or international organizations (Art. 15 § 1, c GDPR);
- the envisaged retention period of the personal data or, when this is not not possible, the criteria used to determine this duration (Art. 15 § 1, d GDPR);
- the existence of requesting from the controller the rectification or erasure of personal data, or a limitation of the processing of personal data personal data relating to the data subject, or the right to oppose to this processing (Art. 15 § 1, e GDPR);
- the right to lodge a complaint with a supervisory authority (Art. 15 § 1, f GDPR);
- the existence of automated decision-making, including profiling, referred to in Article 22 § 1 and 4, and, at least in such cases, useful information regarding the underlying logic, as well as the importance and the foreseen consequences of this treatment for the person concerned (Art. 15 § 1, h GDPR);

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whether the personal data is transferred to a third country or to an organization□

international community, the appropriate safeguards put in place with respect to this transfer (art.□

15 § 2 GDPR).□

64. The response formulated by the defendant therefore appears to the Litigation Division as□

incomplete, however, the Litigation Chamber will not accept these grievances insofar as□

they were therefore not the subject of an adversarial debate in the context of this dispute. The□

Litigation Chamber understands that the complainants' challenge relates to the character□

12 Defendant's summary submissions; letter from the defendant to the plaintiffs of January 9, 2020.□

...□

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incomplete of the categories of data provided with regard to the reasons for termination□

contractual and not on the potentially incomplete nature of the information provided to the□

subject of the data processed by the defendant in general. The Litigation Chamber does not reopen□

therefore not the debates on this last point.□

65. In view of the facts and grievances submitted to it, the Litigation Division therefore classifies the□

complaint not followed up with regard to the grievance relating to the incompleteness of the response□

upon request for access.□

On corrective measures and sanctions□

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

“1° close the complaint without further action;□

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 of□

these to the recipients of the data;□

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 a□

international body;□

15° forward the file to the public prosecutor's office in Brussels, which informs it of the□

follow-up given to the file;□

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

Data protection. »□

67. The complainants claim that the Litigation Chamber declares their complaint founded. The complaint□

does not include a specific mechanism as to the measures requested. The Litigation Chamber□

understands that the complainants are requesting that it find that the response to their request for access□

was late and incomplete and that the Litigation Chamber orders the defendant to□

...□

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comply with their request for access to personal data not yet communicated,□

according to the plaintiffs.□

68. The defendant acknowledges having reacted late to the request for access but denies having□

other personal data about the complainants than those it has transmitted to them. The□

defendant justifies the response period of 4 months by a combination of circumstances. For□

reminder, the recipient of the request was absent due to illness without a back-up having been□

provided for, in the context where the request was not submitted according to the procedures provided for□

by the defendant for this purpose in accordance with Article [X] of its Privacy Policy, namely, via an e-mail with a copy of the identity card, or via various applications. The defendant has have measures in place to deal with such circumstances in the future, and which it requests the Litigation Chamber to take into account in the context of the measures to be ordered. »13

69. The defendant also refers to the existence of a procedure for processing access requests since 2018, more than 25,600 requests processed since then, without a customer did not complain, according to information from the defendant.

70. In this context, the defendant requests that the complaint be dismissed insofar as it considers it unfounded given the legal basis invoked by the plaintiffs. Alternatively, if the Litigation Chamber felt it had to deal with the complaint, the defendant requests the dismissal in accordance with article 100, § 1, 2° LCA. Infinitely in the alternative, the defendant requests the suspension of the pronouncement in accordance with Article 100, § 1, 3° LCA. Specifically, the defendant considers that, given the particular circumstances of the case, in particular the manifestly unfounded nature of the complainants' allegations, the error human resources and the considerable efforts it has made to meet the demands access, any other penalty would be disproportionate. The defendant further claims the confidentiality of the publication of the decision to intervene in an "anonymized" manner, in insofar as no negligence can be reproached to him in the present case.

71. In this case, the Litigation Chamber recalls that the right of access to personal data personal data, enshrined in Article 15 of the GDPR, is a fundamental right for the protection of personal data. The one-month response period does not only apply since the entry into application of the GDPR on May 24, 2018 but indeed since the entry into application since 1993 of the Law of December 8, 1992 relating to the processing of personal data staff who preceded him where the period was 45 days (article 10 § 1 al. 3 of this law

13 Defendant's summary submissions, p. 9.

...



earlier). Failure to comply with the 30-day deadline is, according to the Litigation Chamber, constitutive of a breach.

72. The defendant's argument that human error occurred and a person was ill, so does not stand up to analysis. These exceptional circumstances do not detract from the fact that at the time of the events, no procedure was provided for handling access requests outside of standard communication methods advocated by the defendant.

73. The defendant recognizes in fact by way of conclusion that the processing of the request of the Complainants experienced some degree of delay and claims to have taken steps organizational measures adapted to remedy this in the future:

“Due to an unfortunate combination of circumstances, including the long absence of the competent manager (due to illness) as well as human error when sending of an e-mail, the request could not be followed according to the usual procedure. In order to fix it in the future, the defendant has identified certain concrete measures:

i) The establishment of a strictly monitored internal reminder system: if the person person who coordinates or handles a complaint is absent, this person will in the future be followed by a reserve person who will receive an automated callback.

ii) The implementation of reminders of the possibility of access via automated tools: since any person concerned can consult their own data in various applications, the defendant must further increase the visibility of this possibility, in particular by through a standardized response to anyone submitting an access request recalling the existence of these tools. In this way, everyone concerned can benefit ease and speed of these tools. Nothing of course prevents the treatment of the asks manually if the person concerned wishes it, but this will allow make the procedure even more efficient. »14

74. The Litigation Division takes note of these efforts made by the defendant with a view to  
to improve the future handling of access requests made outside its  
specific automated procedures, and therefore limits itself to sending the defendant a  
reprimand, on the basis of article 100 § 1, 5° LCA. The Litigation Chamber refrains from  
any other sanction insofar as it is the first complaint that it receives with regard to  
concerns the processing of requests for access by the defendant, which is of course  
14 Defendant's summary submissions, p. 9 title 5 "Measures for the future".  
...

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responsible for implementing adequate procedures that enable the effective exercise  
the right of access (art. 24 GDPR juncto art. 15 GDPR).

75. On the basis of this finding of infringement of the GDPR, it is up to the plaintiffs to assert before  
the trial judge – if applicable – whether or not this lack of response deprived them of a  
opportunity to assert their rights in court, in the event that the response provided  
belatedly would be deemed incomplete in such proceedings, which the Chamber  
in this case cannot assess on the basis of the facts submitted to it.

76. Furthermore, given the importance of transparency with regard to the process  
decision-making and the decisions of the Litigation Chamber, this decision will be published on the website  
Internet of the Data Protection Authority by deleting the data  
direct identification of the parties and the persons cited, whether physical or  
morals.

FOR THESE REASONS,

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

- Declare the complaint justified with regard to the late nature of the response provided by the  
respondent to the request for access to personal data made by the complainants,  
note this violation of articles 15.1 and 15.3 juncto 12.1 of the GDPR and for this reason,

pronounce against the defendant a reprimand on the basis of article 100 § 1, □

5° ACL; □

- Close the complaint without further action (art. 100 § 1, 1° LCA) with regard to the incompleteness □

of the response provided by the defendant to the request for access to personal data in □

particular with regard to any personal data processed in connection with the □

reasons for the breach of contract operated by the defendant; □

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

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

given as a defendant. □

Hielke Hijmans □

President of the Litigation Chamber □