

Confidential/By courier

KNLTB

[CONFIDENTIAL]

Display path 4

3821 BT AMERSFOORT

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

Contact

[CONFIDENTIAL]

070 8888 500

Topic

Decision to impose an administrative fine

Authority for Personal Data

PO Box 93374, 2509 AJ The Hague

Bezuidenhoutseweg 30, 2594 AV The Hague

T 070 8888 500 - F 070 8888 501

authority data.nl

Dear [CONFIDENTIAL],

The Dutch Data Protection Authority (AP) has decided to inform the Royal Dutch Lawn Association

Tennis Association (KNLTB) to impose an administrative fine of € 525,000, because the KNLTB in June and July

2018 for the purpose of generating income a file with personal data of its members

has provided to two sponsors for the direct marketing activities of these sponsors. In front of

insofar as it concerns the provision and use of personal data of members who were members before 2007

of the KNLTB, this is an incompatible further processing. With this, the KNLTB

violate Article 5, first paragraph, preamble and under b, of the GDPR. To the extent that the provision and use regarding personal data of members who became a member of the KNLTB after 2007, no lawful basis. This means that the KNLTB has Article 5, first paragraph, preamble and under a jo. article 6, first paragraph, of the GDPR.

The decision is explained in more detail below. Chapter 1 is an introduction and chapter 2 describes it legal framework. Chapter 3 sets out the key facts in this case. In chapter 4 the AP assesses the facts on the basis of the legal framework and concludes that the KNLTB complies with the AVG has violated. In chapter 5 the amount of the administrative fine is motivated. Finally contains chapter 6 the operative part and the remedies clause.

1

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

1 Introduction

Legal entity involved

1.1.

1. The KNLTB is an association with full legal capacity, with its registered office at Displayweg 4 (3821 BT) in Amersfoort. The KNLTB was founded on June 5, 1899 and is located in the Netherlands trade register of the Chamber of Commerce registered under number 40516738. According to the statutes, last amended on March 4, 2019, the goal of the KNLTB is to promote the tennis game in all its forms, including other forms of play in which use is made from a racket, or similar game material.

2. The KNLTB is the umbrella body of tennis sport and tennis associations in the Netherlands and engages in, among other things, advising and supporting management of tennis associations in the field of association policy, accommodation and in legal disputes.¹

3. The KNLTB estimates that there are 1,782 tennis associations in the Netherlands, of which 1,657 (i.e. 97%) are affiliated with the KNLTB.² According to the KNLTB website, there are (through this tennis associations) almost 570,000 tennis players affiliated with the KNLTB, with which the KNLTB in size is the second largest sports association in the Netherlands.³

Process sequence

1.2.

4. On October 22, 2018, the AP started an investigation into the provision by the KNLTB of personal data of its members to sponsors with the aim of approaching members with 'tennis-related and other offers'.

5. On May 7, 2019, the AP adopted its investigation report. On May 13, 2019 she has this report sent to the KNLTB. The AP has [CONFIDENTIAL] from the KNLTB a copy of the research report sent.

6. In a letter dated May 29, 2019, the AP sent an intention to enforce to the KNLTB for violation of Article 5, first paragraph, preamble and under b, of the GDPR and Article 5, first paragraph, salutation and under a jo. Article 6(1) of the GDPR. A copy of the intention is also to [CONFIDENTIAL] sent from the KNLTB.

7. Also given the opportunity to do so by letter dated 29 May 2019, the KNLTB sent a letter from 25 July 2019 gave its opinion in writing on this intention and the basis for it lying research report. [CONFIDENTIAL] of the KNLTB also has a view

1 <https://www.knltb.nl/about-knltb/wat-doen-de-knltb/>.

2 File 35 (appendix 6: position as at 13 November 2018).

3 <https://www.knltb.nl/about-knltb/wat-doen-de-knltb/historie>.

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

filed by way of the document “[CONFIDENTIAL] Comments to the AP research report”.

8. On 1 August 2019, an opinion session was held at the offices of the AP in which the KNLTB has verbally explained its view.

9. On August 2, 2019, the AP asked a number of questions by e-mail that were asked during the opinion session could not yet be answered by the KNLTB. By e-mail of August 22, 2019 and from September 11, 2019 the KNLTB answered these questions.

10. By email of 20 August 2019, the AP sent the report of the opinion session to the KNLTB sent. By e-mail of 17 September 2019, the KNLTB submitted its comments to the report sent to the AP. The AP sent an amended report on October 2, 2019.

11. On October 18, 2019, the KNLTB responded to the amended report by e-mail.

12. By e-mail of October 28, 2019, the KNLTB sent the Contact Protocol KNLTB member database to the AP provided.

Reason and background to start research

1.3.

13. Following the announcement by the KNLTB to collect personal data from its members provide sponsors to approach members with tennis-related and other offers, the AP received tips and complaints from a number of members. As a result of the announcement, a member of the KNLTB publicly to ask whether this behavior of the KNLTB was in line with the GDPR. The media has reported that the KNLTB was under pressure from summary proceedings one of its members had suspended the provision of telephone numbers to a sponsor. This one reporting was reason for the AP to invite the KNLTB for a conversation. In response to of this conversation, the complaints and tips received as well as the media coverage, the AP is a started an investigation into the provision by the KNLTB of member data to sponsors.

2. Legal framework

2.1 Scope GDPR

14. Pursuant to Article 2(1) of the GDPR, this Regulation applies to all or partially automated processing, as well as to the processing of personal data or are intended to be included in a file.

15. Pursuant to Article 3, paragraph 1, this Regulation applies to the processing of personal data in the context of the activities of an establishment of a

3/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

controller or a processor in the Union, whether or not the processing in the Union is already then does not take place.

16. Pursuant to Article 4, in so far as relevant here, for the purposes of this Regulation understood by:

“1) “personal data” means any information about an identified or identifiable natural person person (“the data subject”) [...];

2) “processing” means an operation or set of operations on personal data or a set of personal data, whether or not carried out by automated means [...];
[...]

7) “controller” means a natural or legal person who, alone or jointly with others, determine the purposes and means of the processing of personal data; [...];
[...]

9) “recipient” means a natural or legal person, a public authority, a service or a other body, whether or not a third party, to whom/to which the personal data is provided. [...];

10) “third party” means any natural or legal person, public authority, agency or other

body, not being the data subject, nor the controller, nor the processor, nor the persons who, under the direct authority of the controller or processor are authorized to process the personal data;

11) “consent” of the data subject: any free, specific, informed and unambiguous expression of will with which the data subject by means of a statement or an unambiguous active accepts the act concerned with the processing of personal data;
[...].”

2.2 Principles: Lawfulness, Fairness and Transparency & Purpose Limitation

17. Article 5, first paragraph, opening words under a and under b of the GDPR states:

‘Personal data must:

a) processed in a manner that is lawful, fair and

is transparent ('lawfulness, fairness and transparency');

b) collected for specified, explicit and legitimate purposes and

may not be further processed in a manner incompatible with those purposes; the

further processing for the purpose of archiving in the public interest, scientific or

historical research or statistical purposes shall not be considered in accordance with Article 89(1)

considered incompatible with the original purposes ("purpose limitation");'

18. Article 6(4) GDPR states:

"When the processing is for a purpose other than that for which the personal data was collected"

is not based on the consent of the data subject or on a provision of EU law or

provision under Member State law which, in a democratic society, provides a necessary and proportionate

constitutes a measure to ensure the objectives referred to in Article 23(1), the

controller when assessing whether the processing is for another purpose

4/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

is compatible with the purpose for which the personal data was initially collected, inter alia take into account:

- a) any relationship between the purposes for which the personal data were collected, and the purposes of the intended further processing;
- b) the framework in which the personal data have been collected, in particular what the relationship between the concerned data subjects and the controller;
- c) the nature of the personal data, in particular whether special categories of personal data are processed, in accordance with Article 9, and whether personal data relating to criminal law convictions and criminal offenses are processed in accordance with Article 10;
- d) the possible consequences of the intended further processing for the data subjects;
- e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.”

2.3 Basis for processing personal data

19. Article 6(1) of the GDPR, where relevant, states:

The processing is only lawful if and to the extent that at least one of the following conditions are met:

- a) the data subject has consented to the processing of his/her personal data for a or more specific purposes;
- b) the processing is necessary for the performance of a contract in which the data subject is a party, or to take measures at the request of the data subject before the conclusion of a contract to take;

(...)

- f) the processing is necessary for the purposes of the legitimate interests pursued by the controller or of a third party, except where the interests or fundamental rights and the fundamental freedoms of the data subject which require the protection of personal data,

outweigh those interests, in particular where the data subject is a child.

(...)'

20. The preceding article corresponds to article 8 of the Personal Data Protection Act (Wbp, per withdrawn on 25 May 2018), which read:

'Personal data may only be processed if:

- a. the data subject has given his unambiguous consent for the processing;
- b. the data processing is necessary for the performance of an agreement whereby the data subject is a party, or for taking pre-contractual measures in response to a request from the data subject and which are necessary for the conclusion of an agreement;

(...)

- f. the data processing is necessary for the representation of the legitimate interest of the controller or of a third party to whom the data is provided, unless the interest or the fundamental rights and freedoms of the data subject, in particular the right to protection of privacy, prevails."

5/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

2.4 Authority to impose an administrative fine

21. The authority to impose an administrative fine results from Article 58, second paragraph, preamble and under i, viewed in conjunction with Article 83(5), preamble and under a, of the GDPR and article 14, third paragraph, of the UAVG.

22. Article 58, second paragraph, preamble and under i, of the GDPR states the following:

Each supervisory authority shall have all of the following powers to take corrective measures:

(...)

(i) as the circumstances of each case, in addition to or instead of the . referred to in this paragraph measures, impose an administrative fine pursuant to Article 83 (...);'

23. Article 83, first, second and fifth paragraph, preamble and under a, of the GDPR states the following:

'1. Each supervisory authority shall ensure that the administrative fines imposed under this Article for the infringements of this Regulation referred to in paragraphs 4, 5 and 6 in each case be effective, proportionate and dissuasive.

2. Administrative fines, depending on the circumstances of the individual case, are imposed in addition to or instead of the referred to in Article 58(2)(a) to (h) and (j).

measures. (...)

5. Infringements of the following provisions are subject to

administrative fines up to EUR 20 000 000 or, for a company, up to 4% of the total worldwide annual turnover in the previous financial year, if this figure is higher:

a) the basic principles of processing, including the conditions for consent, in accordance with Articles 5, 6, 7 and 9;'

24. Article 14, paragraph 3, of the UAVG states the following:

In the event of a violation of the provisions of Article 83(4), the Dutch Data Protection Authority may fifth or sixth paragraph, of the bye-law, impose an administrative fine not exceeding the amount specified in this members mentioned amounts."

3. Facts

25. This chapter lists the facts relevant to the decision. What matters are the facts with regarding the provision of personal data by the KNLTB to two sponsors, namely

[CONFIDENTIAL] (trading as [CONFIDENTIAL]; hereinafter [CONFIDENTIAL])

and the [CONFIDENTIAL] ([CONFIDENTIAL]). The purpose of this distribution was for the KNLTB to generate (extra) income. The personal data is provided by [CONFIDENTIAL] and

[CONFIDENTIAL] for their direct marketing activities for which the KNLTB has a

received compensation. [CONFIDENTIAL] and [CONFIDENTIAL] under the
carrying out their direct marketing activities, the personal data also provided to

6/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

[CONFIDENTIAL] and various [CONFIDENTIAL] respectively. The AP has not conducted an investigation
to the lawfulness of the processing of personal data by [CONFIDENTIAL] and the
[CONFIDENTIAL], and the processing of personal data by [CONFIDENTIAL] and the
[CONFIDENTIAL]. In this decision, the lawfulness of the latter processing operations is
also not rated.

26. The facts relevant to this resolution occurred before the last amendment of the Articles of Association of
March 4, 2019. This means that for the description of the facts, insofar as relevant, will be
referred to the articles of association, which were amended on January 19, 2005 (the articles of association 2005) or the
articles of association
as amended on December 30, 2015 (2015 Articles of Association).

3.1 KNLTB

Goal KNLTB

27. According to article 2, first paragraph, of the 2005 statutes (and also the 2015 statutes), the KNLTB
with the aim of promoting the practice of tennis and the development of tennis.

According to the second paragraph, the KNLTB tries to achieve its goal by, among other things:

- a. forming a bond between, if possible, all players of the tennis game;
- b. providing information about the game of tennis and promoting the game of tennis as
leisure activity;
- c. spreading the rules of the game of tennis;

- d. taking all measures that may lead to an increase in the level of play;
- e. deregistering, arranging and supporting tennis matches;
- f. providing information about and support for the construction and improvement of tennis courts and accommodations;
- g. providing information and advice regarding the administrative organization of tennis;
- h. promoting or taking up training courses aimed at an association framework, tennis teachers and referees;
- i. representing Dutch tennis in the organizations where KNLTB is or will be connected;
- j. representing the interests of its members and affiliates;
- k. representing its members in and out of court;
- l. all permitted means, which are further at the service of the KNLTB.

Organization KNLTB

28. According to Article 3, first paragraph, of the 2015 Articles of Association, insofar as relevant here, organs of the KNLTB the Council of Members and the Board of Directors. Pursuant to article 3, second paragraph, of the articles of association 2015

the Members' Council represents all members of the KNLTB. Pursuant to Article 3, paragraph 3, of the Articles of Association 2015, the KNLTB is led by the federation board, which is accountable to the member council.

7/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

29. According to Article 4, first paragraph, of the 2015 Articles of Association, the KNLTB has as a member:

- a. associations [...];

b. federation members;

c. personal members.

30. Pursuant to Article 4, second paragraph, of the 2015 articles of association, members of the association are members of an association as

referred to in paragraph 1, sub a of this article, insofar as they have not been removed from membership by the KNLTB dismayed.

31. According to article 12, first paragraph, of the 2015 articles of association, the board of the association is charged with, among other things:

a. taking all policy decisions [...]

b. the day-to-day business;

[...]

e. implementing the decisions taken by the Members' Council;

Register of members

32. Article 4, ninth paragraph, of the 2005 articles of association (also 2015 articles of association) provides that the board of directors

maintains a register of members. Only those data are kept in this register which are

realization of the goal of the KNLTB are necessary. The board of directors may, after a prior

provide registered data to third parties, except for the member who

has lodged a written objection against the provision to the board of directors.

3.2 Decision-making and information provision provide member data to sponsors

Decision making use of member data for direct marketing purposes sponsors

33. In 2007, the Members' Council, on a proposal from the Board of Directors, approved the use of name,

address and place of residence of members for letter post campaigns by KNLTB sponsors. From the minutes of the

Members' Council meeting in 2007 it can be concluded that the money arising from the use of

member data, among other things, is spent on Top tennis.

34. In 2017, the management of the KNLTB discussed expanding the direct

marketing opportunities by providing personal data to partners (sponsors) for electronic and telephone direct marketing purposes. This policy change was subsequently meeting of the board of directors in April 2017. The Board of Directors has appointed the Council of Members informed, among other things, by means of a memo dated 24 November 2017 about expanding the direct marketing opportunities. The aim of this is to 'create added value' for the members, but also generating 'extra income that will make a structural and substantial contribution over time' supply to the KNLTB and the tennis sport'. The Council of Members has been requested to grant permission for the expanding the direct communication possibilities towards the members of the KNLTB. This one permission saw the provision of personal data of members of the KNLTB for marketing and commercial purposes to current and future structural and future partners with as

8/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

purpose of approach by telephone/telemarketing. The Members' Council has in the Members' Council meeting approved the proposal of the board of directors on 16 December 2017.

Information provision by KNLTB

35. As of 2015, new members of the KNLTB will receive a welcome email. Since 2018, the topic has been privacy is a part of this welcome email. In the welcome email, with regard to privacy aspects under the heading "How does the KNLTB handle your personal data?" the following text included: "We may and can provide your name and address details and telephone number under strict conditions make available to our partners, so that they can approach you with relevant, promotional actions. If you not If you want to be approached by telephone or post with offers, you can use the right of objection (AP: the text [right of objection] is also a shortcut to the right of objection form).

Your e-mail address will therefore not be provided to our partners, unless you have given permission for this (opt-in).

The KNLTB always adheres to the applicable laws and regulations. Do you want more information about the processing of your personal data? Then view our Privacy Statement (AP: the text [Privacy Statement] is also a shortcut to the privacy statement of the KNLTB).

36. In the newsletter of 7 February 2018, the KNLTB informed its members about the sharing of personal data with its partners. Under the heading "Sharing data: added value for members and long term investment for tennis" the following text is stated: "The KNLTB would like added value for you Create KNLTB membership by being able to make your tennis-related and other great offers. In addition does the KNLTB want to generate extra income with which we can make tennis affordable for you and your association hold in the long term. That is why permission was obtained at the Members' Council meeting in December 2017 for providing your data to our partners. Of course, the KNLTB adheres to all applicable regulations in this context laws and regulations, and the KNLTB also strictly monitors the use of your data by its partners. Do you have questions or do you want to know more?"

Via the button [Read more] you can click through to a web page with the title 'Fanmarketing & Data' in which members are informed as follows: "The KNLTB provides your name and address details and telephone number (if you have given an opt-in) available to our partners under strict conditions, so that they can approach you with relevant promotional campaigns. Your email address and phone number will not be provided to our partners without your permission."

Members are also made aware of the possibility to invoke their right of objection: "If you do not wish to be approached by post with offers from KNLTB and/or its structural or incidental partners, then you can use the right of objection. You can pass this on to the KNLTB Member Service via a online form."

37. On February 23, 2018, a similar message was sent to all association boards and volunteers.

38. In the newsletter of 7 March 2018, the KNLTB informed its members about the change in the way in which the KNLTB handles the personal data of its members. Underneath the head "Change in the way in which KNLTB handles your personal data" the following text is stated: "The

KNLTB is continuously looking for ways to create added value for your KNLTB membership. That's why

9/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

it is necessary to have relevant data and to be allowed to use this data, so that we can inform you and others tennis fans can approach with tennis-related and other relevant offers. The Council of Members has December 2017 agreed to provide your data to our partners.”

Via the button [Read more] you can click through to a news item of 12 February 2018 on the website of the KNLTB with the title 'Change in the way the KNLTB works with you personal data' in which members are informed as follows: "The KNLTB will provide your name and address". data and telephone number available to our partners under strict conditions, so that they can contact you approach with relevant, promotional actions. Your email address will not be provided without your permission to our partners. We always monitor the actions of our partners and make strict agreements for each action about how they may handle your data. The KNLTB must and will always adhere to the applicable regulations laws and regulations." Also on this web page members are informed of the possibility to exercise their rights of objection: "If you do not wish to be contacted by telephone or post with offers from KNLTB and/or its structural or incidental partners, you can use the right of objection. You can pass this on to the KNLTB Member Service via an online form.”

39. Furthermore, the short message “How does the KNLTB deal with members' personal data?” from April 23 2018 was on the homepage of the KNLTB for more than a month.

40. In response to media attention about providing members' personal data to it partners, the KNLTB posted various news items on its website on April 23, 2018 and June 13, 2018. websites www.knltb.nl and www.centrecourt.nl, in which members, in short, are informed how the KNLTB handles personal data of members and the KNLTB data of

its members under strict conditions and in the interest of tennis.

41. The KNLTB has placed a privacy statement on its website.⁵ In this, members are, among other things:

informed about the nature of the personal data processed by the KNLTB, the

bases and purposes of the processing. Personal data is processed according to the privacy statement

processed, among other things, for the provision of products, services, events of the KNLTB, the

partners of the KNLTB or other parties with which the KNLTB cooperates. With regard to the

provision of personal data to partners of the KNLTB, the privacy statement states:

“When it comes to providing name and address details to our partners⁶ (making an offer

especially for our members), you are of course entitled at any time to make your objection known via the

appropriate form⁷ (right of objection in the case of direct marketing). Your data will then no longer be

provided to our partners, so that they can make an offer to you as a member of the KNLTB. The legal

the basis for this provision is the legitimate interest (and therefore not permission). Phone numbers

are only provided to our partners if a member has given explicit permission in advance.”

4 The KNLTB uses the website www.knltb.nl for communication towards tennis players and tennis fans and the website www.centrecourt.nl for communication towards tennis associations and tennis teachers.

5 Privacy statement, version December 2018.

6 By clicking on the underlined text, you will be redirected to an overview of the partners who sponsor the KNLTB.

7 By clicking on the underlined text, you will be redirected to the Right of Objection Form, which you can use to can object electronically to the sharing of personal data with partners of the KNLTB.

10/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

3.3 Agreements KNLTB with [CONFIDENTIAL] and [CONFIDENTIAL]

42. From March 2018 to October 2018, the KNLTB has with [CONFIDENTIAL] and

[CONFIDENTIAL] actions started where personal data such as name, address and place of residence (NAW) and telephone numbers of members of the KNLTB have been used. [CONFIDENTIAL] has two discount flyers sent by post to a selection of KNLTB members and [CONFIDENTIAL] has in a telemarketing campaign called a selection of KNLTB members to tell [CONFIDENTIAL] to sell. For the direct marketing activities of [CONFIDENTIAL] and [CONFIDENTIAL] The KNLTB has provided personal data of its members. To the disclosures and the use of this personal data are subject to the following agreements: basis.

Agreement KNLTB - [CONFIDENTIAL]

43. On May 15, 2018, the KNLTB and [CONFIDENTIAL] entered into an Official Supplier Agreement Closed.

44. Article 1.2 of the Official Supplier Agreement stipulates that the KNLTB [CONFIDENTIAL] during the term of the sponsorship rights agreement and/or communication options of the KNLTB (hereinafter: the "Communication options") such as laid down in the Annexes attached to the Agreement.

45. Paragraph 3 of the Official Supplier Agreement stipulates how [CONFIDENTIAL] makes a sponsor contribution to the KNLTB. This sponsor contribution consists of a fixed amount per year (article 3.1), making vouchers available to the KNLTB (article 3.2) and offering discount on items available in [CONFIDENTIAL] webshop.

46. Article 3 of Appendix 1C (Database Rights) of the Official Supplier Agreement reads as follows: For (promotional) actions to individual KNLTB members, the KNLTB proposes a selection of the up-to-date address file (name and address) on request from [CONFIDENTIAL] two (2) times available to [CONFIDENTIAL] per year. Actions must be taken in consultation with and after written approval of the KNLTB [...] and to comply with the guidelines of the KNLTB."

47. Appendix 4 of the Official Supplier Agreement concerns the processing agreement in which further agreements have been made about, among other things, the security of personal data (Article 4), the

possibility of control and audit by the KNLTB (article 5), a duty of confidentiality for [CONFIDENTIAL] (Article 6) and the consequences of termination or dissolution of the processing agreement (Article 12), namely that, in short, the personal data be destroyed by [CONFIDENTIAL] or be sent to the KNLTB as soon as possible returned.

11/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

48. In Appendix 6 (Description of the processing of Personal Data), under the heading "Subject, nature and estimated processing time" states the following: "Personal data of members of the KNLTB, being in any case name and address data for the benefit of actions by post."

49. On 1 May 2018, the KNLTB and [CONFIDENTIAL] made additional agreements with regarding the delivery of KNLTB member data for the purpose of direct mail/post mailing of [CONFIDENTIAL]. The following agreements have been made about the selection of member data: [CONFIDENTIAL] delivers a file to the KNLTB after which the KNLTB on the basis an address file of the agreed selection criteria (with the following data: first name, prefix, surname, street, house number, postal code and city) compose that according to [CONFIDENTIAL] is sent. [CONFIDENTIAL] duplicates this address file by consultation of the legal registers (such as the Postfilter).

Agreement KNLTB - [CONFIDENTIAL]

50. On June 28, 2018, the KNLTB and the [CONFIDENTIAL] entered into an agreement.

51. According to Article 1.1, the purpose of the agreement is:

"The KNLTB will [CONFIDENTIAL] make its 'adult' membership file available to for the purpose of (telephone) approach by [CONFIDENTIAL] and/or [CONFIDENTIAL] on behalf of

of the KNLTB with the offer to become a [CONFIDENTIAL] subscriber, in accordance with the conditions in this agreement.”

52. Insofar as relevant here, Article 1.2 of the agreement provides the following:

“The file that [CONFIDENTIAL] receives from the KNLTB complies at least with the following requirements:

- The records are complete and correct in accordance with the mandatory fields from the supplied format (see attachment 3);

[...]

- The persons in the file as mentioned above are at least 18 years old, members of the KNLTB and are at the registration of their personal data by the KNLTB informed about the provision to third parties

(including [CONFIDENTIAL], [CONFIDENTIAL], [CONFIDENTIAL]) of their personal data;

- The persons in the file have not objected to the provision of their

personal data to third parties. The text of the privacy statement of the KNLTB has been used for this,

as found on the website of the KNLTB. All KNLTB members are also in February last

still informed via the member newsletter about the use of their data for

[CONFIDENTIAL] with the opportunity to object;”

12/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

53. Article 1.6 of the agreement provides, in so far as relevant here:

“During the term of this agreement, [CONFIDENTIAL] is allowed one-time per

calendar year to approach the remaining 8 KNLTB members (by telephone) with an offer to

become a [CONFIDENTIAL] and [CONFIDENTIAL] subscriber, respectively, [...]”

54. Article 3.1 of the Agreement provides, insofar as it is now relevant, that the parties shall both be regarded as responsible as referred to in Article 26 of the GDPR.

55. Article 8.1 provides, insofar as it is now relevant, that in the event of termination of the assignment and/or the agreement or if a party so requests, the data (including all copies) are returned to the KNLTB or destroyed at its request, in which case, it is stated in writing by [CONFIDENTIAL] that this has happened.

56. In Annex 1 (Annex [CONFIDENTIAL]-KNLTB agreement – Telemarketing pilot campaign) the fees for the KNLTB are stated. [CONFIDENTIAL]

57. Annex 3 (Data exchange format) shows that the mandatory records consist of: gender, initials, first and last name, date of birth, address, zip code, place of residence, (mobile) telephone number, email address, registration date, registration time and tennis club.

58. In Appendix 5 to the agreement, further agreements have been made about, among other things, the security of personal data (Article 4) and a duty of confidentiality for the parties.

3.4 Provision to and use of personal data by [CONFIDENTIAL] and [CONFIDENTIAL]
[CONFIDENTIAL]

59. The KNLTB, together with [CONFIDENTIAL], based on selection criteria (and after deduplication) a member base composed of 50,000 members (hereinafter: member base). Of these members, the the following information is included in the file:

- Campaign ID (numerical code);
- Sex;
- First name;
- Initials;
- Last name;
- Street;

8 The file supplied by the KNLTB has been duplicated by the KNLTB with the right of opposition and the right of objection file

of

the KNLTB. After that, the file was deduplicated by [CONFIDENTIAL] on non-Dutch residents, the subscriber base of [CONFIDENTIAL] and on the file with ex-subscribers of [CONFIDENTIAL], consumers who have [CONFIDENTIAL] have been approached, its own right of opposition file and other usual registers, such as the Do Not Call Register

and the Death Register (Article 1.5 of the agreement). The part of the original file that remains after deduplication is ultimately used for marketing purposes, which is implied in the word “remaining”.

13/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

- House number;
- House Number Addition;
- Postal Code;
- Place.

60. On June 11, 2018, the KNLTB put the membership file on the sFTP server (a secure environment) on behalf of [CONFIDENTIAL].

61. On June 11, 2018, [CONFIDENTIAL] deleted the member file from the sFTP server and member file sent via sFTP connection to [CONFIDENTIAL]. [CONFIDENTIAL] has processed the personal data on discount flyers and sent these flyers on 5, 6, 7 and 8 July 2018 to the selected members of the KNLTB.

[CONFIDENTIAL]

62. The KNLTB has provided the following information to [CONFIDENTIAL]:

- Campaign ID (numerical code);
- Sex;

- First name;
- Initials;
- Last name;
- Street;
- Place;
- Date of birth;
- Postal Code;
- House number;
- House number addition;
- Phone number;
- Mobile number;
- E-mail;
- Association.

63. On June 29, 2018, the KNLTB provided a file with 314,846 unique records to [CONFIDENTIAL]. By this the KNLTB means that the data mentioned in marginal 622 of 314,846 unique households were provided. This file was cleaned by [CONFIDENTIAL] on based on ten selections, as included in the Bel-Me-Not Register and persons who have an active subscription to [CONFIDENTIAL] and [CONFIDENTIAL]. The file that eventually used by [CONFIDENTIAL] counted 39,478 records after the selection. There are for [CONFIDENTIAL] 19,595 and used for [CONFIDENTIAL] 19,883 records. This data is subsequently provided via a secure sFTP server to various [CONFIDENTIAL] for the benefit of telemarketing.⁹

⁹ Initially, the KNLTB placed a file on the sFTP server of [CONFIDENTIAL] on June 26, 2018, but pending this file has been removed from the signing of the agreement between [CONFIDENTIAL] and the KNLTB. On June 29, 2018 is again

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

64. The telemarketing campaign started on Monday 16 July 2018 and at the request of the KNLTB terminated early.

3.5 KNLTB complaint regarding statements by the chairman of the AP

65. On December 17, 2018, an item was broadcast in the television program Nieuwsuur (NOS/NTR) about the resale of personal data of tennis players and football players. The chairman of the AP is for interviewed this item. Following statements made by the chairman in this interview, the KNLTB submitted a complaint to the AP on December 21, 2018, which the AP upheld on March 19, 2019 declared.

4. Review

66. In this chapter it is successively established that the KNLTB as controller has processed personal data by providing member data to [CONFIDENTIAL] and [CONFIDENTIAL] (section 4.1 and 4.2); that the AP by conducting an investigation does not violate acted with its own prioritization policy (section 4.3) and that the AP was not careless has acted towards [CONFIDENTIAL] (section 4.4). In sections 4.5 and 4.6, concluded that the AP did not act in violation of the principle of equality or the prohibition of bias. In paragraphs 4.7 – 4.11, the AP concludes that the benefits in kind to and use of personal data by [CONFIDENTIAL] and [CONFIDENTIAL] not are compatible with the original purpose of collecting the personal data or for there was no lawful basis for the provision and use.

4.1 Processing of personal data

67. The KNLTB collects data from its members, including for keeping a register of affiliates.¹⁰ This includes the name, address, place of residence and telephone number of

members.¹¹ These data qualify as personal data as referred to in Article 4, under 1, of the

AVG because it allows members of the KNLTB to be identified directly.

68. The KNLTB has provided personal data of its members in file form to [CONFIDENTIAL]

and [CONFIDENTIAL] for use in connection with their direct marketing activities. With that

the KNLTB has processed personal data as referred to in Article 4, under 2, of the GDPR.

a file on [CONFIDENTIAL]'s sFTP server. This file is the same day by [CONFIDENTIAL] from this server

deleted. It is striking that [CONFIDENTIAL] and KNLTB give a different picture of the number of records used for the

marketing action. According to [CONFIDENTIAL] this concerns a number of 39,478; according to the KNLTB this concerns

21,591 (with the KNLTB

speaks of number of members and not number of records). See File 73.

10 2005 Articles of Association, Article 5, fourth paragraph.

11 Privacy statement KNLTB, version December 2018.

15/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

4.2 Controller

69. In the context of the question whether Article 5, first paragraph, under a and b jo. Article 6(1) of the GDPR becomes

complied with, is important to determine who qualifies as a controller if

referred to in Article 4, preamble and under 7, of the GDPR. For this it is decisive who the purpose of and the

means of processing personal data.

70. The Council of Members has determined the purpose of the processing on a proposal from the Board of Directors, i.e

say the use of personal data collected by the KNLTB to generate (extra)

income by providing personal data to partners (sponsors) of the KNLTB ten

for their direct marketing activities. The Council of Members and the Board of Directors are organs of the

KNLTB. In view of the foregoing, the KNLTB has (partly) determined the purpose of the processing.

71. The means of processing, i.e. the manner in which the data processing takes place, is also (partly) determined by the KNLTB. The KNLTB has attached conditions to the manner on which the personal data are delivered to [CONFIDENTIAL] and [CONFIDENTIAL] and the use by [CONFIDENTIAL] and [CONFIDENTIAL] for their direct marketing activities.

In view of this, the KNLTB has (partly) determined the means for processing.

72. Since the KNLTB (also) determines the purpose and means of the processing of personal data has determined, he qualifies as a controller within the meaning of Article 4(7) of the GDPR.

4.3 Action by the AP not in conflict with its own policy

Position KNLTB

73. The KNLTB wonders why no risk analysis has been made by the AP or an investigation was actually necessary, as the distributions to the sponsors had already stopped.

The KNLTB also believes that the need and basis for the investigation are lacking, in view of the small number of complaints submitted to the AP about the call action by [CONFIDENTIAL].

74. In addition, the KNLTB wonders why the AP, after receiving tips about the policy of the KNLTB, an investigation has been started. According to the Policy Rules for Prioritization of Complaint Investigations of the AP¹² (priorization policy) should have had a norm-transferring conversation or had the AP had a should send a standard-transferring letter, according to the KNLTB. In this regard, the KNLTB points to a passage in the explanation of the prioritization policy, which states that the AP is committed to treating of complaints primarily focuses on achieving norm-compliant behaviour. In doing so, the AP aims for a pragmatic approach, in which effectiveness and efficiency play an important role. A

An example of a pragmatic approach is according to the prioritization policy that the AP, when they

¹² Policy rules for prioritizing complaints investigation, published in the Government Gazette on 1 October 2018. The KNLTB refers to a paragraph

from the introduction in section 2.1 of the policy explanation.

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

can achieve norm-compliant behavior in a specific case by contacting the (alleged) violator, the AP will do this and a complaint can thus be settled.

Response AP

75. The AP and the supervisors employed by it have various (investigative) powers that they can always and spontaneously exercise, in order to be able to monitor adequately exercise compliance with the GDPR. There is no prior and reasoning fact for this, signal, ground or suspicion required.¹³ In view of this, the AP was not obliged to perform a risk analysis whether the investigation was actually necessary. For the exercise of the (research) powers is also not relevant whether and if so, how many complaints have been received and is not relevant that the provision of personal data by the KNLTB and its use by

[CONFIDENTIAL] and [CONFIDENTIAL] have ended. That disbursements and use are terminated does not alter the fact that they did take place. The research was correct intended to answer the question whether the disclosures and use of personal data of members of the KNLTB have been lawful.

76. Insofar as the KNLTB argues that the AP is acting contrary to its prioritization policy, the AP as follows. Apart from the fact that the reason for the investigation consisted not only of complaints but also from the coverage of the KNLTB and the media attention about it and the conversation that the AP to because of this on October 11, 2018 with the KNLTB, the AP has read the contents of the complaints investigated to the extent that this is appropriate. After an initial assessment of the complaints, the AP deemed it plausible that it concerned personal data processing and that possibly there was one or more violations of the GDPR. In view of this and taking into account

that it may have involved many involved (the KNLTB has almost 570,000 members), the provision could potentially have serious consequences for the data subjects and the provision for caused a stir in society, the AP has decided to institute a further research. This is entirely in line with Article 2 of the prioritization policy.

77. The statement of the KNLTB that, according to its prioritization policy, after receiving complaints from its members should have opted for a norm-transferring conversation and should have refrained from research makes no sense. There is no such obligation in these policies, which relate to prioritizing investigations in response to complaints. The policies already provide for this no binding framework for the DPA when making a choice for an enforcement instrument. There is rest therefore no obligation on the DPA to realize norm-compliant behavior in the event of a violation by telephone contact with the (alleged) offender. In addition, the AP points to the resting on her principle obligation to take enforcement action against violations, having regard to the public interest that this is served. To this end, the AP has the information referred to in Article 58, second paragraph, of the GDPR and Article 16 of the UAVG mentioned corrective measures. The AP is entitled to freedom in the choice of enforcement instrument, provided that the chosen instrument is sufficiently effective. In this case, the AP has 13 ABRvS 21 August 2019, ECLI:NL:RVS:2019:2832, r.o. 4.1; Rb. Rotterdam, 23 May 2019, ECLI:NL:RBROT:2019:4155, r.o. 15.2; Rb.

Rotterdam (Frznr.) 28 September 2018, ECLI:NL:RBROT:2018:8283, r.o. 6.1.; CBb October 12, 2017, ECLI:NL:CBB:2017:327, r.o. 6.4; CBb12

October 2017, ECLI:NL:CBB:2017:326, r.o. 4.4; Court of Appeal of The Hague 13 June 2013, ECLI:NL:GHDHA:2013:CA3041, r.o. 2.3.

17/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

not opted for a norm-transferring conversation because of the large number of people involved, the seriousness of the violation and the social fuss that the provision of member data to [CONFIDENTIAL] and [CONFIDENTIAL].

4.4 AP did not act negligently towards FG

Position KNLTB

78. The KNLTB takes the position that the AP wrongly did not involve the DPO in the investigation, also in view of his willingness to cooperate and to provide information.

Response AP

79. The AP considers in the first place that during the investigation a copy of the requests for information to the KNLTB have also been sent to the DPO. In addition, the FG has all relevant correspondence exchanged by email between the AP and the KNLTB. In to that extent, the AP involved the DPO in the investigation. Superfluously, the AP considers as follows.

80. The DPO is an internal supervisor who must advise the controller about the GDPR compliance. In that capacity as internal supervisor, the DPO is in contact with the AP. The AP sees a DPO as an essential part of the quality system of an organization with regarding the processing of personal data. In the context of the exercise of its

In accordance with the General Administrative Law Act, the AP is authorized to request from anyone for supervisory tasks to provide information or to provide access to documents. These powers are described in chapter 5 of the General Administrative Law Act. The AP is aware of the delicate balance between the FG and, on the other hand, the organization or organizational unit that is the controller in the sense of the GDPR. Although the AP works together with the DPO, its supervisory activities it must focus on the controller who is the standard addressee of the GDPR.

81. Although the AP can request information from anyone, including the DPO, by virtue of its duties, at the same time, the DPO is not part of the unit that can be regarded as the controller. Also, the DPO cannot give binding instructions to the company management about setting up data processing. The AP is therefore authorized to

ask the controller. It states first and foremost that in the context of a (possibly) concrete ex officio investigation, to be able to establish a violation and possibly for enforcement, information (also) always with the relevant controller himself must be requested. In addition, the AP notes that the KNLTB itself had the opportunity to involve the DPO (if desired) in the investigation.

82. The AP considers it important to note that in an organization in which a healthy relationship has been built between the controller and the DPO, the DPO is expected to be able to provide valid information on behalf of the controller provide information on GDPR compliance. However, the AP can never depend on this route to obtain the necessary information. When the contact between a

18/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

controller and a DPO would not be optimal, or as soon as important preconditions for internal supervision are missing, this poses a risk to the reliability of the information obtained.

83. On the basis of the foregoing, the AP concludes that it was not negligent, nor on other grounds has acted improperly towards [CONFIDENTIAL] or the KNLTB by her direct research activities to the controller, the KNLTB.

4.5 Action by the AP does not violate the principle of equality

View KNLTB

84. The KNLTB takes the position that the investigation into and possible enforcement action against the provision of personal data from the KNLTB to [CONFIDENTIAL] and [CONFIDENTIAL] violates the principle of equality. To this end, he argues that the AP direction

the [CONFIDENTIAL]¹⁴ ([CONFIDENTIAL]) and [CONFIDENTIAL]¹⁵ ([CONFIDENTIAL]) for

a similar situation has opted for a standard-correcting letter and not for enforcement.

The AP is also aware of the provision of personal data by other, comparable

sports associations to third parties for direct marketing purposes, but only the KNLTB is passed through

the AP spotlighted to set a standard.

Response AP

85. The principle of equality extends, in the context of conducting an investigation and imposing a

sanction not to the extent that the power to do so has been unlawfully exercised merely because a

any other violator is not subject to investigation and enforcement

is passed. This may be different if there is an unequal treatment of

similar cases indicating arbitrariness in the supervisory and enforcement practice of the AP.¹⁶ Of these,

no way.

86. The explanatory notes to the prioritization policy include the following: "Because the AP does a lot of

receives signals, complaints and requests for enforcement and its oversight field is comprehensive,

because of its limited resources, it cannot always carry out a further investigation. Therefore

the DPA assesses in situations where there may be a violation, but for which further details

investigation is necessary to establish the violation, first against its prioritization criteria."

87. The prioritization policy is (partly) intended to avoid arbitrariness in the choice of matters to be investigated

to prevent complaints. Apart from the fact that the investigation into the KNLTB is not alone

started as a result of complaints but also as a result of a conversation with the KNLTB

¹⁴ The KNLTB refers to the letters published on the AP website:

[https://autoriteitpersoonsgegevens.nl/nl/nieuws/banken-mogen-betaalinformatie-niet-zomaar- Use-for-Advertising](https://autoriteitpersoonsgegevens.nl/nl/nieuws/banken-mogen-betaalinformatie-niet-zomaar-Use-for-Advertising).

¹⁵ The KNLTB refers to the letter published on the AP website:

<https://autoriteitpersoonsgegevens.nl/sites/default/files/atoms/files/brf.-kvk-20dec18-handelsregisterinfoproducten.pdf>.

¹⁶ CBb 14 August 2018, ECLI:NL:CBB:2018:401, r.o. 7.2.

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

Due to media coverage, the AP has dismissed the complaints it has received about the KNLTB assessed against its prioritization policy and concluded on the basis of the prioritization criteria that further investigation into the KNLTB was indicated (see marginal 76). To that extent, the proposition is that the AP was guilty of arbitrary incorrectness when conducting the investigation.

88. In addition, the AP disputes that the situations mentioned by the KNLTB are equal to the present one situation. The letter that the AP sent to [CONFIDENTIAL] was prompted by the intention of a bank to further process customer data for direct marketing purposes likely to violate provisions of the GDPR. This is in contrast to the disbursements by the KNLTB that actually took place.

89. The letter to [CONFIDENTIAL] was the result of complaints about the (possible) unlawful use of personal data by customers of [CONFIDENTIAL] for direct marketing purposes. The complaints were not so much related to the provision of personal data by [CONFIDENTIAL] itself but on the (possibly unlawful) use of these personal data by parties to whom [CONFIDENTIAL] has been provided. In view of the tension between the public nature of the commercial register, which means that [CONFIDENTIAL] is obliged to provide certain personal data, and the (further) possible unlawful use of personal data from [CONFIDENTIAL] has sent the AP a letter sent to [CONFIDENTIAL] with a request to review [CONFIDENTIAL]. also has the AP sent a letter to [CONFIDENTIAL] and called for the supplied [CONFIDENTIAL] to assess privacy aspects and to consider measures to prevent illegal use as much as possible. Therefore, there are no equal cases.

90. To the extent that the KNLTB argues that other sports associations also followed a similar policy at

regarding the provision of third parties for direct marketing purposes, the AP considers that it in accordance with its prioritization policy, has given priority to research into the disbursements of personal data by the KNLTB to [CONFIDENTIAL] and [CONFIDENTIAL] and against them to take enforcement action. Unnecessarily, the AP notes that complaints about other sports associations are assessed against its prioritization policy, which may lead to this sports associations will be further investigated. To the extent that research shows that other sports associations have committed a similar violation, enforcement action will also be taken.

91. In view of the foregoing, the AP concludes that it has not acted contrary to the principle of equal treatment acted.

4.6 AP acted without bias

View KNLTB

92. In its view, the KNLTB takes the position that the AP violates the prohibition of bias has violated. According to the KNLTB, this is apparent from the actions of the chairman of the AP in a broadcast of Nieuwsuur on December 17, 2018. The KNLTB finds it remarkable that the AP has

20/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

acknowledged that she has acted improperly towards the KNLTB and yet has an intention to enforce has sent.

Response AP

By decision of March 19, the AP has the complaint that the KNLTB has with the AP on December 21, 2018 submitted about statements by the chairman of the AP in television program Nieuwsuur well-founded declared. The AP has acknowledged, among other things, that in its statements during this programme could and should have been more nuanced and careful on a number of points. without it

to dismiss the importance of this observed carelessness, the AP believes that its statements at that time were not such as to constitute a violation of the prohibition on bias and therefore should not have started an enforcement procedure. The The (outcome of) the complaints procedure does not provide any indications for this. In addition, the AP of believes that the investigation and the subsequent decision-making phase in accordance with the legal requirements has taken place.

4.7 Distinction between processing for collection purpose and further processing

93. The KNLTB processes personal data for several purposes. These goals have evolved over time changed. This has significance for the applicable legal framework to which the benefits in kind member data must be sent to [CONFIDENTIAL] and [CONFIDENTIAL] by the KNLTB tested. If the purpose of these provisions qualifies as a collective purpose, a legal basis as referred to in Article 6, first paragraph, of the GDPR are available for these processing operations. If the disclosures serve a purpose other than the purpose for which the personal data is originally collected, it must be tested whether this other purpose is compatible with the purpose for which the personal data was collected. This is the compatibility test of Article 6, fourth member of the GDPR. This test should be viewed in conjunction with the purpose limitation principle and compatibility included in Article 5(1)(b) of the GDPR. This article states that personal data only for specified, explicit and legitimate purposes may be collected and may not be further processed in a purposes incompatible.¹⁷

94. Does the purpose of the further processing differ from the purpose for which the personal data originally collected (the collection purpose), then such further processing is lawful in the event that:

- (i) data subjects have consented to the processing, or
- (ii) the processing is based on a provision of Union law or a provision of Member State law which democratic society constitutes a necessary and proportionate measure to ensure

the purposes referred to in Article 23(1) of the GDPR, or

17 The principle of purpose limitation also applied under the Personal Data Protection Act (Wbp). Article 9(1) of the Wbp states:

stipulates that personal data will not be further processed in a way that is incompatible with the purposes for which they are obtained.

21/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

(iii) the purpose of disclosure is compatible with the (defined, express and legitimate) purpose of collecting the personal data.¹⁸

95. If the purpose of further processing is compatible with the purpose of collection, no separate legal basis is required for the further processing than that based on whose collection of personal data has been permitted.¹⁹

96. If the further processing takes place for a purpose other than the collection purpose, but no permission has been given for this, it is not based on a legal provision or is incompatible is for the collection purpose, the processing is unlawful due to the lack of a basis. A controller cannot therefore consider further processing as a new processing operation that is separate from the original processing and Article 6(4) of the “bypass” the GDPR by using one of the legal bases in Article 6(1) of the GDPR to legitimize further processing.²⁰

97. For the assessment whether the KNLTB has lawfully provided personal data of its members to [CONFIDENTIAL] and [CONFIDENTIAL], will have to determine for what purposes the KNLTB has collected personal data and whether it has been further processed for another purpose.

4.8 Collection purposes of personal data members KNLTB

98. The purpose limitation principle of Article 5(1)(b) of the GDPR is an important starting point of data protection. Pursuant to the purpose limitation principle, purposes must be well-defined and have been expressly described, which means that a purpose of a processing must be such formulated that it can provide a clear framework for the question to what extent the processing in a specific case is necessary for the purpose described. In addition, the purpose must be justified, i.e. the purpose is in accordance with the law, in the broadest sense of the word. This means in any case (but not exclusively) that the processing for the purpose it must be possible to rely on the data referred to in Article 6(1) of the GDPR mentioned legal grounds.²¹

99. To determine the purposes for which the KNLTB collects and has personal data collected, several documents are important. For the period prior to 2007, the 2005 articles of association are interest. It is true that the collection purposes are not explicitly described herein, but they are derived from this to distract.

18 This is stated in Article 6(4) of the GDPR.

19 See also recital (50) of the GDPR.

20 This follows from the wording of Article 5, first paragraph, under b, of the GDPR ('(...) may not then proceed in any way with that

purposes are processed incompatible (...)') and from WP29 Opinion 03/2013 On purpose limitation, p. 40.

20 WP29, Opinion 03/2013 on purpose limitation, p. 19-20.

21 WP29, Opinion 03/2013 on purpose limitation, p. 19-20.

22/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

100. Persons who join a tennis club as a member thereby become a member of the KNLTB.²² In the

In the articles of association 2005, the following is stated: 'The board of the association keeps a register of members. In this register

only those data are kept that are necessary for the realization of the purpose of the KNLTB. It

After a prior decision of the Members' Council, the board of the federation may provide registered data to third parties, except for the member who has lodged a written objection to the provision to the board of directors."²³ The statutory

The goal of the KNLTB is to promote the practice of tennis and the development of tennis

in the Netherlands.²⁴ The KNLTB tries to achieve this goal by, among other things, promoting the

tennis game as a leisure activity, taking all measures that may lead to increasing

of the level of the game and looking after the interests of its members and affiliates and betting

of all permitted means that are further at the service of the KNLTB.

101. Although this does not follow explicitly from the 2005 articles of association, the AP makes it clear from the factual context²⁵ of this

statutes that the KNLTB has in any case collected personal data of members for implementation

of the membership agreement.²⁶ This is also not in dispute. Nor is it in dispute that

the processing for this legitimate purpose is based on the legal basis

'necessary for the performance of an agreement' as referred to in Article 6, paragraph 1, under b,

of the GDPR (and until May 25, 2018, when the GDPR became applicable, based on

Article 8, under b, of the Wbp).

102. Two other collection purposes can be derived from the 2005 articles of association. In the first place it

collection (and further use) of personal data to the extent necessary for the

realization of the goal of the KNLTB, namely to promote the practice of tennis

and the development of tennis in the Netherlands. Secondly, collecting

registered data (personal data) with the aim of providing it to third parties. The

Articles of association do not contain information about the (category of) third parties to whom personal data may be disclosed are provided nor any information for which the personal data is used by this

third parties. The AP takes the position that these goals are in any case not well-defined and

have been explicitly described because members of the KNLTB could not deduce from this that their personal data would also be used to generate revenue by the providing it to sponsors for their direct marketing activities. The KNLTB had therefore not be allowed to collect personal data for that purpose.

103. In 2007, the KNLTB formulated a new (collection) objective. The members' council of the KNLTB then approved the board's proposal to extend the communication possibilities of KNLTB sponsors, i.e. the use of names, addresses

22 Article 6, second paragraph, of the 2005 and 2015 statutes.

23 Article 4, ninth paragraph, of the statutes of the KNLTB of 19 January 2005 and article 4, ninth paragraph, of the statutes of the KNLTB of

Dec 30, 2015.

24 Article 2, first paragraph, of the articles of association 2015.

25 WP29, Opinion 03/2013 on purpose limitation (p. 23-24) states that it is necessary to take into account the actual context: 'As previously highlighted in the context of purpose specification, it is always necessary to take account of the factual context

and the way in which a certain purpose is commonly understood by relevant stakeholders in the various situations under analysis.'

26 Article 2, first paragraph, of the 2005 articles of association.

23/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

and places of residence (name and address details) of members for letter post campaigns. From the accompanying minutes of In the 2007 Members' Council meeting, the AP concluded that these were advertising messages from KNLTB-sponsors with which the KNLTB generates extra income. Pursuant to the Articles of Association of January 19

2005 (valid at the time of the Members' Council meeting in 2007) members of the KNLTB

obliged to comply with decisions of bodies of the KNLTB.²⁷ It may therefore be assumed that

new members from 2007 have taken note of this new when registering with the KNLTB

collection purpose, which can be more broadly described as monetization through the

providing member data to sponsors for their direct marketing activities.

104. In December 2017, the Council of Members again gave permission for the provision of

personal data of members of the KNLTB for marketing and commercial purposes to current

and future structural and future partners with the aim of approaching per

telephone/telemarketing. According to the AP, this goal can be grouped under the goal of generating

of revenue from providing member data to sponsors and qualifies as such

not as a new (collection) goal.

105. In so far as the KNLTB argues in its view that the purposes stated in the statutes of the

KNLTB of March 4, 2019 (statutes 2019) and the privacy statement of December 2018, including

the provision of personal data to partners, specified, expressly described and

justified and 'have always been central to the KNLTB, both in the present and for

2007, and (...) also [have] always been communicated in this way', the AP considers that the 2019 articles of association and

the

privacy statement are not relevant, because these documents only after the provision of

member data to [CONFIDENTIAL] and [CONFIDENTIAL] in June 2018 came into effect. In front of

insofar as the KNLTB refers to the newsletters about the provision of personal data to sponsors,

It also applies that these were sent to members after 2007. For the question whether before 2007 it was known that

member data would be provided to partners, so it is not these documents but the

the articles of association 2005 and, as already established, this purpose is not defined and expressly stated herein

described.

106. On the basis of the foregoing, the AP establishes that the KNLTB has informed its members since 2007

about its purpose of providing member data to sponsors, which is to generate

(extra) income.

107. On the basis of the foregoing, the AP concludes that the KNLTB personal data of members who

2007 joined the KNLTB has gathered to run the

membership agreement.²⁸ Since 2007, the KNLTB has started collecting

personal data of its members for generating revenue by providing this

data to sponsors. The provision of member data to sponsors qualifies for members who

27 On the basis of Article 6(1)(a) viewed in conjunction with Article 3(1) of the Articles of Association of 19 January 2005

(which

at the time of the benefits in kind), members are, among other things, obliged to comply with decisions of bodies of the KNLTB

(including the

Members' Council).

28 Article 2, first paragraph, of the 2005 articles of association.

24/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

have become a member of the KNLTB before 2007 thus as a further (*Italics AP*) processing of

personal data. For members who joined the KNLTB after 2007, this goal qualifies as

a collection goal.

108. In the following, the AP prepares for the assessment whether the personal data is collected by the KNLTB

a lawful way to distinguish between two situations. The first situation concerns

to the processing of personal data of members who became members before 2007. Hereby

does the AP qualify the provision of member data to sponsors for generating (additional)

income as a processing for a purpose other than that for which the personal data

originally collected (i.e. further processing). For members who joined from 2007

have become, the provision of their personal data to sponsors is the purpose

was known and qualifies as a collection target.

4.9 Compatibility purposes in case of membership before 2007

109. For members who became a member of the KNLTB before 2007, the provision of member data applies

to sponsors for their direct marketing activities to generate (additional)

income for the KNLTB as a further processing. This is lawful if (1) members

have consented to the processing, or (2) the disclosure is based on a

Union law provision or a Member State law provision that applies in a democratic society

constitutes a necessary and proportionate measure to ensure the protection referred to in Article 23(1) of the

purposes of the GDPR, or (3) the purpose of the disclosure is compatible with the

purpose for which the personal data was originally collected. In the following,

be assessed whether one of these situations occurs.

No permission

110. It is not in dispute that there is no permission for the provision of personal data to sponsors

obtained from the members of the KNLTB. However, the Council of Members has approved the provision. In front of

insofar as the KNLTB argues that this consent qualifies as consent within the meaning of the GDPR,

the AP considers that this is not the case. After all, consent must be obtained by the data subject

given by means of a clear active act demonstrating that the data subject is free,

specifically, informed and unambiguously consent to the processing of his personal data.²⁹

The approval of the Members' Council in 2007 does not meet these requirements, now it does not

consent of the individual data subjects has been obtained.

111. The AP concludes that the KNLTB for providing member data to sponsors does not

has obtained the consent of its members.

Provision is not based on legal provision

112. It is also not in dispute that the provision of personal data to sponsors is not based on a

Union law provision or a Member State law provision that applies in a democratic society

29 Recital (32) of the GDPR.

25/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

constitutes a necessary and proportionate measure to ensure the protection referred to in Article 23(1) of the GDPR purposes.

Further processing is not compatible

113. The principle of purpose limitation (Article 5(1)(b) of the GDPR) entails that

personal data for specified, explicit and legitimate purposes

collected and not subsequently allowed to continue in a manner incompatible with those purposes

are processed. In view of the purpose limitation principle, it will have to be examined whether the

processing the personal data for the purpose of generating additional income

is compatible with the purpose for which the personal data was initially collected. In this case,

to be taken into account, inter alia (Article 6(4) of the GDPR):

(a) any relationship between the purposes for which the personal data was collected, and the

purposes of the intended further processing;

(b) the framework in which the personal data have been collected, in particular what the relationship between the

concerned data subjects and the controller;

(c) the nature of the personal data, in particular whether special categories of personal data

are processed, in accordance with Article 9, and whether personal data relating to criminal law

convictions and criminal offenses are processed in accordance with Article 10;

(d) the possible consequences of the intended further processing for the data subjects;

(e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.

Bandage Purposes

114. In its view with regard to the investigation report, the KNLTB has taken the position provided that the collection purpose and the purpose of the further processing are closely related and are in line with each other. According to the KNLTB, the provision of personal data has as The aim is to provide the best possible interpretation/added value to the membership of the members. Both the discounts that are given to members with the promotions, and the financial benefits that resulting from this benefit these members, whereby they in any case gain the added value and will experience the benefits of this. After all, even when there is no participation, members experience the benefits from the proceeds of the campaigns, which are invested in members and tennis. The KNLTB also states that the AP wrongly did not address the the KNLTB communicated goals in which he refers to its statutes and privacy statement.

115. The AP considers as follows. The KNLTB has personal data (of members who were members before 2007 become) originally collected for the purpose of carrying out the membership agreement and not for the purpose of generating (extra) income by provision to sponsors. According to the AP, there is no connection between the two purposes.

Framework in which personal data is collected

116. The KNLTB states that its members could expect that their personal data would also be provided are given to sponsors for their direct marketing activities in order to generate revenue to generate. To this end, the KNLTB argues in the first place that the members are frequently discussing this

26/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

informed. Furthermore, without the direct marketing actions of sponsors/partners, members would not enjoy additional benefits as a result of which the added value of the union membership is not (immediately) would be seen by members, according to the KNLTB. The members also benefit from the tennis sport

accessible and affordable. In addition, it would be contrary to the expectations of the members would come into effect if a different method of generating additional income would be chosen, such as increasing the membership fee or abolishing free tennis lessons for children under the age of age of six years. The KNLTB also emphasizes that membership is a free choice, because the There is a possibility to become a member of an association that is not a member of the KNLTB or to become a member yourself (tennis) club. In addition, members may invoke their right to object to by the KNLTB to its partners. The KNLTB also adds that the Members' Council has a plays an important role, represents all members, is in close contact with the associations and translates the strategic policy of the KNLTB and its importance/consequences for the tennis associations and its members. According to the KNLTB, the Members' Council is therefore a underestimate the link that estimates the reasonable expectations of the other members, communicates, represents, hears, and thereby influences.

117. The personal data of the members of the KNLTB (insofar as they became members before 2007) are collected in the context of the implementation of the membership agreement. Rated submit in any case or the provision by the KNLTB to sponsors to generate (extra) income generation was in line with members' reasonable expectations, based on their relationship with the KNLTB (as controller). According to the AP, this is not the case. Prospective members who Joining a tennis club that is a member of the KNLTB automatically becomes a member of the KNLTB. Someone who wants to join a tennis club that is a member of the KNLTB does not have the choice to not to provide his personal data to the KNLTB; these are necessary for the implementation of the membership agreement. In view of the mandatory membership, the members had should expect that their personal data would only be used for the purpose of collection, the implementation of the membership agreement. The AP takes into account that the KNLTB is a non-profit organization and therefore members could not expect that their personal data would be provided to sponsors with commercial motives. This is valid

the more so for the provision of personal data to and its use by

[CONFIDENTIAL], who made no tennis-related offers (such as [CONFIDENTIAL])

but [CONFIDENTIAL] offered. The additional feature that members of the KNLTB with the purchase of

a [CONFIDENTIAL] chance to win a trip to a tennis match in London does not make this

otherwise. That the KNLTB has its members in various ways prior to the provisions

informed about the further processing of their personal data, is not a circumstance that

is important for the context in which the personal data is collected. After all, informing the

members only took place after (AP italics) the collection of their personal data. In addition

the facts from the investigation indicate that the members of the KNLTB

[CONFIDENTIAL] not expected. Although the KNLTB has informed its members about the

providing personal data to sponsors, the call action has led to many complaints and fuss in the

media, which has also been the reason for the early termination of the call campaign.

27/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

Nature of the personal data provided

118. In its view, the KNLTB points out that only necessary data has been provided to third parties

to be able to contact the members, namely name and address details and telephone number. There are

does not provide any special categories of personal data. Also, no personal data of

underage members nor email addresses of members as this poses a greater risk

exists on spam.

119. The AP finds that the KNLTB does not indeed have any special categories of personal data

provided to [CONFIDENTIAL] and [CONFIDENTIAL]. Assuming that the KNLTB conforms

has acted on his contact protocol, no personal data of persons younger have been provided either

than 16 years old.³⁰ The KNLTB has provided e-mail addresses to [CONFIDENTIAL] while this has not been necessary for the telemarketing campaign, so that the risk of, for example, spam and phishing was unnecessary and has been enlarged.

Possible consequences of further processing

120. The KNLTB emphasizes in its view that the actions of [CONFIDENTIAL] and [CONFIDENTIAL] were positively received by most members and had a high conversion. In addition, the KNLTB points out that when selecting the members who have been approached in the context of the actions every effort has been made to prevent members from being approached inadvertently, because they already have a subscription or are listed in the do not call register. The KNLTB also argues that the disclosures do not mean a loss of control over personal data. He argues for this that members are sufficient in this regard prior to the provision of their personal data informed and could have objected to this. Furthermore, the provision according to the KNLTB does not pose any additional risks to the rights and freedoms of the data subjects, because there are various measures have been taken to ensure the security of personal data, such as the use of a secure sFTP server, the partner agreement, the contact protocol, the call script, the immediate removal of data after use and monitoring whether the agreement is complied with. Finally, the KNLTB states that the negative consequences of the provision are limited: a discount flyer in the letterbox and/or receive a call. These consequences can, according to the KNLTB cannot be called far-reaching.³¹ In this regard, the KNLTB also argues that the telemarketing campaign was terminated early due to complaints about its implementation.

121. The AP considers that due to the benefits in kind, the members of the KNLTB have control over their personal data and their privacy has thus been infringed.

That, as the KNLTB states, the income generated will benefit the members and the

³⁰ The agreement with [CONFIDENTIAL] states – unlike in the contact protocol of the KNLTB – that the persons in the

file must be at least 18 years old.

31 The KNLTB refers to the judgment of the Amsterdam District Court of 12 February 2004, ECLI:NL:RBAMS:2004:AO3649

and to a

document from 2002 from the then Personal Data Protection Board:

<https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/uit/z2002-0881.pdf>.

28/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

tennis, doesn't make this any different. The members should have trusted that the KNLTB will
would only use personal data for the execution of the membership agreement and
would not provide to sponsors. The seriousness of the infringement is partly determined by the following
circumstances. In the first place, the KNLTB left the selection of the members to call
to [CONFIDENTIAL], which has resulted in personal data of 314,846 members
while [CONFIDENTIAL] has only 39,478 members (less than 13%) of them
selected to access. Secondly, [CONFIDENTIAL] personal data
provided that are not necessary for a call, including the e-mail address. This is too tight
now that the KNLTB has explicitly pointed out in its news items that the e-mail address cannot be
consent will be given to [CONFIDENTIAL] and this violates rule of thumb 2
(‘only provide necessary information’) from the Sport & Privacy Handbook. To that extent, the
KNLTB unnecessarily provided a lot of personal data of an unnecessarily many members to [CONFIDENTIAL]. In
third, both [CONFIDENTIAL] and [CONFIDENTIAL] have personal data
provided to [CONFIDENTIAL] respectively various [CONFIDENTIAL] in execution of their
direct marketing activities. This also means that for these members the risk of an infringement
on their personal data may have been increased.

122. In addition, the KNLTB ignores the fact that (unintentionally) receiving a discount flyer and telephone sales can be experienced as a nuisance. This applies in particular for the call from [CONFIDENTIAL] that has been discontinued prematurely for that reason. The stated high conversion of the actions of both sponsors and the income for KNLTB do not affect the data that the many members whose personal data has been provided but not used for the promotions are not have only benefited from the provision of their own personal data.

Appropriate guarantees

123. In its view, the KNLTB refers to the safeguards it has taken to ensure security of personal data. The KNLTB also cites some older decisions of predecessors of the AP (the Registration Chamber and the Dutch Data Protection Authority (CBP)) which included that guarantees could have a positive or sometimes decisive effect on the compatibility trade-off.³²

124. The AP considers that appropriate measures as referred to in Article 6(4) of the GDPR may be serve as 'compensation' for the fact that data continues to be used for a purpose other than the purpose of collection are processed.³³ The measures taken by the KNLTB, such as the possibility of objection, In this case, according to the AP, do not offer sufficient compensation for the infringement that the KNLTB committed with the has made provisions on the personal privacy of those involved. It concerns in the in the first place measures that the KNLTB was obliged to take. Secondly, these

32 The KNLTB refers to: <https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/uit/z2005-0703.pdf> (from 2005); <https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/uit/z2005-1447.pdf> (from 2005); <https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/uit/z2002-0881.pdf> (from 2002) and https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/rapporten/rap_2003_onderzoek_kpn.pdf with a quote from Registration Chamber, The Hague, July 1999, Background Studies & Explorations 14, p. 19.

33 WP29 Opinion 03/2013 On purpose limitation, p. 26.

December 20, 2019

Our reference

[CONFIDENTIAL]

measures cannot prevent an unnecessarily large amount of personal data being provided, in particular to [CONFIDENTIAL] and personal data have ended up with third parties, namely various [CONFIDENTIAL] and [CONFIDENTIAL]. The members of the KNLTB are not or at least about this case insufficiently informed.³⁴ It would have been the KNLTB's way to fully to inform about which personal data would be provided to which sponsors as well as inform its members that in the context of the execution of direct marketing activities would also be provided to third parties. Considering the original collection purpose, the execution of the membership agreement, and the reasonable expectations of its members that their personal data would not be used for commercial purposes of sponsors, it had also located on the road of the KNLTB to request permission from its members. This is however, did not happen.

Conclusion AP

125. In view of the circumstances that any connection between the purpose of the collection and the purpose of the further processing is missing, the disclosures to [CONFIDENTIAL] and [CONFIDENTIAL] are not included in the line with the reasonable expectations of the members, the consequences of the benefits in kind for the members of the KNLTB and that the measures taken by the KNLTB are insufficient for this provide compensation, the AP concludes that further processing for the purpose of generating income is not compatible with the collection purpose, execution of the membership agreement.

4.10 Basis for processing personal data in case of membership after 2007

126. For members who joined the KNLTB after 2007, it is assumed that the purpose of generate income by providing personal data to sponsors, with members was known. The processing of this personal data must be based on a lawful basis. According to the KNLTB, the processing of personal data for the purpose of generating

of additional income necessary for the promotion of his legitimate interests, now his

The number of members (and thus the income of the KNLTB) has fallen sharply over the past ten years. Out

Our own research has shown that this is due to the fact that members have little

see added value in membership of the KNLTB.

AP misinterprets the concept of legitimate interest

127. The KNLTB takes the position that the AP gives a wrong explanation in its investigation report

to the concept of 'legitimate interest' by concluding that an interest only qualifies if

justified if this interest can be traced back to a fundamental right or legal principle. This explanation is

cannot be traced back to:

- the legal text itself;
- information provided by European privacy regulators (including the AP);
- case law;
- guidelines of the European Data Protection Board (EDPB).

According to the KNLTB, the interest must be lawful, which follows from the guidelines of the EDPB and the

34 WP29 Opinion 03/2013 On purpose limitation.

30/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

website of the ICO (Information Commissioner's Office, the supervisory authority in the United Kingdom).

AP . Considerations

128. The AP considers that its conclusion that a legitimate interest must be traced back to a

fundamental right or principle of law follows from the system of the GDPR. After all, a processing of

personal data is always an interference with the fundamental right to the protection of

personal data. As a result, any processing is in principle unlawful. This also follows from article 6(1) of the GDPR, which states that processing is only lawful if and for insofar as at least one of the conditions referred to under a to f (principles of the processing) is fulfilled.

129. The GDPR thus offers a legal basis for processing personal data. This base consists (besides permission) of five other grounds. What is important here is the in Article 6, first paragraph, Basis mentioned under f of the GDPR: the processing is necessary for the representation of the legitimate interests of the controller or of a third party, except when the interests or fundamental rights and fundamental freedoms of the data subject which are protected of personal data outweigh those interests, in particular when the data subject a child.

130. For a successful reliance on the basis of legitimate interests, three cumulative conditions are met for a processing of personal data to be lawful. In the first place: the representation of a legitimate interest of the controller or from a third party. In the second place: the necessity of the processing of the personal data for the representation of the legitimate interest. And in the third place: the condition that the fundamental rights and freedoms of the data subject concerned prevail.

131. The first condition is that the interests of the controller or a third party qualify as justified. This means that those interests are included in (general) legislation or elsewhere in the law are designated as a legal interest. It must concern an interest that is also in law is protected, which is considered worthy of protection and which must in principle be respected and can be 'enforced'.

132. The controller or third party must therefore rely on a (written or unwritten) rule of law or legal principle. Is that legal rule or principle with regard to of the processing of personal data for the data subject (sufficiently) clear and accurate

and/or its application is (sufficiently) predictable, then the processing can be based on the bases referred to in Article 6(1)(c) and (e) of the GDPR (legal obligation or fulfillment of a task in the public interest). But there are also cases where the legal rule or principle with regard to the processing of personal data

31/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

not (sufficiently) clear and accurate for the data subject and/or the application thereof (insufficiently) predictable.

133. In these cases, the controller or third party may nevertheless be legitimate interests. These interests themselves must always be real, concrete and direct. And thus not speculative, future or inferred. In principle, it can be any material or intangible be important.

134. The mere interest in being able to monetize personal data or to make a profit with it does not qualify as a legitimate interest in itself. Not just because such interest will usually be insufficiently specific - in a sense everyone everywhere always has an interest when having more money – but also on a more principled basis because it is then assumed that there is then a decision can be made. And a trade-off between:

- the mere non-legally/legally protected interest that a party has in monetizing other people's personal data on the one hand,
- the fundamentally anchored interest that the data subject has in the protection of his/her personal data on the other.

135. There are few restrictions on commercial opportunities when applying the bases consent and agreement. It concerns processing that is necessary for the representation

of the legitimate interests of the controller, however, in essence precisely to processing beyond the control of the data subject. This is the domain where the rights of controllers conflict with the fundamental right of data subjects. The thought that it principle would be allowed to earn money by encroaching on one's own authority other people's fundamental rights is at odds here with the principle that the person concerned - action of the legislator aside - should have a grip on his data. Such a wide opportunity to balancing cannot therefore be what the AVG intends and is also not mentioned, permitted or advocated by the Data Protection Working Party Article 29 (WP29).³⁵

136. The justification of the interest – also according to WP29 – determines whether the threshold is reached to be able to make a decision. The consideration (necessity and balancing of interests) is after all not an issue if the 'justification' threshold is not met reaches. In other words: If the controller is not on a can invoke a legal/legally protected interest – after all, the data subject can – then there is there is no question of necessity, and certainly not of weighing both legal interests. Other way around does this mean that the protection provided by the closed system of foundations could easily can be eroded if the mere interest in making money is already a legitimate interest would be. After all, under certain circumstances it can simply be claimed that the relevant income is urgently needed, given the importance of raising as much money as possible to deserve. And then in fact only a material consideration remains - to be made by the one with the financial interest itself - between making money yourself and giving up other people's fundamental rights. in the extreme

35 WP29 Opinion 06/2014 on the “Notion of legitimate interests of the data controller under Article 7 of Directive 95/46EC”.

32/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

case, one could argue that if it involves a great deal of money, the infringement of fundamental rights should be proportionally larger. That is obviously not the intention. The fundamental right to protection of personal data would then become largely illusory.

137. The freedom to conduct a business is a recognition in the Charter of the freedom to pursue an economic or commercial activity and a recognition of freedom of contract and free competition. All this is of course not unlimited, but only 'in accordance with the law' of the Union and national laws and practices". It follows from this, among other things, that entrepreneurs in principle determine for themselves with whom they do business and with whom not, may set their own prices establishing, etc. But it is not the case that freedom of entrepreneurship

It follows that the right also protects the interest to earn (as much) money in itself. Or that it follows from this that 'being able to make less profit' conflicts with the fundamental right to privacy or data protection of others. Just as this also does not mean that, for example, the fundamental right of others/customers to property with reference to entrepreneurial freedom under circumstances may be violated. Entrepreneurs, on the other hand, have the necessary duties of care for their employees and/or their customers. These are laid down in concrete or general legal norms. Being able to give substance to this is a legitimate interest.

138. The foregoing entails that legitimate interests have a more or less urgent and specific have a character that arises from a (written or unwritten) legal rule or principle; it must in a certain sense be unavoidable that these legitimate interests are represented.³⁶ Purely commercial interests and the interest of profit maximization lack sufficient specificity and lack an urgent 'legal' character so that they cannot qualify as justified interests.

139. This also follows, albeit in slightly different terms, from the Working Party's Opinion 06/2014 Data protection Article 29 on the concept of "legitimate interest of the data controller" in Article 7 of Directive 95/46/EC. In this advice, under more the following: 'An interest can therefore be considered justified as long as

the controller can pursue this interest in a manner that is appropriate

with data protection and other legislation. In other words, a justified

interest “being acceptable under the law”.³⁷

According to KNLTB, his interest qualifies as justified

140. The KNLTB then argues that, if the AP's explanation is correct, it ignores the fact that it

The interest that the KNLTB has in the processing of personal data can be traced back to the AVG.

Indeed, recital 47 of the preamble to the GDPR states that the processing of

36 See, for example, the judgment of the European Court of Justice of 4 May 2017, ECLI:EU:C:2017:336, r.o. 29: '[...] that the importance of a

third party in obtaining personal data from the person who has caused damage to his property, in order to

to recover this person in court, is a legitimate interest'. See in that sense the judgment of the European Court of Justice of 29 January 2008, ECLI:EU:C:2008:54, r.o. 53).

37 WP29 Opinion 06/2014 on the “Notion of legitimate interests of the data controller under Article 7 of Directive 95/46EC”, p. 25.

33/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

personal data for the purpose of direct marketing can be considered as performed with the

in view of a legitimate interest. The KNLTB also refers to Article 16 of the Charter of the

fundamental rights of the European Union, the freedom to conduct a business. According to the KNLTB, the

AP previously based this legal standard on assessments about the legitimate interest.

AP . Considerations

The AP notes in the first place that the provision of member data to [CONFIDENTIAL] and

[CONFIDENTIAL] serves two interests of the KNLTB: (1) the interest of giving

added value for membership and (2) the importance of reducing the reduced

income from declining membership numbers.

141. The interests asserted by the KNLTB lack a more or less urgent character that stems from a

(written or unwritten) rule of law or principle. As far as the KNLTB

refers to Article 16 of the Charter of Fundamental Rights of the European Union, the freedom of

entrepreneurship is the same. In addition to contractual freedom, this fundamental right regulates the

freedom to pursue an economic or commercial activity. The importance of these freedoms is

however, insufficiently concrete and direct to qualify as a legitimate interest.

In this regard, the AP considers that the KNLTB does not give substance to the provisions of the provisions

concrete or general legal standards that relate to his duties of care as an 'entrepreneur'. The

The AP therefore concludes that neither the interests stated by the KNLTB nor the interests appointed by the AP

interests do not qualify as legitimate.

142. The conclusion is that the KNLTB's interest in providing members' personal data to

[CONFIDENTIAL] and [CONFIDENTIAL] does not qualify as a legitimate interest. Now the

benefits in kind could also not be based on another legal basis as appointed

in Article 6, first paragraph, of the GDPR, the AP concludes that the relevant provisions

have taken place unlawfully.

4.11 Secondary position on the assessment framework for third-party provision

143. As Article 6(4) of the GDPR describes, the test of further processing is relevant if,

summarized, the processing takes place for a purpose other than that for which the

personal data has been collected. The AP is of the opinion that this test is in principle limited to a

further processing of personal data by the controller itself

own business. For the provision of personal data to a third party, the

controller has a separate legal basis as referred to in Article 6(1) of the GDPR

to have. There is no evidence of the existence of a separate basis.

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

5. Fine

5.1 Introduction

144. The KNLTB has without a lawful basis – and therefore unlawfully – personal data of its members provided to [CONFIDENTIAL] and [CONFIDENTIAL]. With this, the KNLTB has towards its members acted contrary to Article 5, first paragraph, opening words and under a jo. Article 6(1) of the GDPR and infringed the right to respect for privacy and the right to protection of personal data of its members. As a result, members of the KNLTB have lost control of their personal data. The AP believes that this is a serious violation

Re. The AP sees this as a reason to use its power to impose a fine pursuant to Article 58, second paragraph, preamble and under i and Article 83, fourth paragraph, of the GDPR, read in conjunction with Article 14, paragraph 3, of the UAVG, to be imposed on the KNLTB.

Confidence Principle

145. The KNLTB takes the position that by imposing an administrative sanction, the AP acts contrary to the principle of trust. To this end, he argues that the KNLTB has justified may rely on written statements from the legal predecessor of the AP, the Dutch DPA. The KNLTB refers to the information sheet 'Providing data from the membership administration' from September 2010 (information sheet), which includes the following: "Provision of personal data to persons and companies outside the association, such as a sponsor, may provide its members with has requested permission. [...] When it comes to activities that are or are customary for the association approved by the members' meeting, no explicit permission needs to be requested from the members. Further an association can provide data to companies for the purpose of direct marketing. The association may only if the members have been given the opportunity to object to this during a reasonable period of time.

146. According to the KNLTB, the content of the information sheet is still relevant in full because the content of which is not considered obsolete. In addition, there is no change (material) in the meantime been in the legal line to which the information sheet looked. It is true that the GDPR does apply and the Wbp no longer applies, but the possible bases and the conditions for the provision of data from a membership file remained unchanged.

147. The AP sees no indications in what the KNLTB argues for the conclusion that imposing of an administrative fine would be contrary to the principle of legitimate expectations. The information sheet where the KNLTB refers to, has already been removed from the AP website in 2014. This already indicates that the content was no longer relevant from that point on. When in June 2018 the benefits in kind by the KNLTB to sponsors must - in view of the long time that had passed since 2014 - have been all the more clear that the aforementioned information was no longer relevant and had it on the way of KNLTB located with the entry into force of the GDPR on 24 May 2016 and the its entry into force on 25 May 2018 will (again) comply with the applicable laws and regulations to make sure. In addition, it is important that the provision by the KNLTB of personal data of

35/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

members to sponsors took place on the basis of legitimate interest. Already in April

2014, the opinion of the WP29 on the concept of "legitimate interest of the

data controller" published in Article 7 of Directive 95/46/EC. This advice

provides guidance on the application of Article 7(f) of Directive 95/46/EC (now Article 6,

first paragraph, preamble and under f, of the GDPR). Given this, the KNLTB should not have trusted anymore on the contents of the information sheet.

setup

148. Insofar as the KNLTB argues that it has not intentionally violated any statutory regulation acted, the AP considers that the violated prohibition of Article 6 of the GDPR is not intentional as a component. Since this is a violation, it is necessary to impose an administrative fine, in accordance with established case law³⁸, does not require proof of intent. the AP may presume culpability if the perpetrator has been established.³⁹

5.2 Fines Policy Rules of the Dutch Data Protection Authority 2019 (Fines Policy Rules 2019)

149. Pursuant to Article 58, second paragraph, preamble and under i and Article 83, fifth paragraph, of the GDPR, read in connection with article 14, third paragraph, of the UAVG, the AP is authorized to appoint the KNLTB in the event of a violation of Article 5, first paragraph, preamble and under a jo. Article 6(1) of the GDPR a to impose an administrative fine up to € 20,000,000 or, for a company, up to 4% of the total worldwide annual turnover in the previous financial year, whichever is higher.

150. The AP has established Fine Policy Rules 2019 regarding the implementation of the aforementioned power to imposing an administrative fine, including determining the amount thereof.

151. Pursuant to Article 2, under 2.2, of the 2019 Fine Policy Rules, the provisions relating to violations for which the AP can impose an administrative fine not exceeding the amount of €20,000,000 or, for a company, up to 4% of total worldwide annual turnover in the previous financial year, if this figure is higher, classified in Appendix 2 in category I, category II, category III or category IV.

152. In Annex 2, the violation of Article 5, first paragraph, preamble and under a, of the GDPR is classified as: category I, II, III or IV, depending on the classification of the underlying provision. This one underlying provision is Article 6 of the GDPR. This article is classified in category III.

153. Pursuant to Article 2.3 of the 2019 Fine Policy Rules, the AP sets the basic fine for violations subject to a statutory maximum fine of [...] €20,000,000 or, for a company, up to 4% of the total worldwide annual turnover in the previous financial year, whichever is higher, fixed within

³⁸ Cf. CBb 29 October 2014, ECLI:NL:CBB:2014:395, r.o. 3.5.4, CBb September 2, 2015, ECLI:NL:CBB:2015:312, r.o. 3.7 and CBb March 7, 2016,

ECLI:NL:CBB:2016:54, r.o. 8.3, ABRvS 29 August 2018, ECLI:NL:RVS:2018:2879, r.o. 3.2 and ABRvS December 5, 2018,

ECLI:NL:RVS:2018:3969, r.o. 5.1.

39 Parliamentary Papers II 2003/04, 29702, no. 3, p. 134.

36/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

the penalty bandwidths specified in that article. For violations in category III of Annex 2 of the

Fines Policy Rules 2019 applies a fine range between € 300,000 and € 750,000 and a

basic fine of € 525,000.

154. Pursuant to Article 6 of the Fine Policy Rules 2019, the AP determines the amount of the fine by the

amount of the basic fine upwards (to a maximum of the maximum of the bandwidth of the

a violation linked fine category) or down (to at least the minimum of that

bandwidth). The basic fine is increased or decreased depending on the extent to which

the factors referred to in Article 7 of the Fines Policy Rules 2019 give rise to this.

155. Pursuant to Article 7 of the Fine Policy Rules 2019, the AP keeps without prejudice to Articles 3:4 and 5:46

of the General Administrative Law Act (Awb) take into account the following factors derived from

Article 83, second paragraph, of the GDPR, referred to under a to k in the Policy Rules:

a. the nature, seriousness and duration of the infringement, taking into account the nature, scope or purpose

of the processing in question as well as the number of data subjects affected and the scope of the data

damage suffered;

b. the intentional or negligent nature of the infringement;

c. the measures taken by the controller [...] to protect the data subjects

limit damage suffered;

d. the extent to which the controller [...] is responsible given the technical and

organizational measures that he has implemented in accordance with Articles 25 and 32 of the

GDPR;

e. previous relevant breaches by the controller [...];

f. the extent to which there has been cooperation with the supervisory authority to remedy the infringement and limit the possible negative consequences thereof;

g. the categories of personal data to which the breach relates;

h. the manner in which the supervisory authority became aware of the infringement, in particular whether, and if so to what extent, the controller [...] has notified the breach;

i. compliance with the measures referred to in Article 58, paragraph 2, of the GDPR, insofar as they rather with regard to the controller in question [...] in respect of the same matter have been taken;

j. adherence to approved codes of conduct in accordance with Article 40 of the GDPR or of approved certification mechanisms in accordance with Article 42 of the GDPR; and

k. any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial gains made, or losses avoided, whether directly or indirectly from the infringement result.

156. Pursuant to Article 9 of the Fine Policy Rules 2019, when determining the fine, the AP keeps such take into account the financial circumstances of the offender. In case of reduced or insufficient financial capacity of the offender, the AP may impose the fine further mitigation, if, after application of Article 8.1 of the policy rules, a

37/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

fine within the fine range of the next lower category in its opinion nevertheless

would lead to a disproportionate fine.

5.3 Systematics

157. With regard to violations for which the AP can impose an administrative fine of at most the amount of € 20,000,000 or up to 4% of the total worldwide annual turnover in the previous financial year, if this figure is higher, the AP has classified the violations into four in the 2019 Fine Policy Rules categories, to which increasing administrative fines are attached. The fine categories are ranked according to the seriousness of the violation of the aforementioned articles, where category I contains the least serious offenses and category IV the most serious offenses.

158. Violation of Article 6 of the GDPR is classified in category III, for which a fine range between €300,000 and €750,000 and a basic fine of €525,000 has been set. The AP uses the basic fine as a neutral starting point. The amount of the fine is determined by the AP pursuant to Article 6 of the Fines Policy Rules 2019 then depends on the factors listed in Article 7 of the Fines Policy Rules 2019, by decreasing or increasing the amount of the basic fine. It's going down more for an assessment of (1) the nature, seriousness and duration of the violation in the specific case, (2) the intentional or negligent nature of the infringement, (3) the measures taken to limit the damage suffered by data subjects and (4) the categories of personal data to which the infringement is concerned. In principle, within the bandwidth of the violation linked fine category. The AP may, if necessary and depending on the extent to which the aforementioned factors give rise to this, the penalty bandwidth of the next higher apply the next lower category respectively.

5.4 Fine amount

159. Pursuant to Article 6 of the Fine Policy Rules 2019, the AP determines the amount of the fine by the amount of the basic fine upwards (to a maximum of the maximum of the bandwidth of the a violation linked fine category) or down (to at least the minimum of that bandwidth). The basic fine is increased or decreased depending on the extent to which the factors referred to in Article 7 give rise to this.

160. According to the AP, in this case, the following factors mentioned in Article 7 are relevant for determining of the fine:

- the nature, seriousness and duration of the infringement;
- the intentional or negligent nature of the infringement (culpability);
- the measures taken by the controller or processor to

to limit the damage suffered by those involved.

161. Pursuant to Article 8.1 of the 2019 Fine Policy Rules, the AP may, if the for the violation certain fine category does not allow an appropriate punishment in the specific case, when determining

38/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

the amount of the fine the fine bandwidth of the next higher category or the apply penalty bandwidth of the next lower category.

Relevant factors for determining the amount of the fine

Nature, seriousness and duration of the infringement

162. Pursuant to Article 7, opening words and under a, of the 2019 Fine Policy Rules, the AP takes into account the nature, seriousness and duration of the infringement. In assessing this, the AP will include the nature, scope or purpose of the processing as well as the number of data subjects affected and the extent of the damage they have suffered.

163. The protection of natural persons with regard to the processing of personal data is a fundamental right.

Under Article 8(1) of the Charter of Fundamental Rights of the European Union and Article

16(1) of the Treaty on the Functioning of the European Union (TFEU)

right to the protection of his personal data. The principles and rules of protection

of natural persons when processing their personal data must comply with

respect their fundamental rights and freedoms, in particular their right to protection of personal data. The GDPR aims to contribute to the creation of an area of freedom, security and justice and of economic union, as well as to economic and social progress, the strengthening and convergence of economies within the internal market and the well-being of natural persons. The processing of personal data must serve people. It right to the protection of personal data is not absolute, but must be considered in relation to its function in society and must conform to the proportionality principle against other fundamental rights. Any processing of personal data must be done properly and lawfully. For natural persons it is be transparent that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data is or will be processed incorporated.

164. Pursuant to Article 5, first paragraph, preamble and under a jo. Article 6(1) of the GDPR serve personal data to be processed in a way that is (among other things) with regard to the data subject lawful, in the sense that there is a legal basis for doing so. These are, in light of the above, fundamental provisions in the GDPR. If action is taken contrary to this, this is the core of the right that data subjects have to respect for their privacy and the protection of their personal data.

165. KNLTB has a more or less fixed working method in order to generate additional income personal data of (a large part of) its members provided on 11 June 2018 to [CONFIDENTIAL] and on at least June 29, 2018 to [CONFIDENTIAL]. The benefits in kind could not be based on a legal basis as referred to in Article 6, first paragraph, of the GDPR. The relevant disclosures were therefore made unlawfully.

39/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

It concerns two provisions that have affected a great many people involved. On

[CONFIDENTIAL] A file with personal data of 50,000 data subjects has been provided. On

[CONFIDENTIAL] The KNLTB has also provided an unnecessary amount of personal data, by means of a

file with personal data of 314,846 data subjects from which [CONFIDENTIAL]

would ultimately select 39,478 people (less than 13%) to approach under its

telemarketing campaign. The AP takes the position that (at least part of) the selection

could have taken place by the KNLTB itself, so that the

personal data would have been provided.

166. In the further assessment of the seriousness of the violation, the AP takes into account, on the one hand, the large number of

data subjects and the amount of personal data provided. On the other hand, the AP involves in this

case, the categories of personal data to which the infringement relates. It concerned under

more name and address details, gender, (mobile) telephone number and e-mail address, but none

personal data that fall within the special categories of personal data as referred to in

Article 9 of the GDPR. The AP has also not shown that the KNLTB personal data of

minors to [CONFIDENTIAL] and [CONFIDENTIAL].

167. In view of the above, the AP is of the opinion that there is a serious violation, but is there

no reason to increase or decrease the basic fine.

Intentional or negligent nature of the infringement (culpability)

168. Pursuant to Article 5:46, second paragraph, of the Awb, when imposing an administrative fine, the AP shall

into account the extent to which this can be blamed on the offender. Pursuant to Article 7, under

b, of the Fines Policy Rules 2019, the AP takes into account the intentional or negligent nature of the

infringement.

169. As the AP has already considered above, it may presume culpability if it

offense is established. KNLTB has provided personal data without the disclosures being possible

be based on a legal basis. In addition, the personal data has been provided consciously.

In light of the above, the AP considers the violation culpable. to those

culpability does not alter the fact that the KNLTB has taken advice from a law firm to

review policies regarding the sharing of personal data with sponsors. The Handbook

Sport & Privacy prepared by a law firm on behalf of [CONFIDENTIAL],

dates from 2017. The manual deals with the basic principles of the privacy policy in an 'accessible way'.

right and only relates to the Wbp and not to the AVG.

170. If and insofar as KNLTB has other, additional, advice from a law firm

specifically with regard to (the policy surrounding) the benefits in kind, it did not

AP submitted. While an appeal to the absence of all guilt lies in the way of the KNLTB

40/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

to make this absence plausible by making known what exactly the advice is about

asked and what the content of the advice was.⁴⁰ KNLTB failed to do so.

Measures taken to limit the damage suffered by those involved

171. The AP considers that the KNLTB has taken various measures to alleviate the suffering suffered by those involved

limit damage. The KNLTB has not previously provided the personal data

than after the approval of the Council of Members has been obtained. The members of the KNLTB,

prior to the benefits in kind, in various ways (including through newsletters and the

website of the KNLTB) about the intended benefits. Furthermore, in the

agreements between the KNLTB and the relevant sponsors a confidentiality clause

included, which obliges [CONFIDENTIAL] and [CONFIDENTIAL] to maintain the confidentiality of the

personal data, which stipulates that personal data cannot be used without permission from the KNLTB may be provided to third parties and which stipulates that the personal data after termination or dissolution of the agreement are annulled. At the request of the KNLTB, [CONFIDENTIAL] also the telemarketing campaign ended early.

172. In view of the foregoing, the extent of the damage suffered by those concerned is, admittedly, limited, but not in such a way that the AP sees reason in this case to reduce the basic fine. With the considering the foregoing factors, the basic amount remains at € 525,000.
proportionality

173. Finally, the AP assesses on the basis of Articles 3:4 and 5:46 of the Awb (principle of proportionality) whether the application of its policy for determining the amount of the fine given the circumstances of the specific case, does not lead to a disproportionate outcome. This takes into account to the extent to which the violation can be blamed on the offender (Section 5:46(2), of the Awb). Application of the principle of proportionality, according to the Fine Policy Rules 2019 It also entails that the AP takes into account the financial situation when determining the fine, if necessary circumstances of the offender.

174. The KNLTB takes the position that a fine is at the expense of all associations and individual members of the KNLTB. The KNLTB has been struggling for years with declining membership numbers and thereby declining income. In view of this and in view of the necessary substantial investments in for example, ICT facilities, the liquidity position of the KNLTB has come under pressure. Although the KNLTB has a positive general reserve, this reserve must be the KNLTB as the minimum necessary resistance to be able to stay comply with the obligations with regard to the personnel and the rental agreement.

40 Parliamentary Papers II 2003/04, 29702, no. 3, p. 134; CBb 7 March 2016, ECLI:NL:CBB:2016:54, r.o. 9.3. and CBb December 1, 2016,
ECLI:NL:CBB:2016:352, r.o. 5.2.

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

175. The AP considers that, according to its annual accounts for 2018, the KNLTB has a healthy liquidity and solvency.⁴¹ The general reserve (equity) amounted to 31 December 2018 €6,356.139.-. At the same time, KNLTB had € 6,057,018 in liquid assets and € 974,982 in receivables (still to be received). The AP sees no reason to assume this that the KNLTB could not bear a fine of € 525,000 in view of its financial position. Yet regardless of whether the general reserve serves as the minimum necessary resistance capacity the general reserve falls within the range of 5 and 8 . even after payment of the fine million euros.⁴²

Conclusion

176. The AP sets the total fine at € 525,000.⁴³

6. Operative part

fine

The AP submits to the KNLTB, due to violation of Article 5, first paragraph, preamble and under b, of the GDPR and Article 5, first paragraph, preamble and under a jo. Article 6, first paragraph, of the GDPR, an administrative fine on at least amount of € 525,000 (in words: five hundred and twenty-five thousand euros).

Yours faithfully,

Authority Personal Data,

w.g.

mr. A. Wolfsen

Chair

⁴¹ Annual Accounts for 2018 of the KNLTB, consulted via [https://www.knlbtb.nl/siteassets/1.-knlbtb.nl/downloads/over-knlbtb/publications/annual statements/6965-knlbtb-annual-report-2018-v11-annual-account.pdf](https://www.knlbtb.nl/siteassets/1.-knlbtb.nl/downloads/over-knlbtb/publications/annual%20statements/6965-knlbtb-annual-report-2018-v11-annual-account.pdf).

42 According to the 2018 annual accounts, the board of directors and the council of members have agreed that the general reserve will be within the bandwidth of EUR 5 and EUR 8 million.

43 The AP will hand over the aforementioned claim to the Central Judicial Collection Agency (CJIB).

42/43

Date

December 20, 2019

Our reference

[CONFIDENTIAL]

Remedies Clause

If you do not agree with this decision, you can return it within six weeks of the date of dispatch of the decide to submit a notice of objection digitally or on paper to the Dutch Data Protection Authority. For the submitting a digital objection, see www.autoriteitpersoonsgegevens.nl, under the heading Make an objection against a decision, at the bottom of the page under the heading Contact with the Dutch Data Protection Authority. It The address for submission on paper is: Dutch Data Protection Authority, PO Box 93374, 2509 AJ Den Haag. Mention 'Awb objection' on the envelope and put 'objection' in the title of your letter.

In your notice of objection, write at least:

- your name and address;
- the date of your notice of objection;
- the reference mentioned in this letter (case number); or attach a copy of this decision;
- the reason(s) why you do not agree with this decision;
- your signature.

43/43