

Litigation Chamber

Decision on the merits 44/2022 of 28 March 2022

File number: DOS-2019-03592

Subject: Complaint for unlawful processing following a request for access on the basis of Article 15

GDPR

The Litigation Chamber of the Data Protection Authority, made up of Mr. Dirk Van

Der Kelen, acting chairman, and Messrs. Frank De Smet and Yves Poullet, members;

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

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

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

data protection), hereinafter "GDPR";

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

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

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

Considering the documents in the file;

made the following decision regarding:

The complainant :

The defendant :

Mr. X, hereinafter "the plaintiff"; and

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Y, represented by Me Erik Valgaeren and Me Jan Joos, lawyers at the bar of

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Brussels, whose office is located at 25, rue de Loos in 1000 Brussels, hereinafter□

"the defendant".□

## I. Facts and procedure□

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1. On June 26, 2019, the complainant filed a complaint with the Data Protection Authority (hereinafter□  
"the DPA") against the defendant. The complainant states in his complaint that on March 29, 2019, he□  
exercised his right of access vis-à-vis the defendant. He states that the request for access concerned the□  
processing of his personal data in the context of the appointment procedure□  
organized by the defendant for the appointment of the members (of the management) of the APD. the□  
complainant clarified that his request was of a general nature, but that it concerned more□  
particularly the report presented to the Conference of Presidents on behalf of the Commission□  
Justice of the defendant in the aforementioned proceedings.□

The complainant specified by e-mail of April 1, 2019 that he had received an acknowledgment of receipt and that he had received□  
April 2019 a second e-mail from the defendant communicating the personal data to him on□  
re. The Complainant states that he put several additional questions to the Respondent by□  
email of May 7, 2019, more specifically concerning the recipients of his personal data□  
personal as well as the presumed inadequacy of this data. The complainant states that he received□  
a response from the Respondent to the above-mentioned questions and remarks by email dated May 27, 2019.□  
The Complainant attaches to its complaint the above-mentioned e-mail exchanges with the Respondent as□  
evidence.□

2. In his complaint, the Complainant alleges the following alleged breaches of the GDPR on the part of the□  
defendant:□

i.□

non-disclosure of information in accordance with Article 13 of the GDPR: the□

complainant considers that he did not receive sufficient information on what happened□

of the data concerned and in particular on the persons with whom they have been

shared;

ii.

the absence of prior information to the complainant in accordance with Article 13 of the GDPR to

about the registration of the motivation of his candidacy;

iii.

the absence of a valid processing basis for registration in accordance with

GDPR article 6.1. The complainant states that this requires in principle the consent

;

iv.

the non-communication of all

the personal data processed.

The complainant states that the deliberations of the Justice Commission as well as the report

to the Commission of Presidents have not been communicated and that it is unlikely that he

there would be no written trace of it;

v.

failure to provide the information referred to in Article 15.1 of the GDPR. The complainant

specifies in this respect that the information relating to what the defendant does globally

personal data has not been communicated; and

vi.

the fact that the processing does not comply with the condition referred to in Article 5.1 c) of the GDPR,

namely the processing of insufficient or inadequate personal data

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to be able to achieve the purpose of the processing (the secret ballot concerning the application

of the complainant).

3. On July 1, 2019, the aforementioned complaint is declared admissible by the Front Line Service

on the basis of article 58 juncto article 60 of the LCA and the complaint is transmitted to the Chamber□

Litigation under article 62, § 1 of the LCA.□

4. On July 23, 2019, the Litigation Chamber decides to suspend the processing of the complaint in□  
awaiting the delivery of the judgment of the Court of Justice of the European Union in the context of the□  
question referred to the Court by the Verwaltungsgericht Wiesbaden (Germany) in□

VQ v. Land Hessen (C-272/19), worded as follows:□

“Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the□

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

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

on data protection - GDPR), in this case article 15, Right of access of the person□

concerned, find application to the Committee of the Parliament of a federated state of a state□

member competent to deal with petitions from citizens, in this case the Committee on□

petitions from the Parliament of Hesse, and should the latter be regarded in this respect as□

a public authority within the meaning of Article 4(7) GDPR?”□

The Litigation Chamber is of the opinion that the answer to this preliminary question is□

relevant for the subsequent examination of the present case, since it also concerns the□

processing of personal data in the context of the work of a committee□

parliamentary.□

5. By letter and e-mail dated July 23, 2019, the Litigation Chamber informed the parties of this□

suspension of the processing of the file, specifying that the most diligent party is free to pay□

the Court's response to the case, in due course.□

6. On July 9, 2020, the Court of Justice delivers its judgment in the aforementioned case C-272/19. In this□

judgment, the Court confirms the applicability of Article 15 of the GDPR to a Committee on Petitions of the□

parliament if and to the extent that it (alone or jointly with others) determines the□

purposes and means of processing, must be considered as "controller"□

within the meaning of Article 4.7 of the GDPR, so that the processing of personal data by□

this commission falls within the scope of the GDPR and more specifically, Article 15

of the GDPR.

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7. On March 11, 2021, the Litigation Chamber forwards the complaint to the Inspection Service pursuant to the articles 63, 2° and 94, 1° of the LCA for in-depth investigation, given that it considers that the documents submitted do not yet allow a decision to be taken pursuant to Article 95 of the ACL.

8. On August 18, 2021, the Inspector General sends his inspection report to the President of the Chamber Litigation, in accordance with Article 91, § 2 of the LCA.

9. On August 27, 2021, the Litigation Chamber decides, pursuant to Article 95, § 1, 1° and Article 98 of the ACL, that the case can be dealt with on the merits.

10. On August 27, 2021, the parties concerned are informed by registered letter of the provisions referred to in Article 95, § 2 as well as in Article 98 of the LCA. The parties concerned are also informed, pursuant to Article 99 of the LCA, of the deadlines for transmitting their conclusions.

11. The deadline for receipt of the Respondent's submissions in response has been set for 22 October 2021, that for the plaintiff's reply submissions of November 12, 2021 and that for the Respondent submissions of the Respondent as of December 3, 2021.

12. On September 15, 2021, the parties are informed that the hearing will take place on December 9 2021.

13. On October 22, 2021, the Litigation Chamber receives the submissions in response from the respondent.

14. On November 12, 2021, the Litigation Chamber receives the submissions in reply from the complainant.

15. On December 2, 2021, the Litigation Chamber receives the submissions in reply from the respondent.

16. On December 9, 2021, the parties are heard by the Litigation Chamber.

17. On December 15, 2021, the minutes of the hearing are submitted to the parties.□

18. On December 20, 2021, the Litigation Chamber receives the defendant's remarks regarding the□  
minutes, which are annexed to the minutes of the above-mentioned hearing and□  
taken up by the Litigation Chamber in its deliberation.□

19. On December 20, 2021, the Litigation Chamber received the complainant's remarks regarding the□  
minutes, which are annexed to the minutes of the above-mentioned hearing and□  
taken up by the Litigation Chamber in its deliberation.□

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## II. Motivation□

### II.1. II.1 Identification of the data controller (article 4.7) of the GDPR)□

20. The Litigation Chamber appoints the data controller for the□  
treatment complained of. In accordance with article 4.7 of the GDPR, it is necessary to consider□  
as controller:□

“the natural or legal person, public authority, agency or other body which, alone or□  
together with others, determine the purposes and means of the processing; when the□  
purposes and means of this processing are determined by Union law or the law of a State□  
member, the controller may be designated or the specific criteria applicable to its□  
designation may be provided for by Union law or by the law of a Member State”.□

21. In this respect, it should be emphasized that in its case-law, the Court of Justice has repeatedly□  
given a broad definition to the concept of "controller", in order to ensure protection□  
effective and complete of the persons concerned. The Court of Justice has also confirmed on several occasions□  
occasions that for the identification of the controller(s) of the processing, an assessment was necessary□  
factual information of the natural person(s) or the legal person(s) who determine(s)□  
"the purposes" and "means" of the processing, the concept being broadly defined with a view to□  
protect those affected.□

22. The complaint lodged by the complainant falls within the framework of the procedure for appointing□

members (of the Board of Directors) of the Data Protection Authority. In accordance with article 39 and following of the LCA, it is Y who is competent for the appointment of the members aforementioned.

23. In its report, the Inspection Service firstly indicates in this respect that on 12 February 2018, a call for candidates was published in the Belgian Official Gazette by Y for the mandates of member of the direction of the Data Protection Authority, in which it was specified that the candidates could submit their candidacy to the Chairman of Y no later than thirty days after the publication of this notice of appeal. The Inspection Service specifies that at the end of the final date for the introduction of applications, a note was drafted by the General Secretariat of Y intended for the Conference of Presidents, including a list of the candidatures submitted but without the candidates' CVs. After agreement of the Conference of Presidents, the Y departments forwarded a copy of the candidates' curriculum vitae to the presidents or secretaries of political factions.

24. It appears from the documents in the file and from the investigation report drawn up by the Inspection Service that the candidates were then heard on January 30, 2019 and February 13, 2019 in the Justice Committee and that on this occasion, each member of this commission received a paper version of the Decision on the merits 44/2022 - 6/33 applications, including resumes and cover letters. The hearing took place at behind closed doors and was followed by oral deliberations for which no report was drawn up.

25. The report of the Inspection Service's investigation indicates in this respect that the current practice used by Y for nominations is as follows:

- “- the documentation of the candidates (letter of motivation and c.v.) is kept, throughout the duration of the reflections and the deliberation, by the presidents or the secretaries of the fractions policies;
- the documentation of the candidates (letter of motivation and c.v.) is not distributed within the fraction, but only made available for consultation within the framework of the

nomination ;

- the documentation of the candidates (letter of motivation and c.v.) is destroyed after the vote”.<sup>1</sup>

all quoted extracts from the inspection report are free translations made by the

General Secretariat of the Data Protection Authority]

The aforementioned procedure was therefore also applied in this case.

26. It appears from the documents in the file and from the report of the investigation of the Inspection Service that the defendant

has taken the initiative for the processing concerned, namely the collection and processing of data to

personal character in the context of the procedure for appointing members (of the management) of

the Data Protection Authority. The defendant determined the purpose and the means of the

processing in question (appeal in the Belgian Monitor, organization of the vote, collection and processing

personal data, privacy statement in the context of appointments,

etc.) within the meaning of Article 4.7 of the GDPR.

27. Based on the foregoing, it must be concluded that the Respondent should be considered as

the data controller for the processing operations in question within the framework of the

selection and that the responsibility therefore falls to him, in accordance with article 5.2 juncto article

24 of the GDPR, to ensure compliance with the principles of the GDPR and to demonstrate this compliance.

<sup>1</sup> Investigation report, p. 7-8.

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II.2. The principles relating to the processing of personal data and the lawfulness of the

processing (Art. 5 and 6 GDPR)

Findings of the Inspection Service

28. In its investigation report, the Inspection Service finds that the defendant allegedly committed

violation of Articles 5.1 a) and 6.1 of the GDPR.

29. More specifically, the Inspection Service first comes to the conclusion that the realization

of audio recordings by the defendant during the hearings of the Justice Commission within the framework

of the processing activity "Appointments and presentations by Y" does not meet the requirement of



necessity included in the aforementioned provisions and as explained by the Court of Justice of the European Union. The Inspection Service declares that the legal basis invoked (art. 6.1 c) of the GDPR) is not in itself in question for the aforementioned processing activity, but that the use of audio recordings does not comply with the concept of "necessity", which would also affect the lawfulness of the processing. The Inspection Service considers that the registration of audio can only be considered "useful" but not "necessary" and contributes only to improve the quality of the martyr text.

30. Secondly, the Inspection Service concludes in its investigation report that the use of the aforementioned audio recordings would not be transparent (referring to in this regard to finding (3). 2

Complaint and conclusions of the complainant

31. The Complainant states in its Complaint and in its Reply submissions that Article 6.1 of the GDPR cannot provide a basis for the audio recording of its explanations made during the hearing before the Justice Commission.

32. Complainant submits that the absence of a valid basis of lawfulness stems from the absence of any information on the legal basis in accordance with Article 13 of the GDPR, since this information would provide proof of the legal basis invoked by the defendant.

2 Investigation report of the Inspection Service, p. 17.

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Respondent's Submissions

33. In its submissions, the Respondent states in relation to this finding that:

1.

the audio recordings that take place during the hearings of the Justice Commission indeed constitute a necessary instrument for the drafting of the martyr texts of these auditions and are used for that purpose only. The defendant draws attention to the fact that a martyr text is a draft text which can still be amended or modified. the

defendant points out that in the use of audio recordings, certain aspects of the hearing could be reported inaccurately or incompletely, which would have an undeniable and irrevocable impact on the guarantee of the quality of parliamentary work, causing the defendant to fail in its mission of public interest.

It specifies that the rapporteur of the hearing must draw up a report, which is delivered in Conference of Presidents. The defendant declares that for the drafting of such a lawsuit-verbal, the rapporteurs can choose to use the martyr text. He specifies that the appeal to this martyr text by the rapporteurs is optional, but if the rapporteur calls for a martyr text, it must indeed be available. The defendant insists on the fact that it is therefore necessary to make an audio recording of each hearing in order to be able to present such a martyr text if the rapporteur so requests.

The defendant further adds that the audio recordings are only made available provision of the services of Y which are responsible for drafting the martyr text. He states that those these are only accessible during the period of the writing of the martyr text by these services and for the time necessary to receive and answer questions from the rapporteur and that at the end of this period, they are deleted.

2.

the processing which is the subject of the first finding concerns (only) the performance audio recording during Justice Commission hearings. The defendant considers that the Inspection Service wrongly declares that the making of the recording could not be considered only as an independent treatment or a partial treatment only "if one communicate clearly on this subject to the data subject" (page 17 of the report inspection). The Respondent asserts that such a finding is erroneous and contrary to the GDPR.

The defendant states that the GDPR does indeed oblige data controllers to inform data subjects about their processing activities (art. 12 to 14 inclusive of the

GDPR), but that the communication of this information does not in any way constitute

the establishment or qualification of a given activity as "processing"

distinct within the meaning of the GDPR. The Respondent adds to this that with regard to the finding

5, the Inspection Service itself seems to be of the opinion that making a registration

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audio constitutes a separate processing activity: "The Inspection Service finds

that in itself, the register of processing activities is incomplete since the processing activity

relating to audio recordings was not provided for" (p. 28 of the inspection report).

3.

correct compliance with the information obligations under Articles 13 and 14 of the GDPR does not

nor does it represent a constitutive condition for the existence of a legal basis for the

processing on the basis of Article 6.1 of the GDPR. He asserts that non-compliance with obligations

information does not as such constitute a violation of Articles 13 and 14 of the GDPR and

has in principle no impact on the lawfulness of the processing on the basis of Article 6.1 of the GDPR.

4. with regard to the purpose of the processing, the making of the audio recording

constitutes an essential related condition for the subsequent processing activity,

know the writing of a martyr text of the hearing using the audio recording. the

defendant declares that the two processing activities jointly pursue the

following purposes: (i) to ensure at all times the quality and integrity of the minutes of

hearings and (ii) ensure at all times the quality and accuracy of parliamentary proceedings

in the appointments. The audio recordings and the martyr texts bring

greater neutrality in the minutes of the rapporteurs and improve

the completeness of the minutes, with a view to preserving

the quality of the work

parliamentarians.

5.

the guarantee of the quality and integrity of the minutes of hearings and proceedings□

parliamentarians in the context of appointments is indisputably part of the mission□

of public interest entrusted to the defendant.□

The Respondent clarifies that for the above reason, in previous letters, he did not□

therefore not only invoked the legal basis of Article 6.1 c) of the GDPR (like the□

implies the Inspection Service) but also the legal basis of Article 6.1 e) of the□

GDPR. The Respondent asserts that the organization of appointments and presentations□

also constitutes a legal obligation incumbent on the defendant, which is not□

contested by the Inspection Service (p. 17 of the inspection report). He adds to this that□

as the organization of appointments and presentations constitutes a legal obligation,□

their correct organization, and therefore the guarantee of the quality of such work, constitutes a□

intrinsic part of this same legal obligation.□

6.□

the constant case law of the Court of Cassation provides that the registration of a□

conversation in which one participates oneself is not illicit, even if it is done without the knowledge of□

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other attendees. The defendant□

refers in this respect in particular to□

:□

▪□

Cas. September 9, 2008, RG P.08.0276.N: "Notwithstanding the protection of□

private communications provided for in these contractual provisions, the sole fact□

to record such a conversation in which one participates oneself, is not□

illicit even if this recording is made without the knowledge of the other participants."□

▪□

Cas. (2nd c.) November 17, 2015, RG P.15.0880.N: "Neither Article 8.1 of the Convention□

[European Court of Human Rights], nor does article 314bis of the Penal Code prohibit

the simple recording of a conversation by a participant in this conversation

without the knowledge of the other participants.”

34. Finally, the Respondent states that the Litigation Chamber of the Data Protection Authority

also makes audio recordings of its hearings, which make it possible to establish a

minutes of the hearing and that there are no specific legal provisions concerning the performance

such audio recordings. The defendant states that he assumes that this treatment is based

also on the legal basis of necessity for a task in the public interest and/or on the basis

legal requirement for the performance of a legal obligation (although there is no legal obligation

specific law for making the actual audio recording).

Assessment by the Litigation Chamber

35. In accordance with the principle of lawfulness set out in Article 5.1 a) of the GDPR read in conjunction with Article

6.1 GDPR, processing of personal data is only lawful if and to the extent

where at least one of the following conditions is met:

a) "the data subject has consented to the processing of his or her personal data for

one or more specific purposes;

b)

processing is necessary for the performance of a contract to which the data subject is

party or the execution of pre-contractual measures taken at the latter's request;

vs)

processing is necessary for compliance with a legal obligation to which the data controller

treatment is submitted;

d)

processing is necessary to protect the vital interests of the data subject

or another natural person;

e)

the processing is necessary for the performance of a task carried out in the public interest or falling

the exercise of official authority vested in the controller;

f)

the processing is necessary for the purposes of the legitimate interests pursued by the data controller

processing or by a third party, unless the interests or freedoms and rights

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fundamentals of the data subject which require data protection to be

personal character, in particular when the data subject is a child."

36. In the present case, the Litigation Division finds that for the disputed processing, the

defendant invokes both Article 6.1 c) of the GDPR and Article 6.1 e) of the GDPR. In his conclusions

in response, the Respondent in effect states the following:

"In his previous letters, the controller therefore not only

invoked the legal basis of Article 6.1 c) of the GDPR (as suggested by the Inspection Service),

but also the legal basis of Article 6.1 e) of the GDPR:

"The purpose of this data processing is the appointment of the members of the bodies of

the Data Protection Authority in accordance with the [LCA]. This data processing is

therefore necessary for compliance with a legal obligation to which the controller

is subject (article 6.1.c) of the GDPR) or at least necessary for the performance of a mission of interest

public authority vested in the data controller (article 6.1.e) of the GDPR). (Part 1) (setting

clean fat).

Furthermore, the organization of appointments and presentations by Y constitutes an obligation

legal, which is not disputed by the Inspection Service (p. 17 of the inspection report). Seen

that the organization of appointments and presentations constitutes a legal obligation, it goes without saying

itself that their correct organization, and therefore the guarantee of the quality of such work, constitutes

also an intrinsic part of that same legal obligation." 3 [Editor's note: the excerpts quoted from

conclusions of the parties are free translations made by the General Secretariat of

Data Protection Authority]□

37. The Litigation Chamber considers that the defendant was not subject to a legal obligation in□  
as such within the meaning of Article 6.1 c) of the GDPR for the disputed processing, namely the□  
audio recordings of the hearings. In this case, the Litigation Chamber nevertheless considers□  
be able to validly invoke the legal basis set out in Article 6.1 e) of the GDPR, according to which the□  
processing is necessary "for the performance of a task in the public interest or in the exercise of□  
the public authority vested in the controller". In relation to the above, the□

Recital 45 of the GDPR and Article 6.3 of the GDPR clarify that processing based on Article 6.1□  
e) GDPR "should have a basis in Union law or in the law of a Member State".□

The GDPR thus excludes a "mission of public interest" or "relating to the exercise of authority□  
public" is entrusted to the data controller by virtue of a contract, even if this contract was□  
concluded□

in□

interest□

audience.□

The Litigation Chamber finds in this respect that the defendant is entrusted with the mission of interest□  
aforementioned public pursuant to articles 39 e.s. of the ACL.□

3 Respondent's submissions, p. 7.□

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38. The Litigation Division considers that it can be accepted that the disputed processing is necessary□  
with a view to guaranteeing the quality and integrity of the minutes of hearings and guaranteeing the quality□  
and the accuracy of parliamentary proceedings in the appointment of Committee members□  
management, the Knowledge Center and the Litigation Chamber of the Authority of□  
Data protection.□

39. The Litigation Chamber emphasizes in this respect that the missions of public interest or falling within□  
the exercise of official authority vested in data controllers is often not□

not based on precisely described legislative obligations or standards. Treatments  
are instead carried out on the basis of a more general authorization to act, as required by the execution  
of the mission. Controllers who wish to invoke Article 6.1 e) of the GDPR on  
the basis of such a legal basis must then themselves carry out a weighting between the  
necessity of the processing for the mission of general interest and the interests of the persons concerned.

40. In its case law - notably in the Huber judgment - the Court of Justice of the European Union  
emphasizes in this respect that the concept of "necessity" within the meaning of Article 6.1 e) of the GDPR must be  
assessed in the light of proportionality and that, in other words, if several alternatives  
exist to achieve the intended purpose, the least intrusive should be chosen.<sup>4</sup>

41. The necessity and proportionality of the measure must therefore be more precisely  
demonstrated with regard to the absence of less intrusive means for the rights and freedoms of  
data subjects through which the intended purposes could also be achieved.

42. In this regard, the Respondent argues that "the making of the audio recording [is] indeed  
necessary in order to ensure at all times, via the successive processing of the drafting of the martyr text,  
the quality and integrity of the minutes of the hearings. In the absence of audio recording (and therefore  
in the absence of a martyr text if the rapporteur so requests), certain aspects of the hearing may  
indeed be reported incompletely or erroneously. This would have an undeniable impact and  
irrevocable on the guarantee of the quality of the work of parliament, which would therefore fail in its mission  
of public interest" 5. The defendant declares that there is no other means of accomplishing  
correct this mission of public interest.

43. The Litigation Division considers that the foregoing has been demonstrated in the present case and does not  
therefore find no violation of Articles 5.1 a) and 6.1 of the GDPR with regard to the  
lawfulness of the disputed processing.

44. The Litigation Chamber emphasizes, however, that the processing must be foreseeable for the  
data subject and in this respect draws attention to the importance of respecting the principle of

<sup>4</sup> CJEU, Huber, C-524/06, ECLI:EU:C:2008:724, par. 59-61.



5 Respondent's submissions, p. 7.□

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transparency and the principle of limitation of storage in the case of audio recordings (see□  
hereinafter Title II.4).□

II.3. Data minimization and adequacy of personal data (Art.□

5.1 c) GDPR)□

Complaint and conclusions of the complainant□

45. According to the complainant, when processing his personal data in the context of the□  
appointment procedure, the respondent violated Articles 5.1 a) and 5.1 c) of the GDPR.□

46. With regard to this last provision, the Complainant alleges a violation of the principle□  
of adequacy referred to in Article 5.1 c) of the GDPR, given that the personal data□  
dealt with would have been inadequate to allow the secret ballot about the candidates to□  
proceeds appropriately.□

Findings of the Inspection Service□

47. In its investigation report, the Inspection Service states that no violation of Articles 5.1 a)□  
and (c) cannot be ascertained.□

Respondent's Submissions□

48. With regard to the Complainant's grievances regarding the Respondent's alleged breach of□  
Article 5.1 a) and c) of the GDPR, the defendant argues that:□

1.□

the DPA is not competent to carry out a concrete assessment of the minimization of□  
given in connection with an appointment procedure carried out by the respondent.□

The defendant declares that he agrees on this point with the position of the Inspection Service in the report□  
of the investigation, where the latter states the following: "with regard to this specific point, the□  
rather [raises] questions about the precise ("quality") requirements of a□  
(concrete) evaluation within the framework of an appointment procedure to which he must□

comply, rather than raise an issue of (non-)compliance with the GDPR. Since this concrete aspect does not fall within the competence of the Authority, the Inspection Service will not elaborate on this point raised." (Inspection report, page 20).

In this regard, the Respondent argues, inter alia, the following in its Reply submissions:

(i) Jurisdiction defined by law

In accordance with article 4, § 1 of the DPA Law, the Data Protection Authority is responsible for monitoring compliance with the fundamental principles of data protection of a personal nature, within the framework of the APD law and laws containing provisions relating to

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to the protection of the processing of personal data. This provision reflects

Article 57 of the GDPR where the tasks of the controllers are taken up and where the control of the application GDPR takes center stage.

The Litigation Chamber is the administrative litigation body of the Protection Authority

data (article 32 of the APD law). Under article 4, § 1 of the APD law, the Chamber

Litigation has only the competence to rule on disputes arising from the application

personal data protection legislation.

Consequently, the Litigation Chamber is not competent to verify the application

correctness of an appointment procedure governed by law. Y points out in this regard that under

of article 14 of the law of January 12, 1973, the Council of State is competent to rule on

appeals for annulment of appointments by legislative assemblies.

As an administrative litigation body, the Litigation Chamber is also bound by

the law that it cannot ignore, nor address preliminary questions on this subject to the Court

constitutional law concerning the legality or the interpretation of the legislation in question.

(ii) Complainant's Claims Regarding Competence

Y observes first of all that the plaintiff states - rightly - the following: "The conclusive is

aware that it is not for the Litigation Chamber to assess the lawfulness or compliance

of the appointment procedure with the provisions of the GDPR. This analysis is incumbent on the power of the court." (p. 7 of the complainant's conclusions)

It is therefore surprising that the complainant then criticizes several points relating to the conduct of the appointment procedure which (i) are in direct contradiction with the above position and (ii) have no connection with alleged data breaches at personal nature and for which the Litigation Chamber is not competent as such. These include, among others, the following allegations:

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"The foregoing raises the question of whether and to what extent members of the various fractions have or obtain knowledge of these data. The responsibility of ensuring that this is the case falls to the services of Y..." (p. 11);

-

"The applicant has no legal remarks concerning this part of the processing of data, but it refers to the chaotic and inefficient organization of language tests in question..." (p. 12);

-

"Unless I am mistaken, no official record of the members who were present at this meeting is published, but such a document must be easily presented by the services of Y." (p. 14)

;

-

"At the hearing on February 13, 2019, not all political factions were represented." (p. 15);

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- If the candidatures are the subject of a deliberation by the Justice Commission, it is advisable to note that the Justice Commission takes the decision itself and therefore proceeds to or influences a vote which, according to Y's rules, is reserved for all individual members

of Y.” (p. 15);

-

"The concluding party observes in this regard that the appointment procedure must not only be transparent towards him as a data subject, but that the aim is that this procedure is transparent for all citizens, as part of the requirement that the procedure must make it possible to guarantee the independence of the members." (p. 17);

-

"It is surprising that during the plenary meeting it was not referred in any way or to any time to special requirements in terms of language, ...". (p. 17);

It is clear that such statements are intended only to question the validity and the correct application of the appointment procedure of article 39 of the APD law as well as its confrontation with the provisions of Articles 51 and 53 of the GDPR. As explained above at several times, and moreover acknowledged by the complainant himself, such verification is not the competence of the Data Protection Authority.

2.

the principle of data minimization refers to the obligation to process only the data of a personal nature that are adequate, relevant and limited to what is necessary for the with regard to the purposes for which they are processed. The defendant refers to the directives of the European Data Protection Board in this respect and asserts that it follows that the concept of data minimization has only a limiting function. It limits the possibility for a controller to process personal data to data that are necessary for the intended purposes. The defendant asserts that neither the provisions of the GDPR, nor do the available guidelines support an interpretation of the principle of minimization of data imposing an obligation to process a minimum number of personal data person to achieve the intended purpose. The Respondent states that this interpretation requires indeed a judgment of opportunity for which the APD is not competent.

The Respondent concludes that the Complainant cannot in any way invoke the principle of minimization of data to assert that the members of Y did not have enough personal data to be able to make an informed decision in the context of the vote.

Assessment by the Litigation Chamber

49. According to Article 5.1.c) of the GDPR, the personal data processed must be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed" ("data minimization").

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50. The Litigation Division first notes on the basis of documents in the file that there is no indication that the complainant's personal data processed by the respondent are excessive or irrelevant in light of the purposes of the processing (i.e. the appointment of members (of the management) of the APD).

51. With regard to the complainant's complaint that the personal data processed would have been inadequate, the Litigation Chamber considers - like the Inspection Service in its investigation report<sup>6</sup> - that it is not for it to carry out a concrete assessment concerning the data which were or were not taken into account by the defendant during the selection and appointment. The Litigation Chamber indicates in this respect that the final selection is made through a vote by members of parliament.

52. The Litigation Chamber considers that this grievance of the complainant concerns rather the way in which the appointment procedure has been carried out and not the (non-) compliance of the data processing with personal nature relating thereto with the provisions of the GDPR.

53. The Litigation Division therefore finds no violation of Article 5.1 c) of the GDPR.

II.4. The obligation of information and transparency (art. 5.1. a), 12.1 and 13 of the GDPR)

Findings of the Inspection Service

54. In its investigation report, the Inspection Service finds that the defendant allegedly committed

violation of the obligation of information and transparency set out in Articles 5.1 a), 12.1 and 13 of the GDPR given that neither the privacy statement of the defendant nor the invitations (of the 30 January and 13 February 2019) at the hearing before the Justice Commission addressed to the complainant included information regarding the audio recording that was made of the hearing aforementioned.

Complaint and conclusions of the complainant

55. In this regard, the Complainant first indicates in its Reply submissions that the Respondent stated that a separate privacy statement relating specifically to appointments and presentations had been taken from the defendant's website in which the information needed were provided.

56. The complainant stated, however, that when he submitted his application, no such statement appeared on the defendant's website. The latter specifies that this is more precisely demonstrated via a check on web.archive.org (using the page containing legal information [...]), from which it would appear that a privacy statement has been added

6 Investigation report, p. 20.

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on the aforementioned page between 27/05/2019 and 12/11/2019.<sup>7</sup> The complainant states that this seems indicate that there was previously no privacy statement on the website. the plaintiff states that it is for the defendant to indicate when which statement was included on the website as well as, where applicable, on which page this addition is located.

57. Secondly, the Complainant asserts that he was not informed in advance of the registration audio made comments as part of his candidacy. He adds that as long as this is a direct collection of personal data by the defendant, it should to apply Article 13 of the GDPR.

58. The Complainant asserts that many other controllers find themselves in a situation similar when applying GDPR for audio recordings. The complainant refers to this

with particular regard to

the practice of

the Litigation Chamber of

ODA which carries out

recordings of the hearing by effectively informing the persons concerned of the existence of

registration and its purpose.

59. The Complainant concludes that the Respondent should be dealt with harshly in this respect, in particular because

of the role of example which is his.

Respondent's Submissions

60. In its Reply and Reply submissions, the Respondent states with respect to the finding

aforementioned that:

1. At the beginning of the entry into force of the GDPR, there was a lack of clarity as to the applicability

from standing orders to parliamentary activities.

The defendant refers in this respect to Article 2.2 a) of the GDPR which provides that the regulation

does not apply to "an activity which falls outside the scope of Union law". the

respondent states that the GDPR itself does not, however, contain any details regarding

the activities of the legislative power (this in contrast to the activities of the judiciary).

The Respondent asserts in this regard that this doubt was also shared by the Chambers

laws of other Member States. He refers in this respect to the Finnish legislator, who indicated

in the law implementing the GDPR that parliamentary activities were excluded from the

material scope of the GDPR.

The defendant further indicates that the imprecision described above led to the sending of a

preliminary question to the Court of Justice (Land Hessen), following which the Court stated that

parliamentary activities also fell within the material scope of the GDPR.

The defendant draws attention to the fact that the imprecision described above caused a

delay in the adoption of certain documents, therefore the privacy statement relating to

7 Exhibit 9 to the complainant's file.□

8 Respondent's Reply Submissions, p. 14-19.□

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appointments. He declares that the aforementioned privacy statement has been published on his□  
website on July 9, 2019 and acknowledges that it was not yet available at the time of□  
the sending of invitations to the audition nor at the time when the audio recordings of the audition□  
aforesaid have been carried out.;□

With regard to the period after July 9, 2019 (publication of the declaration of□  
confidentiality), the Respondent argues the following:□

2.□

Article 13 does not require a separate list of each of the different forms of□  
processing (such as the storage, transfer, consultation, processing, etc. of□  
data, as well as the making of audio recordings which constitute a form of□  
treatment).□

3.□

it did inform the complainant of the purposes and legal basis of the processing activity by□  
question (namely the making of an audio recording). The Respondent reiterates in this regard that□  
the making of the audio recordings aims to be able to make the appointments and□  
presentations in a correct, qualitative and integrated manner.□

He declares that for this purpose of nomination and presentations, a declaration of□  
separate confidentiality was adopted and published on the Respondent's website<sup>9</sup>. He is pointing out that□  
this specific privacy statement therefore applies to the processing activity of□  
audio recordings and describes the processing purpose as follows:□

"These personal data are processed in particular for the purposes□  
following: (...) exercise the constitutional, legal and regulatory powers in□  
matters of designation, appointment, etc."□



61. The Respondent states that this statement also already contained the particulars required by  
GDPR Article 13, such as the legal bases for processing, which are described as follows:  
"Compliance with regulatory obligations (in particular the Rules of Y)" or the legal basis of  
the legal obligation according to article 6.1 (c) of the GDPR and "exercise of powers  
constitutional, legal and regulatory provisions in matters of designation, appointment, etc.", or the  
legal basis for the performance of a task in the public interest in accordance with Article 6.1 (e) of the  
GDPR.

62. Respondent further argues that Article 13 of the GDPR does not require disclosure of  
categories of personal data to the data subject. He emphasizes that it is beautiful

9 Exhibit 2 of the defendant's set of exhibits.

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and although required under Article 14 of the GDPR, where the personal data is not  
not obtained directly from the person concerned and that the latter therefore did not  
knowledge of the personal data that are processed about him (directives in  
transparency within the meaning of Regulation (EU) 2016/679, "Article 29" Working Party).  
"This information is required in an article 14 scenario because the character data  
personal are not obtained from the data subject who is therefore not  
sufficiently aware of the categories of personal data that the controller  
treatment has obtained." (p. 37)

63. The Respondent indicates that in this case the data was collected from the person  
concerned itself, using a microphone (i.e. a data collection device), which  
implies that Article 13 of the GDPR would apply and not Article 14 of the GDPR:  
"(...) Article 13 applies to the scenario where the data is collected from the person  
concerned.  
That  
understand

them□

data□

at□

temper□

personal□

:□

- that a data subject deliberately provides to a controller (e.g. by□

completing an online form); Where□

- which are collected by a data controller from a data subject through□

to a record (e.g. using automated data collection devices or□

data collection software such as cameras, network equipment, wifi tracking,□

RFID (identification using radio waves) or other types of sensors).”□

64. Respondent submits that neither Article 13 nor Article 14 of the GDPR further specifies the degree of□

specificity in which the mandatory information elements must be communicated. He□

declares that it therefore seems sufficient to provide information on the actual purpose (i.e. the realization□

appointments and presentations by Y), without having to communicate specifically in this□

context all the "sub-purposes" (such as guaranteeing the quality and integrity of the□

procedure for arriving at these nominations and presentations).□

65. Respondent clarifies that the confidentiality statement relating to appointments and appointments□

presentations by Y describes the categories of personal data processed as follows:□

"For the purpose of processing the application, the categories of personal data processed□

by Y and the General Secretariat include the following:□

- Identification data (for example, surname, first name, quality, activity carried out);□

- Contact data (e.g. address, e-mail address, telephone number);□

- The data transmitted in your application and during a possible hearing;□

- Data transmitted by third parties (SELOR,□

institutions organizing exams□

languages, etc.) in the processing of the application."□

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66. The Respondent adds to this that the candidates communicate themselves, among other things, their□

curriculum vitae, their identification data and their contact details and that the latter□

also communicate the personal data themselves during a□

possible hearing during the appointment procedure. The defendant considers that□

this also includes personal data processed in the context of registrations□

sound.□

67. Finally, the Respondent states that it is ready to adapt its current privacy statement as well as□

invitations to auditions. He attaches an amended privacy statement and clarifies that the□

aforementioned statement is now available on its website.□

Assessment by the Litigation Chamber□

68. Pursuant to Article 5.1, a) of the GDPR, personal data must be "processed□

in a lawful, fair and transparent manner with regard to the data subject ("lawfulness, fairness,□

transparency)").□

69. Articles 13 and 14 of the GDPR contain the information to be provided to data subjects at□

about the processing of personal data.□

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70. The Article 29 Working Party Transparency Guidelines<sup>10</sup> specify in this regard□

regard :□

"Articles 13 and 14 set out the information to be provided to data subjects upon□

beginning phase of the treatment cycle. Article 13 applies to the case□

in which the data is collected from the data subject. This includes the□

personal data:□

- that a data subject knowingly provides to a data controller (for example□

example when filling out an online form); Where ☐

- that a data controller collects from a data subject by ☐

observation (e.g. using automatic data capture devices ☐

or data capture software such as cameras, network equipment, ☐

a Wi-Fi tracking system, RFID or other types of sensors). ☐

71. Given that in this case the personal data was collected via ☐

an automatic data capture device (i.e. audio recordings using a ☐

recorder), Article 13 of the GDPR applies to the disputed processing. ☐

72. Articles 13.1 and 13.2 of the GDPR provide the following: ☐

"When personal data relating to a data subject is collected ☐

with this person, the data controller provides him, at the time when the data in question ☐

question are obtained, all of the following information: ☐

a) the identity and contact details of the controller and, where applicable, of the representative ☐

the controller; ☐

b) where applicable, the contact details of the data protection officer; ☐

c) the purposes of the processing for which the personal data are intended as well as ☐

the legal basis for the processing; ☐

d) where the processing is based on Article 6(1)(f), the legitimate interests ☐

sued by the controller or by a third party; ☐

e) the recipients or categories of recipients of the personal data, if they ☐

exist; and ☐

f) where applicable, the fact that the data controller intends to carry out a transfer of ☐

personal data to a third country or to an international organisation, and ☐

the existence or absence of an adequacy decision issued by the Commission or, in the case ☐

transfers referred to in Article 46 or 47, or in the second subparagraph of Article 49(1), the ☐

reference to the appropriate or adapted safeguards and the means of obtaining a copy or ☐

where they were made available.□

10 Article 29 Data Protection Working Party, Guidelines on Transparency within the meaning of Regulation (EU)□  
2016/679, 11 April 2018, p. 17, item 26.□

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2. In addition to the information referred to in paragraph 1, the controller shall provide the□  
data subject, at the time the personal data is obtained, the□  
following additional information that is necessary to ensure processing□  
fair and transparent:□

a) the retention period of the personal data or, where this is not possible,□

the criteria used to determine this duration;□

b) the existence of the right to request from the controller access to the data to□

personal character, rectification or erasure thereof, or limitation of processing□

relating to the data subject, or the right to object to processing and the right to portability□

Datas ;□

c) where the processing is based on point (a) of Article 6(1) or on Article 9,□

paragraph 2(a), the existence of the right to withdraw consent at any time, without□

undermine the lawfulness of processing based on consent made before the withdrawal of□

this one ;□

d) the right to lodge a complaint with a supervisory authority;□

(e) information on whether the requirement to provide personal data□

personnel is of a regulatory or contractual nature or if it conditions the conclusion of a□

contract and whether the data subject is obliged to provide the personal data, as well as□

only on the possible consequences of the non-provision of these data;□

f) the existence of automated decision-making, including profiling, referred to in Article 22,□

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

underlying data, as well as the significance and anticipated consequences of such processing for the□

concerned person".□

73. The Litigation Division recognizes that, as raised by the defendant, the provisions□  
above do not determine the degree of specificity in which the information elements□  
mandatory must be communicated to the persons concerned and that these provisions do not□  
nor require that each of the forms of processing and/or categories of data to be□  
personal character be mentioned.□

74. It should however be emphasized that in accordance with the principle of transparency set out in Article□  
5.1 a) of the GDPR, read together with recital 60 of the GDPR, a data subject must□  
to be informed of the existence of the processing operation and its purposes no later than the time□  
obtaining personal data.11 Recital 39 further clarifies□

general that "The fact that personal data relating to natural persons□  
are collected, used, accessed or otherwise processed and the extent to which these□

11 Recital 60 GDPR.□

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data is or will be processed should be transparent to natural persons□  
concerned. (...)".□

75. It is established on the basis of the documents in the file that this was not the case in the present case. It comes out in□  
effect that the plaintiff was not informed either via the defendant's privacy statement or via□  
the invitation to the audition or via any other means by the very fact that the auditions concerned□  
would be recorded. This is also acknowledged by the Respondent in its□  
conclusions in reply and in reply, in which he declares that - in particular given the vagueness□  
which initially reigned concerning the applicability of the GDPR to the legislative chambers - the□  
privacy statement relating to the processing of personal data in the□  
framework of the appointment procedures was not published on the Respondent's website until 9 July□  
2019. Therefore, the privacy statement was not yet available at the time of□  
the sending of the invitation to the hearing of January 14, 2019 to the complainant, nor at the time of carrying out the□

audio recordings of the hearings concerned (January 30 and February 13, 2019).<sup>12</sup> The invitation  
didn't include any information about it either.

76. Consequently, the Litigation Chamber considers that a violation of Article 5.1 a) of the GDPR  
(principle of transparency) has been committed. The Litigation Chamber formulates a reprimand for  
the aforementioned violation.

77. The Litigation Chamber finds on the basis of the documents transmitted by the defendant that the  
privacy statement as well as the invitation to the hearings have meanwhile been amended and  
that they now clearly mention the audio recording.<sup>13</sup> The Litigation Chamber  
draws attention to the fact that data subjects should also be informed of the  
possibility to object to the processing in question by means of audio recordings (see Art. 21  
GDPR).

## II.5. The right of access (Art. 12 and 15 GDPR)

### Findings of the Inspection Service

78. In its investigation report, the Inspection Service notes that in response to the request for access  
of the plaintiff of March 29, 2019, the defendant did not provide him with all the information  
listed in Article 15.1 of the GDPR within the period of one month prescribed by Article 12.3 of the GDPR.

79. More specifically, the Inspection Service finds that the Respondent did not inform the Complainant  
time regarding the (categories of) recipients to whom the personal data has been

<sup>12</sup> Respondent's Reply Submissions, p. 15.

<sup>13</sup> Exhibits 3 and 4 of the Respondent's Reply Brief.

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provided (Art. 15.1 c) GDPR and the retention period of personal data or  
the criteria for determining this duration (Art. 15.1 d) of the GDPR).

80. However, the Inspection Service specifies in its investigation report that the defendant  
nevertheless transmitted the information concerning the recipients of the personal data  
personnel to the complainant after his second request of 7 May 2019.

81. Based on the foregoing, the Inspection Service finds, in summary, that the Respondent violated articles 15.1 c) and d) of the GDPR but that the latter has rectified the first violation before the transmission of the inspection report to the Litigation Chamber by the Inspection Service.

Complaint and conclusions of the complainant

82. In his complaint and rejoinder submissions, the Complainant states that the information referred to in Article 15.1 of the GDPR were not fully provided to it by the Respondent in response to its request access. The complainant refers in this respect to the deliberations of the Justice Commission as well as to the report to the Commission from the Presidents about which the complainant states that he is unlikely that there is no written record of it.

Respondent's Submissions

83. In its submissions, the Respondent indicates that in light of the wording of Article 15.1 of the GDPR, it is up to the complainant himself to specify the exact purpose of his request for access. Defendant states that it can be inferred from Plaintiff's original request (dated March 29 2019) that the exercise of his right of access aims to obtain the personal data processed about him in the appointment process. The defendant argues that, by therefore, it can in no way be considered unreasonable to have only responded to this specific request in its first response and not to have immediately communicated the other information relating to the characteristics of the processing, set out in GDPR Article 15.1 (such as retention periods). The Respondent therefore declares - through its response of April 25, 2019 - having responded within the legal deadline of one month (as set out in Article 12.3 of the GDPR) to the complainant's request for access.

Assessment by the Litigation Chamber

84. In accordance with Article 15.1 of the GDPR, the data subject has the right to obtain confirmation that personal data relating to him are or are not being processed and, when are, access to said personal data as well as the following information: has)



the purposes of the processing;□

b) The categories of personal data concerned;□

vs)□

the recipients or categories of recipients to whom the personal data have been□

been or will be communicated, in particular recipients who are established in third countries□

or international organizations;□

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d)□

where possible, the envisaged retention period of the personal data□

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

e)□

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

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

relating to the data subject, or the right to object to such processing;□

f)□

the right to lodge a complaint with a supervisory authority;□

g)□

when the personal data is not collected from the person□

concerned, any information available as to their source;□

h)□

the existence of automated decision-making, including profiling, referred to in Article 22,□

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

underlying data, as well as the significance and anticipated consequences of such processing for the□

concerned person.□

85. In accordance with Article 12.3 of the GDPR, the controller "provides to the person□

concerned information on the measures taken following a request made in□

application of Articles 15 to 22, as soon as possible and in any event within one□  
months from the receipt of the request". The aforementioned provision specifies that, if necessary, this□  
deadline can be extended by 2 months, taking into account the complexity and the number of requests.□

86. According to the documents in the file, the Complainant sent an access request to the Respondent by e-mail□  
dated March 29, 2019. The complainant formulated the subject of his request for access as follows:□

"As part of my candidacy for a position as a member of the Management Committee of□  
the Data Protection Authority, my personal data has been processed by□  
the services of Y as well as by Selor.□

By this e-mail, I wish to exercise my right of access and request that, as prescribed□  
by Article 15 of the GDPR, you provide me with a copy of the data concerning me which has been□  
and are processed by y. My request relates to all the data, but above all aims to□  
take note of the mentions and therefore of the data concerning my person, in the□  
report that Mrs Onkelinx sent on behalf of the Justice Commission to the Conference of□  
Chairman on March 20, 2019, as reflected in the full minutes of the Y meeting of the 28□  
March 2019. For your information, know that I only request access to the data me□  
concerning, so that no further data has to be provided to me. (...)"□

87. By email of April 25, 2019 - i.e. within one month - the defendant responded to the request□  
the aforementioned access of the complainant as follows:□

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"Following your request of March 29 to obtain a copy of the personal data□  
personal information about you that has been processed by Y in the context of your application□  
with the Data Protection Authority, on the basis of article 15.3 of the□  
Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 relating□  
to the protection of natural persons with regard to the processing of personal data□  
personal character and on the free movement of such data, and repealing Directive□  
95/46/EC (General Data Protection Regulation) (hereinafter GDPR), you□

Attached is a copy:□

1. your initial application;□

2. personal data processed by the General Secretariat, namely:□

- the documents that were necessary to process your applications. They are□

limited to personal data concerning you. In accordance with your□

request and in Article 15.4 of the GDPR, the personal data concerning the□

other candidates were removed;□

- the e-mails exchanged with the General Secretariat;□

3. personal data processed by the commission department in the context of□

framework of the hearing before the Justice Committee, namely:□

- the e-mails exchanged with the commission department;□

- the audio recordings of your hearing.□

Due to the size of the files, the aforementioned documents and records will be□

sent in multiple emails.□

In addition, personal data concerning you is processed within the□

following printed materials:□

- Appointment of members of the Data Protection Authority, DOC 54 3676/001:□

link;□

- Verbatim Report, Plenary Session, Thursday 28-03-2019, Evening, CRIV 54 PLEN 278:□

link;□

- Summary record, Plenary session, Thursday 28-03-2019, Evening, CRIV 54 PLEN 278:□

link;□

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- Verbatim Report, Plenary Session, Thursday 04-04-2019, Evening, CRIV 54 PLEN 281:□

link;□

- Summary record, Plenary session, Thursday 04-04-2019, Evening, CRIV 54 PLEN 281:□

link.□

Mrs Onkelinx's report to the Conference of Presidents of 20 March 2019 was□

delivered orally. The Conference meets behind closed doors. Conference meetings□

are not recorded on tape. In the minutes of the March 20 Conference□

2019, no personal data concerning you is processed.□

I draw your attention to the fact that you can file a complaint with□

the Data Protection Authority (rue de la Presse 35 in 1000 Brussels, Tel. +32 (0)2□

274 48 00, e-mail [contact@apd-gba.be](mailto:contact@apd-gba.be)) and that you have the right to lodge an appeal□

jurisdictional."□

88. By e-mail of May 7, 2019, the Complainant replied to the Respondent that he considered that he had received no response□

completes its request for access and declares, among other things, the following:□

"(...) At no time was I given all the information as required by the□

Articles 13 and/or 14 of the GDPR. This particularly applies to the recipients of the information.□

This immediately leads me to an additional request, which is to tell me who the□

recipients of personal data concerning me. This concerns in particular the□

internal recipients, i.e. recipients within Y, but also potential recipients□

external parties, such as, where appropriate, political parties. This information must moreover□

principle also be provided as part of a response to a request for access, such as the□

provides for Article 15 of the GDPR, which was not the case here. (...)"□

89. On May 27, 2019, the Respondent replies to the aforementioned email from the Complainant and communicates to him the□

(categories of) beneficiaries.□

90. The Litigation Division draws attention to the fact that the right of access set out in Article 15 of the□

GDPR has three "layers" of information, namely:□

1.□

confirmation from the controller that personal data□

concerning the data subject are (or are not) processed;□

details relating to the processing, as listed in Article 15.1 of the GDPR; and

access to the personal data concerned.<sup>14</sup>

2.

3.

<sup>14</sup>ZANFIR-FORTUNA, G., “Article 15. Right of access by the data subject” in KUNER, C., BYGRAVE, L.A. and DOCKSEY, C., *General Data Protection Regulation (GDPR). A commentary*, Oxford University Press, Oxford, p. 464; EDPB, Guidelines 01/2022 on data subject rights - right of access, 18 January 2022 (public consultation).

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91. When receiving a general access request from a data subject, the data controller

processing must provide each of the above layers of information<sup>15</sup> and must communicate

- within the time limits determined for this purpose in Article 12.3 of the GDPR - all the information listed in Article 15.1 of the GDPR to the data subject.

92. It emerges from the wording of the complainant's request (see above) that in the present case, it is a

general request, but that it concerns in particular the report presented to the Conference of

Chairpersons on behalf of the Justice Commission as part of the appointment procedure. In his

submissions in reply, the complainant specified that the part of his complaint concerning the right of access

is divided into two sub-complaints.

93. First of all, the complainant points out that all the personal data processed did not

not been communicated. Specifically, he finds it unlikely that there is no written record of the

aforementioned report presented to the Conference of Presidents and wishes to have access to its

personal data processed in this context.

94. With regard to this point, the Inspection Service notes in its investigation report

that no personal data of candidates - and therefore of the complainant - appears

in the extract from the Conference of Presidents of March 20, 2019 with the oral report by the

rapporteur of the hearings with the candidates in the Justice Committee and that consequently, no

access shall only be granted by the Respondent to the aforementioned record in connection with

GDPR Article 15.16

95. On the basis of the analysis of the documents in the file, the Litigation Division agrees with the point of view of the Inspection Service.

96. Second, the Complainant states in its Complaint and Reply Submissions that the defendant did not provide him with all the information listed in Article 15.1 of the GDPR. The service of Inspection notes in this regard in its investigation report that the defendant did not in fact provide no information to the complainant - within one month of his request - concerning the (categories of) recipients (Art. 15.1 c) of the GDPR) and the retention periods (Art. 15.1 d) of the GDPR).<sup>17</sup>

97. The Respondent argues in this regard in its submissions in response that it is incumbent on the person concerned to specify the exact purpose of his request for access and declares that the (initial) request of the complainant did not make it possible to deduce that it concerned all the items of information included in GDPR article 15.1.

15 Ibid.

16 Cf. investigation report of the Inspection Service, p. 24.

17 See investigation report of the Inspection Service, p. 25-27.

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98. The Litigation Division nevertheless points out that, in accordance with recital 63 in fine of the GDPR, the controller may, where appropriate, for example if processing a large amount of data relating to the person concerned, ask the latter to specify, before providing the information, on which data or which processing operations his request concerns<sup>18</sup>. In this case, however, the Respondent did not request such additional clarification.

99. In accordance with Article 12.2 of the GDPR, the controller must facilitate the exercise of rights of the data subject and therefore cannot be based on the wording of the request of the complainant for not responding appropriately, timely or fully.

100. This is also confirmed by the EDPB in its recent guidelines on the rights of

data subjects (and in particular the right of access), in which it emphasizes the application

broad of Article 15.1 of the GDPR and states: "In addition to the access to the personal data

themselves, the controller has to provide information on the processing and on data subject rights

according to Art. 15(1) (a) to (h) and 15(2) GDPR"<sup>19</sup> and "Unless explicitly requested otherwise by the

data subject, a request to exercise the right of access shall be understood in general terms,

encompassing all personal data concerning the data subject".<sup>20</sup>

101. The EDPB stresses in this respect that the majority of the information items listed in Article 15.1 a)

to h) inclusive of the GDPR must indeed already be included in general form in the declaration of

confidentiality and/or record of processing activities of the data controller, which

allows in principle to use (reuse) this information and to supplement it and/or

specify in response to the concrete request of the data subject.<sup>21</sup> The EDPB refers between

others to the categories of recipients as an example of an item of information listed in Article

15.1 which should, where appropriate, be specified for any individual access request.

102. The Litigation Division finds on the basis of the foregoing that in this case, the defendant has

not fully satisfied with the aforementioned obligation within the period of one month prescribed by Article

12.3 GDPR with regard to (categories of) recipients (Art. 15.1 c) GDPR) and deadlines

(Art. 15.1 d) GDPR) and has therefore committed a violation of Article 12

18 Recital 63 of the GDPR (last sentence): "When the controller processes a large amount of personal data

relating to the person concerned, he should be able to ask the latter to specify, before providing him with the information, on

which data or which processing operations his request relates to".

19 EDPB, Guidelines 01/2022 on data subject rights - right of access, 18 January 2022 (public consultation), n° 110 (p.35).

Free translation: In addition to access to the personal data themselves, the controller must also

provide information on the processing and the rights of the data subject, in accordance with Article 15, paragraph

1 lit. a) to h) inclusive, and Art. 15 para. 2 GDPR.

20 Ibid., No. 35 (p. 15). Free translation: Unless explicitly requested otherwise by the data subject, a request to exercise

right of access should be understood in general terms and encompasses all personal data relating to the

concerned person.□

The Litigation Chamber specifies however that the publication of the aforementioned guidelines (for public consultation)□  
is subsequent to the hearing in this case.□

21 Ibid., n° 110 e.s. (pp. 35-36).□

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juncto article 15.1 of the GDPR. The Litigation Chamber decides to impose a reprimand for the□  
aforementioned violation.□

103. The Litigation Division takes note of the fact that in its submissions in reply, the plaintiff□  
requests that an additional investigation be requested from the Inspection Service and formulates to this end□  
several questions :□

"For an objective treatment of this complaint, it was appropriate to verify in particular the following:□

- which members of the Justice Committee were present at the hearing of 13 February 2019□
- whether the Justice Committee deliberated on the hearing of February 13, 2019□
- whether the hearing of February 13, 2019 was the subject of a report and if so, what□  
data this report contains□
- whether data relating to the hearing of February 13, 2019 has been provided to all members of Y□
- if all the members of Y have been able to read all the data relating to ...□
- if during the vote in plenary session, account was taken of the language requirements specific to the□  
functions□
- if the ballot paper given to the members of Y included other□  
data as the job description of the candidates□
- the date on which Y's privacy statement regarding presentations and□  
appointments has been published on the website□

In these conclusions, the complainant requests that the Litigation Chamber instruct the□  
Inspection Service to further consider the above points. It is therefore not possible to set□  
this question earlier."□



104. The Litigation Division points out that a response has already been given to several of these questions of the complainant<sup>22</sup> and considers that the other questions concern rather the methods of organization of the appointment procedure and not the (non-)compliance of the processing of personal data related personnel with the provisions of the GDPR (see also above).

105. With regard to the complainant's above claim, it should also be pointed out that in accordance with Article 94 of the LCA, it is solely up to the Litigation Chamber to judge whether or not to request a further investigation and that the LCA does not provide no possibility for the parties to make such a request. In addition, the Chamber Litigation draws attention to the fact that the time limit provided for this purpose in Article 96 of the LCA is elapsed. The Litigation Chamber therefore does not accede to the aforementioned request of the complainant.

<sup>22</sup> With regard to questions 3, 4, 5 and 8; see respectively Title II.5 (a.o. Nos. 90 and 95) and Title II.4 (a.o. Nos. 61, 68 and 76) of this decision.

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II.6. Register of processing activities (Article 30 of the GDPR)

Findings of the Inspection Service

106. In its investigation report, the Inspection Service notes that the register of the activities of defendant's treatment is incomplete, since it does not mention the relative treatment activity to audio recordings.<sup>23</sup>

Respondent's Submissions

107. In its Reply and Reply submissions, the Respondent states with respect to the above finding of the Inspection Service that Article 30.1 of the GDPR does not impose any concrete obligation concerning the level of detail of the descriptions, nor concerning the level of detail for the mention of the different processing activities.

108. The defendant points out that it had already informed the Inspection Service, through its delegate at the data protection in its letter of April 9, 2021, that the making of recordings

audio had not been listed as a separate processing activity in the register but that the defendant had indicated in his register the general purpose "appointments and presentations for public institutions". The defendant reiterates that the specific processing activity of the realization of audio recordings also falls under this purpose. The defendant states that one cannot conclude to a violation, since Article 30 of the GDPR and the available guidelines do not provide for no specific level of detail.

109. The Respondent adds that following the inspection investigation, he took the initiative to resume the making audio recordings as a separate processing activity in its registry.

The defendant adds the adapted version of the register of processing activities and integrates an excerpted in its conclusions.

#### Assessment by the Litigation Chamber

110. Pursuant to Article 30.1 of the GDPR, each data controller - or where applicable his representative - keeps a record of the processing activities carried out under his responsibility. This register must include the following information:

"(a) the name and contact details of the controller and, where applicable, of the controller's spouse of the processing, the representative of the controller and the data protection officer

Datas ;

b) the purposes of the processing;

c) a description of the categories of data subjects and the categories of data to be processed of a personal character;

23 Investigation report of the Inspection Service, p. 28.

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d) the categories of recipients to whom the personal data have been or will be communicated, including recipients in third countries or international organizations ;

e) where applicable, transfers of personal data to a third country or to a

international organisation, including the identification of this third country or this organization□

international community and, in the case of transfers referred to in the second subparagraph of Article 49(1), the□  
documents attesting to the existence of appropriate safeguards;□

f) as far as possible, the deadlines provided for the erasure of the different categories of□  
data ;□

g) as far as possible, a general description of the technical security measures and□  
organizational arrangements referred to in Article 32(1)."

111. Article 30.3 of the GDPR specifies that the aforementioned register must be in a form□  
written, including electronic form.□

112. The Litigation Chamber finds, on the basis of the documents in the file, that at the time of the complaint□  
of the complainant, the record of processing activities did not contain any specific fields□  
mentioning the processing activity relating to audio recordings of candidates' auditions□  
in appointment procedures.□

113. The Litigation Division recognizes, as emphasized by the defendant, that the GDPR does not contain□  
no specific requirement concerning the level of detail of the information required. It suits□  
however, to point out that in accordance with Article 30.1 c) of the GDPR, the register of the person responsible for the□  
processing must include the categories of personal data. The realization□  
of audio recordings must therefore be mentioned in the register as□  
separate category of personal data.□

114. The Litigation Chamber emphasizes that the register of processing activities constitutes a□  
essential instrument within the framework of the responsibility of data controllers, which occupies□  
a central place in the GDPR.□

115. For the reasons set out above, the Litigation Chamber considers that the register of activities□  
of the defendant's treatment was incomplete at the time of the treatment and that a breach of Article□  
30.1 of the GDPR has therefore been committed. The Litigation Chamber formulates a reprimand for the□  
aforementioned violation.□

116. The Litigation Division notes, however, that the defendant has in the meantime adapted its register

processing activities and took over the audio recordings there as a separate processing.

Publication of the decision

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

Litigation, this decision is published on the website of the Authority for the protection of

data. However, it is not necessary for this purpose that the identification data of the parties

are communicated directly.

FOR THESE REASONS,

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

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pursuant to Article 58.2 b) of the GDPR and Article 100, §1, 5° of the LCA, to impose on the defendant

a reprimand for violation of Articles 5.1 a), 12 juncto 15.1 GDPR and 30 GDPR.

Pursuant to Article 108, § 1 of the LCA, this decision may be appealed to the

Court of Markets within thirty days of its notification, with the Authority of

data protection as defendant.

(Sr.) Dirk Van der Kelen

President of the Litigation Chamber f.f.