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Litigation Chamber

Decision on the merits 15/2020 of 15 April 2020

File number: DOS-2018-04725

Subject: Complaint relating to the processing by a municipality of personal data

of tenants by means of the tax declaration

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

Hijmans, chairman, and Messrs. Dirk Van Der Kelen and Jelle Stassijns, members;

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

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

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

data protection) (hereinafter the "GDPR");

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

ACL;

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;

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made the following decision regarding:

• Mr. X, hereinafter: the "complainant"

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The City of Y, hereinafter: the "defendant"

1. Facts and procedure

Facts

1. On August 30, 2018, the complainant filed a complaint with the Data Protection Authority.

2. The complaint can be summarized as follows. As part of the tax declaration for residences

secondary, the tax authorities of the defendant claimed from the lessor (the owner)

several personal data of the tenant of the accommodation or the accommodation unit via

the tax declaration for secondary residences. These personal data are not

therefore not obtained directly from the person concerned, in this case the tenant. He

these are personal data which, on the basis of the tax declaration, are relevant

for obtaining a tax reduction by the owner when establishing the rate

tax on secondary residences located in the territory of the defendant.

The defendant is a Flemish municipal institution. According to the complainant, who must complete

the tax declaration in question as owner and lessor and must transmit the

personal data of its tenants, this processing of personal data

constitutes a violation of the GDPR.

3. According to the complainant, questions relating to the tenant's personal data

concern the "private life of the tenant student, which are not relevant in the relationship

student-lessor which has been contractually defined". The complainant qualifies the questions of the

defendant of "bad governance" because, according to him, they give rise to unlawful processing.

The complainant asks the Data Protection Authority to take "measures

correctors" with respect to the defendant.

4. The complainant also attaches to his complaint addressed to the Data Protection Authority the

declaration form for the tax on second homes, which requires the lessor to pay the

following personal data of the tenant:

•

• an emergency number linked to the tenant;

• a registration certificate indicating that the tenant is registered for day courses in

the surname and first name of the tenant;

•

•

full-time education on January 1 of the tax year;

if applicable, a copy of the study allowance indicating that the scholarship allowance

for the student tenant exceeds 200 EUR;

where applicable, a declaration of arrival for cross-border students, called "appendix 33".

5. The complaint was declared admissible on September 20, 2018. The admissibility was brought to the

knowledge of the complainant by mail that same day.

6. In its meeting of October 3, 2018, the Litigation Chamber notes that no decision can be

still be made pursuant to section 95 of the LCA. Pursuant to Articles 63, 2° and 94,

1° of the LCA, the Litigation Chamber requests an investigation from the Inspection Service. This

request is sent to the Inspector General on October 5, 2018.

7. On 7 June 2019, the Inspection Service sends a letter by e-mail to the secretariat of the

defendant and to the e-mail address "GDPR@[defender].be". These two accounts are managed by

the defendant's administration as controller. In his letter, the

Inspection Service clarifies the following, after referring to the content of the complaint:

"Please provide the Inspection Service by return mail and at the latest in the month following

following the date of this letter the following information as well as the related documents

(see articles 5, 6, 30, 37 and 38 of the GDPR):

1. a copy of the [defendant's] liability documents,

in accordance with Article 5 of the GDPR, and of legal basis, in accordance with Article 6 of the

GDPR, for the processing of personal data of tenants which must be

communicated to [the defendant] via its declaration form for the tax on

secondary residences for the 2018 tax year;

2. a copy of the [respondent's] data protection officer notices,

in accordance with Articles 38 and 39 of the GDPR, regarding its declaration form

for the tax on second homes for the 2018 tax year;

3. an extract from the register of the processing activities of the [defendant], in accordance with

Article 30 of the GDPR with regard to processing activities relating to its tax on

secondary residences for the 2018 tax year."*

8. On July 1, 2019, the defendant sends a letter by e-mail to the Inspection Service.

This letter explains the context of the processing. The defendant deducts, for its financing

general, a tax on second homes, for which the municipal council has approved

tax settlement. If the owner can prove that the secondary residence is occupied by

a student, this amount is reduced. An additional reduction is granted to the owner

whose secondary residence is occupied by a student who is entitled, during the financial year

tax, to a study grant of more than 200 EUR. The complaint of personal data

personnel is therefore part of the establishment of the municipal tax rate.

9. The defendant also mentions that "in order to combat (tax) fraud, it is necessary

so that the students can be identified." The defendant further asserts in the letter that he

is necessary, for reasons of public security ("security reasons"), to collect the data

personal nature of the tenants. The collection of the emergency number of a person that we

can reach when the tenant is involved in an emergency (ICE number) constitutes

here in particular an additional requirement for the aforementioned tax declaration. The defendant

specify this as follows:

"In an emergency, you can quickly and easily establish a list of students

likely to be affected. The [defendant] sought the opinion of the Commission in this respect

of the Protection of Privacy on May 2, 20161."

10. In response to the Respondent's letter and annexes of July 1, 2019, the Inspection Service

sent an email letter to the defendant on July 3, 2019 requesting documents

and additional explanations regarding the collection of personal data via the

declaration form for tax on second homes. The Inspection Service

more specifically expected:

1 Hereafter: OPC.

* All quotes in this decision have been freely translated by the Secretariat of the Protection Authority

data, in the absence of an official translation.

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"a. a concrete explanation by [the defendant], supported by documents, concerning the

decisions and measures that have been taken by [the defendant] since May 24, 2016, i.e.

say the date of entry into force of the GDPR, in order to ensure that the processing of data to

personal character of tenants via their declaration form for the tax on

secondary residences for the 2018 tax year is done in accordance with the GDPR and

the relevant national legislation.

b. an explanation from [the defendant] indicating concretely how its

declaration form for tax on second homes for the financial year

tax 2018 takes into account the extract from the register of the minutes of the board

municipal […]

vs. a copy of the decisions of [the defendant] and of the opinions of the data protection officer

[the defendant's] data regarding the recording of student data for

security reasons […]

11. In addition, the Inspection Service asks several additional questions as to the way

whose data processing register is completed. The Inspection Service requests

details of the categories of data subjects, establishment of the retention period,

the recipient of the personal data and the security measures. The service

of Inspection also requests justification for the absence of the name and contact details of the

data protection officer in the data processing register.

12. Finally, the Inspection Service requests the following documentation concerning the delegate for the

data protection of the defendant:

"a. a copy of [the defendant's] organizational chart with an explanation of where the

data protection officer is located precisely;□

b. a copy of [the defendant's] documents showing what is involved in practice□

the schedule of [the defendant's] data protection officer;□

vs. a copy of [the defendant's] documents indicating the manner in which the analysis and□

evaluated, when deciding to appoint the data protection officer of [the□

defendant], his professional qualities and, in particular, his expertise in□

the field of data protection law and practice as well as□

his ability to perform the tasks referred to in Article 39 of the GDPR;□

d. a copy of the opinions that have been issued by the data protection officer of [the□

respondent] regarding [the extract from the data processing register]"□

13. On August 2, 2019, the defendant provided a response letter to the Inspection Service. She there□

mentions that it has taken "some general measures" to comply with the GDPR. The□

respondent states that it is currently working on an information management plan for the□

city, which will notably include retention periods. With regard to the measures relating□

to the processing to which the complaint relates, the defendant asserts the following:□

“No specific decision or action has been taken in relation to the processing of□

personal data of tenants via the declaration form for the tax on□

second homes."□

14. The defendant explains the use of the concrete declaration form on the basis of□

of the tax regulations adopted by the municipal council:□

“In this way, the finance department of [the defendant] can verify whether or not it is□

of a secondary residence and therefore whether the tax is due or not. Owners can□

also complete the data of the inhabitants. This is the first and last name, a number□

emergency and, in the case of a student, proof of enrollment in an institution□

education and proof that the student has a scholarship.□

15. With regard to the question on the basis of which decisions the defendant claims
personal data within the framework of the guarantee of public security, as well as
any related opinions from the data protection officer of the defendant, this
last responds as follows:
"This has already been done since 2015, following a serious fire in a student house […] where
two students lost their lives. We send you in appendix the decisions of the council
municipal of June 23, 2014 and December 17, 2018.
Since this method was already approved before the entry into force of the Regulation
general on data protection, there is no opinion of the data protection officer
data. For new projects in which personal data is
processed and for changes to existing processing, the opinion of the Data Protection Officer
data is requested, in accordance with Article 35 of the General Data Protection Regulation
Datas. However, it is impossible to seek the opinion of the Data Protection Officer
data for all existing treatments."
16. With regard to the register of processing operations, the defendant submits elements
additional information concerning the categories of personal data mentioned, the deadlines for
storage, transmission of personal data, security measures and
the absence of mention of the data protection officer. On this last point, the
defendant asserts the following:
“In the data processing register, there is no mention of the contact details
of the Data Protection Officer. They will be added."
17. With regard to questions from the Inspection Service concerning the fulfillment of the
function of the data protection officer, the defendant indicates, with regard to the
point a: a data protection officer has been appointed via a service provider
external and this was not included in the defendant's organizational chart; point b: for
indicate the timetable, the defendant attaches a document indicating that the civil servant

external is physically present at the defendant's home 3.48 hours a week and works by

elsewhere 11.24 hours for the defendant as data protection officer, but

for example at the offices of the external service provider, on site visit to

services and departments of the defendant and for relevant training and meetings in

the performance of his duties as data protection officer for the defendant;

point c: the function of data protection officer is combined with that of adviser

in information security, as proposed by the college of mayors and aldermen of the city

on May 9, 2018. The defendant claims that the external service provider that provides the delegate

data protection "analyzes the qualities and expertise of its staff members when

of their recruitment";

point d: there is no written opinion from the data protection officer "for the processing

already existing. It is indeed impossible to request an opinion from the Data Protection Officer.

data for all existing treatments. In the event of new treatments or modifications,

the data protection officer is systematically involved".

18. To assess this task, the tax regulation that was approved by the municipal council on June 23

2014 is important. This regulation was valid at the time the complaint was lodged on 30

August 2018.

To assess the lawfulness of the processing, it is relevant to note that the tax regulations of the

defendant mentions that the certificates or proof relating to the registration of a student, to

the request for a scholarship by the student and the request for subsidized social housing

must be submitted by the owner "when reporting".

19. With regard to the appointment of another external data protection officer the

March 15, 2019, provided by the same external service provider, the decree of the college of

burgomaster and aldermen of the defendant refers to an "internal reorganization" within the

external service provider.

20. With regard to the register of data processing, the general page mentions

including the following:

"Each management is responsible for its data register and must complete and maintain it

update itself.

If you have any content or legal questions about GDPR, you

can contact gdpr@[defendant].be. The secretariat and the communication department

will take care of your request.

Communication relating to the GDPR is provided by the communication department [email address

of a staff member of the defendant]

For technical questions about the data register, you can contact

[email address of a staff member of the defendant]"

21. In the documents that the Inspection Service adds to the file, there is also the response of the

OPC at the defendant's request for an opinion on the compulsory recording of data

Personal Information from City Students, dated June 2, 2016. This response states

to the defendant that, as a municipal institution, it is not entitled to request an opinion

to the CPP and that the defendant's request would therefore be "simply treated as a

request for information". The CPP also adds in its response a reference to the website

on which the defendant will be able to find more information as well as the fact that in the event of other

questions, it can contact the CPP.

The inspection report

22. On August 22, 2018, the Inspection Service submitted its investigation report to the Litigation Chamber

relating to this case.

23. With regard to the findings in the context of the complaint, the Inspection Service refers

in Articles 5 and 6 of the GDPR. The Inspection Service asserts that the defendant violated these articles

by requesting the personal data of the tenants via the declaration form

for secondary residences that the lessor must complete. The Inspection Service affirms that the

defendant "has not taken any specific decision or action to comply with the GDPR" for

regarding this processing.

24. The Inspection Service also notes problems with regard to processing, via

the same form, of the personal data of the tenants in order to guarantee the

public security. The Inspection Service notes the following.

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“[the defendant] refers to a request for an opinion that it sent on 02/05/2016 to the

Privacy Commission […] to defend its practice of recording

since 2015 "student data for security reasons". The CPP responded to the

aforementioned request for an opinion by means of a letter dated 02/06/2016 […] referring to

documentation on the CPP website, but cannot be deduced from the answers

of [the defendant] what [she] did with it. Furthermore, the aforementioned serious fire does not imply

that a processing of student data […] "is necessary for the security and identification

of persons", as claimed by [the defendant] in its aforementioned reply letter of

07/30/2019. [The defendant] does not sufficiently demonstrate the added value of the

aforementioned processing in view of the principle of data minimization, taken together

with responsibility."

25. With respect to the defense that the personal data claim is

necessary in order to verify fraud in the tax declaration, the Inspection Service considers that

the purpose of combating fraud does not justify the processing in concreto.

“[The defendant] does not in fact sufficiently demonstrate the added value of the treatment

aforesaid in view of the principle of data minimization, considered together with the

responsibility."

26. The Inspection Service also considers it important to include in the inspection report

certain matters "outside the scope of the complaint" or certain supplementary findings. He

refers in particular to findings "concerning the transparency of information and

communications and the procedures for exercising the rights of the data subject (Article 12 of the
GDPR) and the information to be provided when personal data is collected
to the data subject (Article 13 of the GDPR)".
27. In the context of Article 12 of the GDPR, the Inspection Service issues a declaration of
confidentiality of the defendant who would not be in compliance with the GDPR for the reasons
following.
"a) The information provided is not always transparent and comprehensible for the
data subject, as required by article 12, paragraph 1 of the GDPR. The
[defendant] thus uses, in its own words, "platforms such as Twitter,
Facebook, Mailchimp and Google Analytics", without informing data subjects in any way
transparent about how these platforms process their personal data
staff. Finally, [the defendant] mentions that "modifications to our policy of
confidentiality" are possible, without specifying how the persons concerned will be
informed in a transparent and comprehensible manner.
b) The information provided is incomplete since all the information to be
provide under Article 13 of the GDPR are not actually provided to persons
concerned. The persons concerned are thus not informed by [the defendant] of the
applicable Commission adequacy decisions and/or appropriate safeguards
applicable in the event of transfer of personal data to a third country,
in particular during processing via/by the aforementioned platforms for which [the
defendant] nevertheless asserts in its declaration of confidentiality that "Your data
may circulate outside the EU". Furthermore, there is no mention of the right to restriction of
processing, nor the right to oppose the processing or the right to the portability of
data. Finally, it is not mentioned that the persons concerned have the right to wear
complaint to the Data Protection Authority."

28. Finally, the Inspection Service also notes that there are shortcomings in terms of

appointment of the data protection officer and his position (respectively article 37

and Article 38 of the GDPR). The Inspection Service considers that the defendant does not demonstrate

sufficiently how the professional qualities of data protection officers

successive have been evaluated or tested, and in particular their expertise in the field of

data protection laws and practices. The Inspection Service considers

also that their ability to perform the tasks referred to in Article 39 of the GDPR could not be

sufficiently analyzed.

29. With regard to the position of the Data Protection Officer, the Inspection Service

note that the latter was not included in the organization chart of the defendant. The

defendant mentioned in its response to the Inspection Service of August 2, 2019 that the delegate

was placed under "the direct functional authority of the head of day-to-day management within

of the proceedings, namely in this case the general manager of [the defendant]".

of Inspection states the following:

"In view of the general wording of the text of Article 9 of the decree of the Flemish Government

of 23/11/2018 relating to data protection officers, referred to in article 9 of the decree

of 18 July 2008 on the electronic exchange of administrative data, a copy of which

was attached to this file (exhibit 16), it is not clear whether [the defendant] is watching

effectively that its data protection officer can work and do

report directly to the highest level of management of the controller.

According to the Inspection Service, the highest level of management is probably in

the species the College of mayors and aldermen which ensures "the daily management of the city"

[…]".

Proceedings before the Litigation Chamber

30. On September 25, 2019, the Litigation Chamber decides that the case can be dealt with on the merits.

31. The defendant and the plaintiff are informed of this decision of the Litigation Chamber by

registered letter of September 25, 2019, in accordance with Article 98 j° 95, § 2 of the LCA. In

this letter, the deadlines for submission of submissions are also set.

32. On November 29, 2019, the defendant filed its submissions. She lays down means of

defense regarding the jurisdiction of the Data Protection Authority (hereinafter: DPA), the

merits

of inspection.

1) Competence of DPA

findings

Service

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33. The defendant refers to Article 4 of the LCA. This article provides that ODA, "over the whole

territory of the Kingdom", monitors compliance with the fundamental principles of the protection of

personal data "without prejudice to the powers of the Governments of

community and region, community and regional parliaments, the United College and

meeting referred to in article 60 of the special law of 12 January 1989 relating to the Institutions

Brussels."

34. The defendant refers to the powers of the regions which, in accordance with Article 39 of the

Constitution, are governed by the special law of institutional reforms of August 8, 1980

(hereafter: LSRI). Article 6, § 1, VIII of the LSRI provides that the regions are responsible for

municipal institutions. The defendant concludes: "the organization and functioning of the

municipal institutions, including the measures they take to protect

data, therefore fall under regional competence. The Federal State is not competent in this

respect."

35. The defendant asserts that the Vlaamse Toezichtcommissie (Flemish Control Commission)

is competent "to monitor compliance with the GDPR by the municipalities and not the Authority of

data protection." The defendant argues that "to the extent that Article [4 of the

LCA] is interpreted as meaning that the Data Protection Authority may also exercise

monitoring of compliance with the GDPR by the municipalities in parallel with the [Vlaamse Toezichtcommissie],

there is a violation of Article 6, § 1, VIII of the LSRI."

For these reasons, the defendant asks the Litigation Division to declare itself

incompetent.

36. In the alternative, with regard to the competence of the DPA as a whole and the fact that

the defendant considers it important to clarify this conflict relating to the distribution of powers, it

asks the Litigation Chamber to address a preliminary question to the Court

constitutional, in accordance with article 26, § 1, 1° and 2° of the special law of 6 January 1989 on

the Constitutional Court. The defendant considers that the Litigation Chamber is "a jurisdiction

within the meaning of article 26 of the special law of January 6, 1989 given that it is responsible for processing

legal disputes relating to the application of the GDPR and that it is also competent to

impose in this context a sanction and measures ". It asks the Litigation Chamber

to address the following preliminary question to the Constitutional Court and, in the meantime, to

suspend the case:

"Section 3 [of the ACL], in the interpretation where [the DPA] may exercise compliance control

of the GDPR by the municipalities, does it violate the rules of distribution of competences, of which article

6, § 1, VIII of the LSRI?"

2) Merit - findings "in the context of the complaint"

37. The defendant argues that the processing is lawful. First, the processing is lawful

in the context of the tax return with regard to the legal basis of Article 6, § 1, c) of the

GDPR: "the processing is necessary for compliance with a legal obligation to which the controller

processing is submitted".

38. With regard to the claim of the personal data of the tenants with a view to

complete the declaration for the tax on second homes, the defendant refers to the

tax regulations of the municipal council which have been approved for this purpose. The defendant emphasizes

that it appears from reading recital 41 of the GDPR that even a legal standard established in

municipal level should be considered a "legal obligation".

39. The defendant asserts that if the aforementioned personal data is not requested,

"it is impossible for the concluding party to set the rate of the tax due. The names of the students are

also necessary because if he does not have one, the applicant cannot check whether the residence

secondary in question is actually occupied by a student, possibly holder of a

scholarship, as asserted by the taxpayer." Furthermore, the defendant submits that the ODA does not

may take the place of an administrative body having discretionary competence as in

the species the municipal council.2

2 The defendant refers to a judgment in annulment of a decision of the DPA: Court of Appeal of Brussels, section Court of

markets (19th Chamber A, Chamber of Markets), Judgment of October 23, 2019, Federal Public Service Public Health c. Author

data protection, directory number 2019/8029.

40. Secondly, the defendant also refers to Article 6, paragraph 1, e) of the GDPR:

"the processing is necessary for the performance of a task in the public interest or relating to the exercise

of the official authority vested in the controller".

41. With regard to the request for an emergency telephone number on the

declaration for the tax on second homes, the defendant considers that this is

"necessary in order to be able to guarantee safety in student houses, to assist firefighters

optimally in the event of fire or other disasters and thus be able to save lives

human".

Under article 135 of the New municipal law (June 24, 1988, consolidated), the municipalities

are competent for public security, according to the defendant, and as such, this

latter is competent to take such measures. Also on this subject, the defendant

affirms the following: "it is not up to the DPA to replace the concluding party as an instance

administrative authority having competence of appreciation and to determine which data concluding it

may claim in order to enable the exercise of its tasks in the public interest and its public authority."

42. With regard to the finding of the Inspection Service that the defendant did not take

"no specific decision or measure" to return its declaration for the tax on residences

GDPR-compliant secondaries, the defendant asserts that "it was impossible to review all

existing processes under the GDPR."

43. With regard to the finding of the Inspection Service that the defendant does not

not demonstrate, in the context of data minimization and liability, that the

processing is necessary for public security, the defendant indicates that the processing is aimed

also to be able to set the tax rate. She adds that: "the residence tax

secondary is moreover passed on by all the owners to the tenants, namely the

students. These students can therefore also choose not to transmit their data.

personal, but in this case the normal tax rate will be applied."

defendant further considers that the personal data are "well and truly necessary"

to ensure public safety. She refers in this respect to a fatal incident in a house

of students. The relevant personal data is only intended to be

consulted and transmitted "in the event of fire or other disasters".

44. With regard to the finding of the Inspection Service that the defendant does not

demonstrate, in the context of data minimization and liability, how

whose "fight against fraud" purpose justifies the claim for personal data

from lessee to lessor, the defendant asserts that it cannot simply rely on "a

declaration of the taxpayer as to the fact that the secondary residence is inhabited by a student,

whether or not they receive a study allowance". The defendant therefore considers that the salary

is "strictly necessary in the light of the intended purpose".

3) Merits - findings "outside the scope of the complaint"

45. With regard to the finding of the Inspection Service regarding shortcomings in compliance with the

articles 12 and 13 of the GDPR, the defendant asserts that the privacy statement indicates

make it clear how the personal data of data subjects are

used. Specific reference is made to findings relating to information and

transparency regarding the use of Twitter, Facebook, Mailchimp and Google Analytics:

"However, the concluding party has no control over the subsequent processing of the data to

personal character by these platforms, but believes that this is the responsibility of

these platforms themselves […]

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opt-in

More concretely, said platforms are used as follows by the concluding party:

- Mailchimp: is used for the exchange of e-mails, working systematically with a

- Google Analytics: everything is anonymized

- Facebook – Twitter: the city publishes photos/messages on Facebook, these are

always GDPR compliant. In addition, there are also reactions to the messages

that citizens post from their private accounts."

It may be noted in this respect that the defendant engages in its defenses

to "adapt [its privacy policy] in order to further specify this use".

46. With regard to the finding of the Inspection Service that the persons concerned

are not informed of the applicable adequacy decisions of the Commission and/or of the

appropriate safeguards applicable in the event of the transfer of personal data to

third countries, the defendant asserts that it has already taken "concrete steps" to

remedy by asking an external service provider responsible for managing "all
of its ICT" to buy a new digital tool.

47. With regard to the finding of the Inspection Service that the declaration of
confidentiality does not mention how data subjects can exercise
their rights, the defendant asserts that the right to object and the right to restriction of processing
have meanwhile been mentioned. With regard to the indication to data subjects
that they can lodge a complaint with the Data Protection Authority, the defendant
refers to its findings relating to the fact that the Data Protection Authority is not
competent, so that it considers that this mention is not relevant. As it concerns
the right to data portability, the defendant considers that for the processing it carries out
in the context of tasks in the public interest and tasks in the exercise of authority
public, it is not subject to the obligation to respond to such requests from persons
concerned.

48. With regard to the findings of the Inspection Service relating to the register of the activities of
treatment, the defendant asserts the following:

"The contact details of the data protection officer have meanwhile been included in
the data register of [the defendant], so that the remark concerning this deficiency
has been taken into account.

All other missing information mentioned in the inspection report will be
can be consulted in the new tool […].

All comments have since been taken into account.

49. With regard to the findings of the Inspection Service regarding the appointment of the delegate to
data protection within the defendant and to its position, the defendant reiterates that
the data protection officer works through an external service provider, and does not appear
therefore not in the organization chart of the defendant. The defendant's assessment of the qualifications
professional skills and expertise in the field of legislation and practice in relation to

data protection is considered by the defendant to be sufficiently proven,

since this data protection officer had to pass "a written and oral test"

with the external service provider and that it has been analyzed and judged by

said external company. The defendant explains it as follows in its pleadings:

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“Mr [Y] has proven to be the most suitable candidate in this selection procedure […]

The defendant can therefore reasonably rely on the fact that Mr [Y] has the

professional qualities required. He also performs this function for other

local governments.

The fact that Mr [Y] was appointed by [the external service provider]

also guarantees that he can work independently.

The college of mayors and aldermen has in the meantime decided to delegate its competence in

GDPR matters to the Chief Executive Officer, with the exception of his competence within the framework of the plan

of security and the annual report of the DPO."

50. On the basis of all the observations as to the merits, the Respondent asks the Chamber

Litigation, in addition to declaring itself incompetent and addressing a preliminary question to

the Constitutional Court, to dismiss the plaintiff's complaint and, for the rest, to order

dismissal with regard to the defendant.

51. The defendant also asks, when introducing its conclusions, to be heard,

in accordance with Article 98, first paragraph, 2° of the LCA. On March 2, 2020, the House

Litigation invites the defendant and the plaintiff to be heard on March 17, 2020. Only the

defendant confirms its presence at this hearing.

52. Given that at various times during the period preceding the hearing, the Federal State

promulgated measures to limit the spread of the COVID-19 coronavirus, in particular by

the ministerial decree of March 18, 2020 on emergency measures to limit the spread of

coronavirus COVID-19 (M.B. of March 18, 2020), preventing the Litigation Chamber from organizing

a hearing in the usual way, it was proposed to the defendant to organize the hearing by the
through electronic means of communication. The defendant consented to this. The hearing has
has been postponed to March 23, 2020.

Hearing

53. During the hearing on March 23, 2020, the defendant again explained its means of defense
verbally.

54. The defendant asserts that the claim of the personal data via the declaration
taxation serves two purposes. There is indeed a large overlap between the character data
personnel necessary to set the tax rate and the processing of personal data
personnel who serve the purpose of "public safety". The defendant decided to combine this
via the declaration for the tax on second homes because the personal data
have anyway been claimed by this route and that we wish to avoid a
administrative overload linked to the claim of the same personal data. The
defendant explains that claiming the gsm number is only necessary to guarantee
public safety. It takes up the purpose of public security in the tax regulations in order to
to avoid having to regulate this separately in a police regulation.

55. The Litigation Chamber asks for clarifications on the transparent information of
data subjects about the processing. More specifically, she wants to know how

example the students concerned are informed, as tenants, of the fact that their data
of a personal nature are processed.

56. The defendant refers to the tax regulation as a legal standard and to the principle
legal principle according to which no one is supposed to be unaware of the regulations in force.
Reference is also made to the practice whereby lessors pass the tax on to
tenants, so that they are thus probably informed of the transfer of personal data
staff.

57. The Litigation Chamber would also like explanations as to the position of the delegate to the
Data protection. These are more precisely the use of time and access to the highest level.
of the management body of the municipality which require additional explanations.
58. The defendant refers to the decree on local administration which provides that certain
competences can be delegated to the director general of the municipality, given that this
the latter is at the head of the entire city administration.
59. It is specified that for the moment, the data protection officer does not carry out any other
task than that of data protection officer, and that there is no conflict of interest in this
respect. The Data Protection Officer also performs tasks as a delegate
to data protection for other municipalities within the network of the service provider
external. As regards the timetable, the defendant advances in its remarks
made to the minutes of the hearing that the Data Protection Officer is working in
average three days a week for the defendant.
60. The defendant also explains that it is customary for lessors to pass on to the
tenants the tax on second homes, but that it is not a legal obligation.
61. The defendant also explains that it does not use a specific database where
are stored and consulted the personal data which are collected within the framework
guarantee of public safety. In this regard, the defendant mentions in its observations
brought to the report that the personal data collected within the framework of the
tax regulations are kept in the city's tax application, including the tax number
telephone of the contact person.
62. The Litigation Chamber also wishes clarification on the way in which the
data subjects who are not tenants and whose personal data are
processed are informed of the processing of their personal data. The defendant
thus affirms that the mobile phone number which is requested to be consulted in the event of an emergency must not
not be that of the tenant, and may therefore be that of other persons concerned.

63. The defendant indicates that this is not explicitly established in a regulation or decree of the city, but that the persons concerned can be informed when the lessor claims the personal data to tenants.

64. Questions were also asked about the use of social media by the defendant. The defendant explains that it can respond to messages from people concerned via the user platforms mentioned in the declaration of confidentiality (Facebook, Twitter). In this respect, it wishes to emphasize that it is the people concerned themselves who decide to share certain personal data via the platforms. In other words, data subjects are under no obligation to transmit personal data to the defendant through these platforms.

65. Finally, during the hearing, it is also asked whether the two data protection officers of the defendant appearing in the file have been notified to the DPA. The defendant cannot confirm this at the hearing, but indicate in their remarks in the minutes of the hearing that the notifications have taken place. It refers in this respect to the registration numbers internal ODA.

2. Motivation

2.1.

The jurisdiction of the Litigation Chamber

66. The defendant considers that the Data Protection Authority, including its organs and therefore also the Litigation Chamber, is not competent to exercise control of the compliance with the provisions legal (and constitutional) and other provisions regulations on the protection of personal data when this control relates to Flemish municipal institutions.

67. The Litigation Chamber considers that this point of view of the defendant is based on a conception
wrong legal. For the Litigation Chamber, the fact is that the plaintiff's complaint as well as
the report of the Inspection Service concern the (non-)compliance with binding provisions of the
GDPR that do not require clarification in national law. In such a case, only the Chamber
Litigation, as a body of the DPA, is competent to rule, both under the law
which governs the federal organization of Belgium than under European Union law.
68. From the perspective of national law, it is established that the Data Protection Authority exercises
its supervisory competence on the basis of the provisions of the LCA.
69. First of all, the Litigation Chamber recalls that the Data Protection Authority was
created on the basis of the LCA and that, in accordance with Article 4 of the same law, it is
responsible for monitoring compliance with legislation in the field of data protection
of a personal nature, in particular the GDPR. Without prejudice to the competences of the entities
federates, the DPA carries out this mission, independently of the national law applicable to the processing
concerned, throughout Belgium (article 4, § 1, second paragraph of the LCA).
70. It is true that, as expressly confirmed by Article 4, § 1, second paragraph of the LCA, the
federated entities can themselves create data protection authorities. According to
rules of distribution of competences of federal Belgium, these authorities of the federated entities,
such as the Vlaamse Toezichtcommissie, are however in no way competent to control
compliance with the binding provisions of the GDPR, even if the data processing takes place in
matters for which the communities or regions are competent, and even if
the data controller is a local public authority or a federated entity.3
71. According to consistent case law of the Constitutional Court, the right to respect for private life,
as guaranteed by Article 22 of the Constitution (as well as in treaties), has a wide scope
3 See also in this respect the Explanatory Memorandum of the LCA; Doc. Speak. Chamber 2016-17, no. 2648/1, 8: "Opinion no
of 15 June 2017 rendered by the Council of State indicates the possibility for the regions to establish their own bodies of
surveillance in order to control the regulations issued in their area of competence. This position does not contradict

federal retains its general jurisdiction□

make that□

to□

–□

at□

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protection framework□

data."□

the inspection body□

the□

the whole□

control of□

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and includes in particular the protection of personal data and information□

personal.4□

72. With regard to the right to respect for private life, article 22 of the Constitution provides that□

following :□

“Everyone has the right to respect for his private and family life, except in the cases and conditions laid down□

by the law.□

The law, decree or rule referred to in Article 134 guarantees the protection of this right."□

73. Since article 22 of the Constitution postdates the State reform of 1980, it is□

"Law" in this provision means federal law. Limitations of the rights guaranteed by□

this constitutional provision cannot therefore in principle be established by decree□

or a prescription. This would mean that an invasion of privacy - including the processing□

of personal data – cannot result from decrees or ordinances.5□

74. Given that such an interpretation would render meaningless the competences of the communities□

and regions, the Constitutional Court and the legislation section of the Council of State considered that

only the establishment of general limitations was a matter reserved for the federal legislator. The

federated entities retain the possibility, within the framework of their powers, of providing for

specific limitations, provided they comply with the general federal framework.6

75. With regard to the preliminary draft of the LCA, the legislation section of the Council of State issued an opinion which

examines in particular the constitutional aspects of the law in the context of Belgian federalism.7

In this opinion, the Council of State referred to the rules for the distribution of powers set out below.

above. The Council deduced from this that it was up to the Federal State to create a supervisory authority which

is competent to control the general rules regarding the limitation of the right to respect for

privacy.8 This federal controller has, according to the Council, "a general competence (…) for all

the processing of personal data, even for those that take place within the framework of

matters for which the communities and regions are competent."9

76. Furthermore, the Council specified that the communities and regions were also responsible for

create its own supervisory authority.10 It is for this reason that the provision to

4 See for example Cour const., n° 29/2018, 15 March 2018, B.11; no. 104/2018, July 19, 2018, B.21; No. 153/2018, November 8

2018, 153/2018, B.9.1.

5 A. ALEN and K. MUYLLE, Handboek van het Belgisch Staatsrecht, Mechelen, Kluwer, 2011, 918; K. REYBROUCK and S. SC

federale bevoegdheden, Antwerpen, Intersentia, 2019, 122; J. VANDE LANOTTE, G. GOEDERTIER, Y. HAECK, J. GOOSSEN

PELSMAEKER, Belgisch Publiekrecht, Brugge, die Keure, 2015, 449.

6 Cour const., n° 50/2003, 30 April 2003, B.8.10; no. 51/2003, April 30, 2003, B.4.12. ; Opinion of the Council of State No. 37.28

July 2004, Doc. Speak. Speak. Fl. 2005-2006, n° 531/1: "[…] de gemeenschappen en de gewesten [zijn] slechts bevoegd […] o

specifieke beperkingen van het recht op de eerbiediging van het privateleven toe te staan en te regelen voor zover ze daarbij de

federaal bepaalde basisnormen aanpassen of aanvullen, maar […] ze [zijn] niet bevoegd […] om die federale basisnormen aan

you tasten".

7 Opinion of the Council of State no. 61.267/2 of 27 June 2017 on a draft bill "reforming the Commission for the Protection of

private life".

8 Ibid., 36, points 4.1 to 6.

9 Ibid., 36, points 5, referring to Council of State opinion no. 37.288/3 of 15 July 2004 on a preliminary draft decree "relating to th

Doc.Parl.,

system

Speak. Fl. 2005-06, n° 531/1, 153 e.s.

10 Ibid., 36, points 7.1-7.2. See also for example the opinion of the Council of State n° 66.033/1/AV of June 3, 2019 on a draft d

of the Flemish Government of 10 December 2010 "implementing the decree relating to private placement, with regard to

the establishment of a registration obligation for sports agents", 4; Opinion of the Council of State no. 66.277/1 of July 2, 2019

on a draft decree of the Flemish Government "laying down the procedures concerning the processing, storage and force

evidence of electronic data relating to allowances in the context of family policy", 6-7.

of information

Health",

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Article 4, § 1, second paragraph of the LCA, to which the defendant refers. Thus, the legislator

Flemish has actually made use of its competence to create itself a supervisory authority

within the meaning of the GDPR: the Vlaamse Toezichtcommissie.11 According to the Council of State, the authorities of

control of federated entities can only be authorized to exercise control of the rules

specific that the federated entities have promulgated for the processing of data in the

framework of activities which fall within their competence, and this of course only to the extent

where the GDPR still allows Member States to establish specific provisions and that one does not

does not infringe the provisions of the ICA.

77. In short, the DPA, as the federal supervisory authority, is the body competent to supervise the

directly applicable provisions of the GDPR which do not require further national execution,

as well as for the general rules that the Federal State has established in execution of the GDPR (but this

last point is not directly relevant to this case).12 This is also the case if the

data processing relates to a matter which is the responsibility of the communities or regions and/or

if the data controller is a public authority under the jurisdiction of the communities or

regions, such as a municipality.

78. The Data Protection Authority is therefore in any case competent to control

generally the general rules relating to the protection of privacy, in particular the

GDPR, with regard to municipal institutions, even if the federated entity has itself created a

supervisory authority within the meaning of the GDPR.

79. From the point of view of European Union law, it is a fact that the Data Protection Authority

data is a supervisory authority within the meaning of Article 8.3 of the Charter of Fundamental Rights

of the European Union and within the meaning of Chapter VI of the GDPR.

80. The Litigation Chamber also points out that the treaties of the European Union, as well as the

case law of the Court of Justice of the EU, lay down strict requirements as to the independence

and the execution of the tasks of the controllers. Control is an essential element of the law of

individuals to the protection of their personal data.13 In other words, individuals

people are entitled to protection by an authority. Part of this right is

that a complaint is dealt with appropriately by the authority.14

81. Since the LCA has designated the Data Protection Authority as the competent authority

controller of the GDPR, data subjects have the right to have their complaint

handled appropriately by that authority.

82. Other obligations of controllers and – where applicable – processors,

such as the notification of the data protection officer, also fall within the competence

control of the Data Protection Authority. In this context, it is also appropriate to

point out that in its actions the defendant does not contest the competence of the DPA either.

11 Created by the decree of 8 June 2018 containing the adjustment of the decrees to Regulation (EU) 2016/679 of the Europea

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

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

data), M.B. of June 26, 2018.

12 See also for example the opinion of the Council of State no. 66.033/1/AV of 3 June 2019 on a draft decree of the Flemish Go
of December 10, 2010 "implementing the decree relating to private placement, with regard to the establishment of an obligation
of registration for sports agents", 5; Opinion of the Council of State n° 66.277/1 of July 2, 2019 on a draft decree of the
Flemish Government "laying down the procedures concerning the processing, storage and probative value of the data
relating to family policy allowances", 7.

13 Recital 117 of the GDPR and CJEU, Judgment of March 9, 2010, Commission c. Germany, C-518/07, ECLI:EU:C:2010:125 p
23.

14 CUJE, Judgment of October 6, 2015, Schrems c. Data Protection Commissioner, C-362/14, ECLI:EU:C:2015:650, par. 63.

Indeed, the defendant did send the notification of its delegates for the protection of
data (also) to the Data Protection Authority.

83. The Litigation Chamber further emphasizes the fact that the GDPR is a regulation directly
applicable in the Union and cannot be transposed into national law by the Member States. The
provisions of the GDPR cannot be specified in Belgian regulations either, except
with regard to the points for which the GDPR expressly allows it. The protection of
data has in principle become a matter covered by European law.15

84. Member States have a responsibility to provide for effective and consistent monitoring16, the GDPR
making no distinction between the public and private sectors (with specific exceptions
which are not relevant here). It would be contrary to this universal character of the GDPR
that a Comptroller General in a Member State is not competent with regard to certain
categories of controllers, unless a Member State provides for provisions
legal guaranteeing the effectiveness and consistency of control.

85. The Litigation Chamber does not rule on the question of whether the Vlaamse
Toezichtcommissie meets the requirements that the GDPR places on an independent controller neither on the
whether the Vlaamse Toezichtcommissie is competent to carry out certain tasks
of the controller referred to in Article 57.1 of the GDPR.

86. The possible existence of such a specific exercise of tasks does not, however, prejudice the
general supervisory competence of the Data Protection Authority under national law
and European.

2.2. A preliminary question to the Constitutional Court

87. The defendant considers it necessary, in the alternative, to address the following question for a preliminary ruling
to the Constitutional Court on the basis of article 26 of the special law of 6 January 1989 on the Court
constitutional:

“"Section 3 [of the LCA], in the interpretation where [the Data Protection Authority] may
exercise control of compliance with the GDPR by the municipalities, does it violate the rules of distribution
jurisdiction, including Article 6, § 1, VIII of the LSRI?"

88. Although the Litigation Chamber has already stated in point 2.1. that she was competent to
deal with the present case and that the provision of the LCA in question clearly did not constitute
not a violation of the rules of distribution of competences, the Litigation Chamber wishes
nevertheless point out that the Data Protection Authority is part of the administration
public and that under Article 108 of the ACL, the decisions and actions of the Chamber
Litigation can always be appealed to the Court of Markets. It is therefore
there is no need to address the aforementioned preliminary question to the Constitutional Court,
regardless of whether the Litigation Chamber has jurisdiction in this regard.

2.3.

Basic principles and lawfulness of processing (Articles 5 and 6 GDPR)

89. In order to assess the lawfulness of the processing, it is important to make a distinction between the processing
of personal data which takes place in the context of establishing the amount of the

15 See for example C. Kuner, L.A. Bygrave and C. Docksey (eds.), The EU General Data Protection Regulation:
A Commentary, Oxford University Press, 2020, 54-56.

16 By way of illustration: Article 51, paragraph 2 of the GDPR thus provides that the supervisory authority contributes to the app
consistency of the Regulation throughout the Union. Mutatis mutandis, it must be able to ensure that the regulations are

applied consistently within the own Member State.

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municipal tax on second homes on the one hand, and the processing of personal data

staff to ensure public safety on the other hand.

90. The personal data collected from donors, including the complainant, using the

declaration form "tax on secondary residences" of the defendant, are, for these

two purposes, the personal data of the same data subjects, namely the

tenants. However, the defendant claims not only the personal data

tenants, but also the personal data of data subjects other than

tenants, asking to provide an "emergency number" on the declaration form

for the tax on second homes.

91. With regard to the "emergency number", it can therefore be assumed that this data to be

personal character is only linked to the second purpose of "public security" described

above. This is what the Litigation Chamber finds in particular in view of what the

defendant itself states in its pleadings:

"As regards the request for a gsm number, it is referred to the statement of facts

above, where it has already been indicated that this is necessary in order to be able to guarantee the safety

in student houses, optimally support firefighters in the event of fire and

thus being able to save human lives."

92. Given that on the basis of the above, the purpose of the processing is twofold, the Chambre

Litigation handles the two separate processing operations separately.

93. On the defendant's second home tax return form, the

following personal data are requested from the lessor of a second home

:

The name of the tenant

The first name of the tenant

-

-

- A tenant's emergency number

-

Confirmation that the tenant is or is not domiciled in the civil status register of the

defendant

Whether or not the renter is a student, using proof of enrollment

Using a "copy of their study allowance showing that the allowance is greater than

€200", whether or not the tenant is a student who is entitled to a study allowance

greater than EUR 200.

With the help of an "appendix 33 (= declaration of arrival for cross-border students)", the fact

whether or not the tenant is a student from one of the countries bordering Belgium.

2.3.1. Treatment on the basis of the tax settlement of the defendant

94. Article 6, paragraph 1, c) of the GDPR qualifies processing "necessary for compliance with a

legal obligation" as a sufficient alternative condition for the processing of data

of a personal nature. The defendant considers that the processing on the basis of this provision

is lawful, because it specifies in its tax regulations of June 23, 2014 that the tax rate is

lower if the owner of the secondary residence can produce proof of registration,

the study allowance and/or the tenant's "appendix 33" certificate, depending on the tenant's situation

and the tax reduction related to his situation. The condition which is laid down for this purpose in the decree

above-mentioned municipality to be able to benefit from this advantage is to attach these documents to the

tax return.

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95. For the proper application of the provisions relating to the protection of privacy, it is necessary
point out that there is a difference between, on the one hand, the activities of the defendant who adopts
decreed via its municipal council, and on the other hand the activities of the administration which executes these
arrested.

96. When the defendant asks the plaintiff, via its declaration form, to transmit
the tenant's personal data, and that it bases this on a legal standard such
that established by a municipal council, this does not mean that the methods of execution of
the administration for this declaration cannot – at the level of data processing to
personal nature – be subject to the control of the Data Protection Authority and to the
judgment of the Litigation Chamber with regard to their legality within the meaning of Article 6 of the
GDPR. This would indeed prejudice the legal protection against authority for citizens
regarding the protection of their privacy.

97. In addition, the processing must comply with the principles relating to the processing of personal data
personnel which are established in Article 5 of the GDPR. For the processing it carries out, the defendant
is in fact not exempted from the said principles, solely because it defines the processing in a
regulation via its municipal council. In this case, the Litigation Chamber examines the
violations of the principles formulated in the first three parts of Article 5 of the
GDPR.

a) Loyalty and transparency

98. In this regard, the Litigation Chamber finds that not enough measures have been taken
in accordance with Article 5(1)(a) GDPR for the processing to be fair and
transparent to the data subject. Indeed, the defendant, as responsible
of the processing, does not treat fairly and in a transparent manner the personal data
staff of the tenants, since it does not at any time indicate to the persons concerned
whose data is collected that this data is collected by him or for what
purposes.

100.

99. It thus appears that at no time did the defendant itself take steps to

inform data subjects that their personal data is being processed

by his care. Moreover, it never indicates that it gives instructions to the lessors – whose

complainant – aiming to notify tenants in some way of the intention to collect and

to further process the personal data.

The defendant asserts the following in its pleadings:

“"It is moreover the taxpayer himself who requests a tax reduction and who must therefore

provide proof that he is eligible for this reduction. The taxpayer can also

choose not to claim a tax reduction, in which case no evidence needs to be

provided and no personal data should be transmitted."

The Litigation Chamber emphasizes that it is the defendant who processes the personal data

personnel and that, consequently, it must be able to provide justifications with regard to

processing compliance. Moreover, it is clear from all the previous elements of the defense that

the defendant bases the lawfulness of the processing on Article 6, paragraph 1, c) of the GDPR, with the

tax regulation as a legal standard, and therefore not on the consent of the persons concerned

in accordance with Article 6(1)(a) GDPR.

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For this treatment, the defendant is the data controller, and it cannot escape

to the obligations imposed on it by the legal provisions relating to the protection of life

private.

b) Purpose limitation

101.

The purposes of the processing described in the tax regulations are more limited than the processing

which is ultimately carried out with the personal data collected via the tax declaration.

Article 5, paragraph 1, b) of the GDPR provides that personal data "must

be collected for specified, explicit and legitimate purposes, and not be processed

subsequently in a manner incompatible with those purposes".

102.

If the tax regulations provide that the personal data is used to establish

the tax rate for a secondary residence and then it appears that the data to be

personal character collected in the tax return are also processed for other

purposes, in particular in the context of guaranteeing public security, this in itself is already sufficient

to find a violation of the principles relating to the processing of personal data.

c) Data minimization

103.

104.

105.

As already indicated, the "emergency number" claimed via the tax declaration for residences

Defendant's side is not necessary for the tax return. The treatment of

this emergency number serves another purpose. For completeness, we can therefore mention in this

consideration that with a view to the tax declaration, it is not a necessary processing operation which meets the

principle of data minimization referred to in Article 5, paragraph 1, c) of the GDPR.

The defendant asserts the following in its pleadings:

"The APD cannot therefore replace the municipal council in judging which data

may be claimed in execution of a municipal tax regulation."

This assertion is based on an erroneous legal conception. Of course, determination

personal data which is necessary for the performance of a specific task

is first and foremost a competence of the municipal council. Performing this skill

must however comply with the provisions of the GDPR or other relevant provisions of law

national privacy policy. It naturally falls within the competence of the

Litigation Chamber – for the cases referred to it – to study to what extent it is

the case. The evaluation of the processing is obviously linked to the question of whether these data to be

personal character are necessary for the purpose as established in the tax regulations.

d) Conclusion

In view of all of the aforementioned elements, the Litigation Chamber considers that it is

sufficiently established that a violation of Article 5 of the GDPR is committed, due to the breaches

observed with regard to compliance with the principles relating to the processing of personal data

staff. First of all, it concerns the processing of personal data which is not

sufficiently fair and transparent (article 5, paragraph 1, a) of the GDPR). Then, the purposes

are not determined and explicit, given that the personal data that is

used in the tax declaration are used for several purposes without this being

communicated in a determined and explicit manner neither to the persons concerned nor to the lessors

as the complainant (Art. 5(1)(b) GDPR).

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106.

Finally, claiming a telephone number clearly cannot be considered

as processing that complies with the principle of data minimization, insofar as this

processing is linked to the purpose of establishing the tax rate (Article 5, paragraph 1, c) of the

GDPR).

2.3.2. Processing of personal data for public security

a) Competence of the municipalities with regard to the guarantee of public security

107.

The personal data collected and subsequently processed via the declaration

tax for second homes are also used in the second instance "in order to be able to

effectively maintain public security", according to the defendant. For legality, it

refers to Article 6(1)(e) GDPR. This article provides that where the processing is

necessary for the performance of a task in the public interest or in the exercise of authority

public authority vested in the controller, the processing is lawful.

108.

The processing in question concerns the collection of personal data via

the tax declaration, after which this data can be used later in certain

emergencies in which tenants may find themselves. The defendant asserts the following

in his conclusions:

"The concluding party [retains] the names of the students as well as the telephone number indicated and

only consults this data in the event of a fire or other disaster (in addition to the fact that the

names are also used to assess the claim for tax relief)."

The defendant refers to Article 135 of the New Municipal Law, which provides that the

municipalities are competent for public security on their territory and can take

measures in this context.

b) Request for an opinion from the Commission for the Protection of Privacy

110.

The defendant also refers in this respect to a request for an opinion which it sent on 2 May

2016 to the Commission for the Protection of Privacy (hereinafter: CPVP). According to the request for advice,

the aim was to request the following personal data: the name of the inhabitant by

housing entity, the exact address associated with this inhabitant, the coordinates of the inhabitant (we

evokes a "gsm number") and a telephone number "in case of emergency-ICE". Those

personal data would be consulted "in case of emergency" and kept in a

"new database to be created", in the words of the defendant in the request for an opinion

of May 2, 2016.

109.

In response to the request for an opinion, the CPP communicated to the defendant that it could not

send a formal request for an opinion to the CPVP, as this did not fall within the legal competence

of the CPP. However, the CPP has attached to its response an informative reference to a web page of the

OPC by concluding as follows: "If you still have specific questions after reading these

information, you can contact the Commission again." The defendant does not indicate

if she contacted the CPP again afterwards.

111.

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112.

113.

c) Decision to request the personal data under the guarantee of the

public security

The Inspection Service has requested additional information to know when and

by whom (which body) it was decided to process the personal data in question for

this purpose. The Inspection Service also requested in its letter of July 3, 2019 "a

copies of the decisions of [the defendant] and of the opinions of the Data Protection Officer of

[the defendant] on the recording of student data for security purposes such as

mentioned in [respondent's response of July 1, 2019]".

In its response of August 2, 2019, the defendant refers to its tax regulations of June 23

2014 and December 17, 2018.

The following can be read in the recitals of the secondary residence tax regulation

of June 23, 2014, in force at the time of the complaint:

"Considering that keeping population registers is a task and a responsibility

of the municipality and must be executed by the municipality in accordance with the law of July 19, 1991

and that the registration is done by the intervention of and after examination by the municipality, in a way

that population registers provide correct information on the number of

population ;

Considering that this correct information is necessary for statistical reasons, in order to

to be able to carry out good management of the population;

Considering that this correct information is also necessary for the security and

the identification of persons;

Considering that it is important that whoever can register at the residence address does so

also effectively, in particular for security reasons and in the interest of the management

correct from the city's population register".

115.

The tax regulation of December 17, 2018 contains a similar motivation.

114.

With regard to this ground of legitimation, the defendant again refers to the exercise

of its legal powers. In its conclusions, it states in this regard:

"It is not up to the DPA to replace the concluding party as an administrative body

having jurisdiction of appreciation and to determine which data the concluding party can claim

in order to enable the exercise of its tasks in the public interest and its public authority."

In this respect also, the Litigation Chamber recalls that it is not enough that a treatment

take place lawfully. The processing must also comply with all the other principles relating to the

processing of personal data. In this regard, the Litigation Chamber notes that

insufficient measures have been taken in accordance with Article 5, paragraph 1, a) of the

GDPR so that the processing is fair and transparent with regard to the data subject. The

defendant, as controller, processes the personal data

tenants, as data subjects, in an unfair and non-transparent manner,

given that it does not at any time indicate to the data subjects whose data is

processed that it collects this data, or for what purposes.

It also appears here that the defendant does not itself at any time take steps

to inform data subjects that their personal data is being processed

by his care. Moreover, it never indicates that it gives instructions to the lessors – whose

116.

117.

complainant – aiming to notify tenants in some way of the intention to collect and

to further process the personal data.

As in point 2.3.1., we can refer to the confusion of purposes, the distinct purposes

not being determined and explicit, as required by Article 5, paragraph 1, b) of the GDPR.

A fortiori, the tax regulation does not clearly and concretely associate the claim of the data

of a personal nature to the description of "public security" purpose that it indicates in the

aforementioned recitals. Furthermore, it may be noted that the defendant mentions in the

during the hearing that it records all personal data in a

"city tax application", and therefore not in a specific database that exists

within the framework of the guarantee of public security.

The onus is on the data controller to demonstrate compliance with the data protection principles.

processing of personal data, in accordance with Article 5, paragraph 2 and Article

24 GDPR. The defendant does not do this sufficiently and thus violates several principles

with regard to the processing of personal data as formulated in article 5,

paragraph 1 of the GDPR, namely that the defendant does not process personal data

staff in a sufficiently fair and transparent manner, by not ensuring transparency

for the data subject with regard to the processing, as well as due to the confusion of purposes

when collecting personal data.

2.4.

118.

119.

120.

Information to be provided when personal data has not been

collected from the data subject (Article 14 of the GDPR)

Paragraphs 1 and 2 of Article 14 of the GDPR provide that certain information must

be provided to the data subject when the personal data is not

obtained from it. These include the identity and contact details of the person responsible

processing as well as the contact details of the data protection officer.

Article 14(3) provides that this information must be provided by the

controller to the data subject "within a reasonable period of time after having obtained

personal data, but not exceeding one month", admittedly "in view of the

particular circumstances in which the personal data is processed".

The defendant does not indicate at any time that it is taking any action to

inform tenants that their personal data is being processed. Even the

findings of the Inspection Service do not allow any deduction of any

communication of information. Tenants are, however, data subjects whose

data is collected and further processed and in this regard, the defendant, as

controller, must communicate several elements to these data subjects,

as required by the GDPR.

2.5.

Findings outside the scope of

information complaint

transparency, communication and modalities for the exercise of the rights of

the data subject and concerning the information to be provided when the

personal data is collected from the person

concerned (Articles 12 and 13 of the GDPR)

In its report, the Inspection Service notes several shortcomings with regard to the

121.

Defendant's privacy statement.

122.

123.

The first shortcoming that the Inspection Service observes concerns the information

provided to data subjects whose personal data the defendant processes.

The Inspection Service considers that this information "is not always transparent and

comprehensible for the persons concerned, as required by Article 12, paragraph 1 of the

GDPR." The Inspection Service notes that the privacy statement mentions

the use of platforms such as Facebook, Twitter, Mailchimp and Google Analytics "without

transparently inform data subjects about how these platforms

use their personal data."

When, as noted by the Inspection Service, the privacy statement

just mentioning that we use certain platforms is not enough

transparent, clear and understandable, as required by Article 12(1) GDPR.

Not all information required under Article 13 of the GDPR is provided either.

in this way to the persons concerned. For example, we cannot deduce the purposes

processing when collecting and further processing personal data through

such platforms by the defendant. The legal basis for this processing is not

no longer mentioned explicitly. This is, however, required under Article 13, paragraph 1, c) of the

GDPR.

125.

124.

In its conclusions, the defendant defends itself as follows on this subject:

"The contractor always ensures that the GDPR is complied with when transferring data to

these platforms. However, the contracting party has no control over the subsequent processing of the

personal data by these platforms, but believes that this falls within the

responsibility of these platforms themselves."

It is indisputable that these platforms are also data controllers

within the meaning of Article 4, 7) of the GDPR. However, when the defendant uses these platforms to

the processing of personal data on the basis of a purpose that it defines itself

(for example: marketing or provision of services) and means that it also defines itself.

same (for example: own staff who write texts and communicate them via an account

user or a "fan page" that she has created herself), she is herself also a responsible

of the processing with regard to this processing and it cannot escape the obligations which

are imposed as such by law. This is confirmed by the case law of the Court

Justice of the European Union.17

126.

Although the defendant's level of liability is not necessarily on the

same footing as that of the said platforms, the defendant cannot fully contest

his responsibility. According to the Court of Justice, when assessing the level of liability, it is necessary

hold

of species.18

127.

It is therefore not (simply) on these platforms that it is responsible for providing

themselves information on their use. When another controller uses

such platforms, he must also provide the information referred to in Articles 12 and 13 of the

GDPR in the most transparent and understandable way possible. The defendant is

a controller, since it has a decisive influence on the collection and

the transfer of personal data of visitors to the website for the benefit of

platforms that offer these services. The collection and transfer of this data would not have

place if the defendant did not offer the possibility to the persons concerned to contact it via the

circumstances

relevant

account

all

case

the

from

of

17 CJEU, judgment of 5 June 2018, Wirtschaftsakademie Schleswig-Holstein, ECLI:EU:C:2018:388.

18 CJEU, judgment of 29 July 2019, Fashion ID, C-40/17, ECLI:EU:C:2019:629, par. 70.

provide personal data in this way.

platforms and

128.

The defendant indicates in its pleadings and during the hearing that it is the persons

concerned themselves who make personal data available on the

platforms that the defendant uses and that it has no control over what happens next

personal data via the platforms. It must in fact be taken into account that the

defendant only offers the services via the platforms to data subjects who

take the initiative themselves, for example by posting a public or private message, such as

the defendant explains this in its pleadings and during the hearing. Even a treatment

sporadic, optional or complementary, however, constitutes processing that must comply

to the provisions of the GDPR.

129.

This does not imply that the defendant bears the responsibility and must guarantee the

transparency regarding any further processing of personal data by the

platforms that have a connection with the initial treatment.19 The defendant must, however, provide the

data subjects transparent information within the meaning of Articles 12 and 13 of the GDPR, for

processing for which it actually determines the purposes and means.20 This is the case when the
defendant uses the platforms in support of its provision of services via its "fan page",
in particular when the persons concerned provide personal data to the
defendant in connection with the provision of services.
130.
In addition, the Litigation Division further notes that a public authority must ensure in
particular that the use of social media is done in a responsible manner in the light
the fundamental right to the protection of personal data. The Litigation Chamber
refers here again to the principle of liability established in Article 5, paragraph
2, and Article 24 of the GDPR. A public body has to a certain extent a role of example.
131.
132.
133.
The Inspection Service finds a second shortcoming: the declaration of confidentiality
mentions that changes to the privacy policy are possible.21 The Service
of Inspection considers that this is not sufficient because the information does not specify
"how the data subjects will be informed in a transparent and
understandable."
The Litigation Chamber affirms in this respect that the aim is of course not to inform the
inhabitants directly (for example via e-mail) of any changes to the policy of
confidentiality. However, these changes must be clearly communicated on the site.
Community Internet.
The third shortcoming that the Inspection Service observes concerns the information
referred to in Article 13(1)(f) GDPR. This article provides that the controller
must inform the data subject of the fact that he intends to carry out a data transfer
of a personal nature to a third country or to an international organisation, and of the existence or

the absence of an adequacy decision issued by the Commission or, if there is a transfer to a

third countries or an international organization for which there is no such decision

adequacy, what appropriate or suitable safeguards have been provided under this

transfer, how to obtain a copy or where it was made available.

19 Ibid., para. 76 and 85 in fine.

20 Ibid., para. 100.

21 The precise text reads as follows: "We regularly check our personal data policy

staff under the law.

It is therefore possible that we

adapt our privacy statement in the future. Changes are valid from the time they are published.

on this website."

134.

135.

The privacy statement simply mentions: "Your data may circulate in

outside the EU." In this context, the defendant is clearly not respecting its obligations in

as controller, given that it does not indicate at any time where, how

nor what data can end up in a third country. The defendant indicates here that it has

acquired, via an intermunicipal association responsible for the mission, a new computer tool

intended to remedy the problem. However, we do not know how to clearly deduce from the documents transmitted

by the defendant in this respect in what way this tool will in itself be able to offer more

transparency to the data subject regarding the transfer of personal data

staff.

Other shortcomings noted by the Inspection Service concern the mention in the

privacy statement of the exercise by data subjects of the right to restriction of

processing, the right to object to processing and the right to data portability. In what

concerns these aspects, the defendant states that it has in the meantime included them in the declaration
of confidentiality, whereas these possibilities were not mentioned before.
136. In addition to the shortcomings noted by the Inspection Service regarding compliance with articles
12 and 13 of the GDPR, the Litigation Chamber still underlines some other aspects which
constitute breaches within the meaning of the GDPR.
137. A first example is Article 13, paragraph 1, b) of the GDPR, which provides that
the contact details of the data protection officer must be provided. The declaration of
confidentiality mentions a general "information security" e-mail address with the
external service provider to which the delegate can be reached. The Litigation Chamber
would like to confirm that nothing stands in the way of setting up a "DPO team" which uses
a common mailbox to carry out the tasks of the Data Protection Officer.22 Who
moreover, it may even be desirable or recommended in some cases, when it is
necessary to bring together a certain expertise, depending on the processing activities of the controller
of the processing or of the processor. This practice is confirmed explicitly by lines
European data protection guidelines.23
138. However, more explanation of such a situation can be encouraged.
general e-mail address and status of the Data Protection Officer, additionally for
underline with regard to the persons concerned the guarantees in terms of secrecy and
confidentiality referred to in Article 38(5) of the GDPR. The surname and first name of the delegate to the
data protection do not absolutely have to be mentioned but it would be good
practical to explain the concrete structure that has been put in place on the basis of a
service delivery.24
139.
For the sake of completeness, it can also be mentioned that the privacy statement
refers only to the Vlaamse Toezichtcommissie with regard to the rights of persons
concerned to file a complaint with a supervisory authority. Checking compliance with the rules

general rules on data protection, however, constitutes a competence of the Authority

22 See also below, point 2.7.

23 Article 29 Data Protection Working Party, Guidelines for Data Protection Officers

(DPD), 5 April 2017, available via: http://ec.europa.eu/justice/data-protection/index_en.htm (hereinafter: GT29, Lines

DPD guidelines), 10.

24 Mentioning the name of the data protection officer is also a good practice but does not constitute an obligation

under current legislation and there may be circumstances where it is undesirable to publish such details. It belongs

controller, or processor, and data protection officer to decide whether it is "necessary

or useful" in the particular circumstances of the case considered, cf. GT29, DPD Guidelines, 13.

of data protection and it is therefore this authority which must be mentioned as the authority

of control to which the person concerned can lodge a complaint.

The Litigation Chamber notes in general that the information of the policy

of confidentiality are formulated too concisely by the defendant and that a violation

of Articles 12 and 13 of the GDPR is thus committed.

140.

Findings outside of activity log complaint

of processing (Article 30 of the GDPR)

141.

The Inspection Service mentions in its report several shortcomings concerning

the extract from the register of the defendant's processing activities. As the story attests

of the facts and the conclusions of the defendant, the remarks of the

Inspection Service.

142.

The Litigation Division wishes, however, to emphasize that the defendant must complete the

register of processing activities in a sufficiently precise manner so that the processing of

personal data are recorded clearly and precisely. It is important being

given that this is the responsibility of the defendant. A comprehensive list of all

processing that it carries out is therefore indisputably important in order to be able to comply with all

GDPR obligations.

2.6.

2.7.

Findings outside the scope of the complaint concerning the Protection Officer

data and its location (Articles 37 and 38 GDPR)

143.

Since the defendant is a public authority, it must appoint a delegate to the

data protection in accordance with Article 37(1)(a) GDPR. The

defendant mentions in its answers that at the time of the delivery of the Service's report

inspection, a data protection officer had been appointed via the service provider

external services.

144.

At the time the complaint was filed, Ms. X was designated as the delegate for the

Data protection. The appointment of Mr. Y as data protection officer

by the college of mayors and aldermen took place by decree of March 15, 2019, which is

clearly before the investigation by the Inspection Service.

Since the complaint did not concern the appointment or the position of the delegate for the

data protection, only the designation and position of Mr Y have been analysed, being

given that this is the most recent situation, i.e. that existing at the time when the investigation

was carried out by the Inspection Service.

145.

2.7.2. Appointment of the Data Protection Officer (Article 37 GDPR)

146.

The Inspection Service finds that the defendant violates Article 37, paragraph 5 of the GDPR

given that it does not demonstrate "how the professional qualities of Ms [X] and

then of his replacement, Mr [Y], and, in particular, their expertise in the field of

data protection laws and practices, and their ability to perform the

assignments referred to in Article 39 have been analyzed and assessed when the decision is taken to

appoint as data protection officer […]"

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147.

148.

149.

150.

The defendant asserts in its submissions that a recruitment procedure was

organized by the external service provider "specifically for the profile of

'information security advisor – DPO'." The defendant argues that Mr. X has

proven to be the most suitable candidate for the selection procedure of the external service provider

and that she can therefore "reasonably rely on the fact that Mr [X] has the qualities

required professional skills."

It should be noted that the mere fact of being the "most suitable" person for a selection procedure does not

does not demonstrate ipso facto that it is sufficiently suitable. As the Service points out

rightly so, this also applies to the assessment of a delegate's suitability for

data protection, when the latter must be appointed on the basis of his expertise in the

area of data protection law and practice, and its ability

to carry out the tasks referred to in Article 39 of the GDPR.

In this respect, the documents which the defendant itself adds to its pleadings sow

besides, even more doubts. The call for applications for the position of protection delegate

literally states: "(extensive) knowledge of GDPR is an asset."

It does not follow from this wording that candidates must know the legislation on

data protection.

Nor does it appear from the questions put to the candidates in the context of the

written and oral selection procedure that these have been sufficiently tested in the broad sense

level of the quality requirements referred to in Article 37, paragraph 5 of the GDPR.25 The Chamber

Litigation would like to point out that a thorough knowledge of computer systems

internal and a knowledge of all business processes can represent in the broad sense

an added value for the exercise of the function of data protection officer and in itself,

can be characterized as relevant skills and expertise.26 Knowledge of relevant legislation

in terms of data protection is however required, especially with a view to the exercise of

tasks of the data protection officer referred to in Article 39 of the GDPR. This knowledge

is not in itself tested in the questions of the written and oral selection procedure transmitted

by the defendant. For the sake of completeness, it may be mentioned that the candidate's answers

finally selected, or their analysis, were not sent to the Litigation Chamber.

It is apparent from the defendant's reasoning that at no time did it verify itself

whether the quality requirements set out in Article 37(5) GDPR are met when it

appoints Mr. X as data protection officer by order of his college of

mayor and aldermen of March 15, 2019. This observation, as well as the shortcomings in

the response to the Inspection Service's request to comment on the professional qualities of

Mr. X in accordance with Article 37(5) of the GDPR therefore constitutes a violation

of article 37, paragraph 5 of the GDPR.

2.7.3. The position of the Data Protection Officer (Article 38 GDPR)

151.

152.

The Inspection Service finds that the defendant does not comply with the requirements relating

to the position of Data Protection Officer under Article 38 of the GDPR, being

given that the Inspection Service does not know clearly whether the defendant is actually ensuring

what the data protection officer can work independently and do

report directly to the highest level of management of the controller.

25 For the expertise and skills required, see GT29, DPD Guidelines, 11-12.

26 GT29, DPD Guidelines, 23.

153.

The lack of precision that the Inspection Service observed regarding the position of the

data protection officer can indeed be deduced from the documents in the file. We can thus

read in the conclusions of the defendant that the college of mayors and aldermen delegated

the “GDPR competences” to the managing director, “with the exception of his competence

as part of the DPO's security plan and annual report".

154.

Given that in a municipality, the college of mayors and aldermen is the highest level

highest level of management, the data protection officer must be able to report

directly to this college, in accordance with Article 38, paragraph 3 of the GDPR. In other words, this

report cannot be limited to the annual report, given that the report as referred to in

GDPR may also relate to information and advice on obligations for certain

specific treatments that are being considered. The data protection officer must in other

also be able to carry out ad hoc advisory and information missions with regard to

from the highest level of the management body.

The independence requirements of the data protection officer are further described

in the negative form in the GDPR. Pursuant to Article 38(3) of the GDPR, the delegate

to data protection cannot receive instructions as to the exercise of its missions

and cannot be relieved of his duties or penalized for the performance of his duties. We do not demonstrate

not that one of these two situations has occurred and therefore the Litigation Division cannot

find a violation of this provision.□

155.□

3. Violations of the GDPR found□

156.□

defendant are proven:□

The Litigation Chamber considers that the violations of the following provisions by the□

at.□

b.□

vs.□

d.□

e.□

f.□

Article 5 of the GDPR, since the processing of personal data□

tenants as data subjects via the 'tax declaration on the□

secondary residences' does not take place in accordance with the principles relating to the treatment of□

personal data;□

Article 6 of the GDPR, since the defendant does not sufficiently demonstrate□

to what extent this processing is lawful within the meaning of this provision with regard to□

the public safety aspect;□

Article 12 of the GDPR, since no□

transparent nor□

communication are not ensured nor used by the defendant with regard to the persons□

concerned;□

Article 13 of the GDPR, since the defendant does not provide enough□

information in its privacy statement to data subjects about□

the use of platforms with (joint) third-party controllers;□

Article 14 of the GDPR, since the defendant does not provide sufficient
information to data subjects (whose personal data it processes)
personnel via their tax return for secondary residences and who are not the
taxpayer in this sense) about the processing of personal data that it
does not obtain via the data subjects themselves;
Article 37 of the GDPR, since the defendant does not demonstrate whether the delegate
data protection meets the quality requirements imposed by the GDPR;
information
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g.
Article 38 of the GDPR, since the defendant cannot demonstrate that it
ensures that the position of the data protection officer is sufficiently
independent and allows reporting to the highest level of the management body.
The Litigation Division considers it appropriate to order that the processing be brought into conformity
with the provisions of the GDPR (Article 58, paragraph 2, d) of the GDPR and Article 100, § 1, 9° of the
ACL).
157.
A violation of one or more of the principles relating to the processing of personal data
personnel, as argued above, is qualified by definition as serious with regard to the
letter and spirit of the GDPR. This is the case for the processing by which personal data
personnel of the persons concerned are claimed from the lessor who is the taxpayer, as
reasoned in point 2.3 above. The defendant is a municipality with more than 30,000
second homes. Some secondary residences are occupied by several tenants,
often students. It is therefore the processing of personal data of tens
thousands of people affected. If in this context, the defendant does not process the data
of a personal nature according to the principles relating to the processing of personal data

of the GDPR, the magnitude of the number of people concerned immediately reveals the seriousness of this violation. 27

158.

Particular mention should be made of the shortcomings in terms of transparency which appear about violations of each of these principles. This lacks transparency with regard to the persons concerned and the persons, including the complainant, with whom the personal data is collected for the dual purpose of this personal data staff. The persons concerned are thus largely deprived of control of their personal data.28

159.

As regards the purpose of "public security", the defendant cannot, moreover, provide the Data Protection Authority with the necessary details as to the legality of the processing. There is no specific decision relating to the claiming of the data from personal character in this context and the defendant cannot explain how it took concrete measures to store personal data correctly or how it provides adequate security to protect personal data from access illicit.29

160.

Given that, without action taken by the Litigation Chamber, the processing would continue without additional technical and organizational measures guaranteeing the compliance with the legislation on the protection of personal data, a intervention of the Litigation Chamber is necessary. Violations of the law indeed continue until now.

161.

The Litigation Chamber therefore considers it appropriate to order the freezing of processing until that the appropriate technical and organizational measures are taken so that the processing is

in accordance with the legal provisions on the protection of personal data.

27 Recital 75 of the GDPR provides that there may be a risk to the rights and freedoms of natural persons "when the processing involves a large volume of personal data and affects a large number of people concerned."

28 Recital 75 of the GDPR considers this as a factor which may constitute a risk for the rights and freedoms of physical persons.

29 This also raises questions about compliance with Article 32 of the GDPR regarding the security of processing.

As soon as the defendant considers that it will have brought the processing into compliance with the provisions of the GDPR, it will have to provide proof of this to the Litigation Chamber, so that the freezing temporary treatment can be lifted.

The Litigation Chamber emphasizes that in this case, the other criteria of Article 83, paragraph 2 of the GDPR are not such as to give rise to other sanctions or measures than those taken by the Litigation Division in the context of this decision.

Given the importance of transparency with regard to the decision-making process of the Litigation Chamber, this decision is published on the website of the Authority of data protection by deleting the direct identification data of the parties and natural persons mentioned.

162.

163.

FOR THESE REASONS,

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

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-

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to order the defendant, in accordance with Article 58, paragraph 2, f) of the GDPR

and in Article 100 of the LCA, to freeze the processing, namely the collection and processing

later of the personal data of the tenants via the tax declaration for

secondary residences, until the necessary guarantees are put in place

so that the processing complies with Articles 5, 6 and 14 of the GDPR and until the

Litigation Chamber has been informed thereof;

to order the defendant, in accordance with Article 58, paragraph 2, d) of the GDPR

and in article 100, § 1, 9° of the LCA, to put the information it provides about

of its processing in accordance with Articles 12 to 14 inclusive of the GDPR, and this in the

three months of the notification of this decision, and to inform the Chamber

Litigation within the same period;

to notify the defendant, in accordance with Article 58, paragraph 2, a) of the GDPR and

in article 100, § 1, 5° of the LCA, that in the future, it must closely monitor the

designation and position of the data protection officer as well as the exercise of the

tasks by the data protection officer so that all these elements are

compliant with Articles 37 to 39 inclusive of the GDPR.

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

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

given as defendant.

(Sr.) Hielke Hijmans

President of the Litigation Chamber