Decision on the merits 19/2021 of 12 February 2021

Dispute room

File number : AH-2018-0124

Subject : Right to object to direct marketing and to processing based on

the legitimate interest of telecom operator Telenet BV

The Dispute Chamber of the Data Protection Authority, composed of Mr Hielke

Hijmans, chairman and Messrs. Jelle Stassijns and Frank De Smet, 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 on the free movement of such data and repealing Directive

95/46/EC (General Data Protection Regulation), hereinafter GDPR;

In view of the law of 3 December 2017 establishing the Data Protection Authority, hereinafter

WOG;

In view of the

rules of

internal order, as approved by the Chamber of

Members of Parliament on 20 December 2018 and published in the Belgian Official Gazette on

January 15, 2019;

Having regard to the documents in the file;

has made the following decision regarding:

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Telenet BVBA, with registered office at Liersesteenweg 4, 2800 Mechelen; KBO no. 0652.615.604, hereinafter

the “defendant”, represented by mr Tim Van Canneyt and mr Louis Vanderdonckt.

I. FACTS AND PROCEDURE

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1. Defendant provides telecommunications and TV services. Between April 17, 2018 and February 8, 2019□
the Data Protection Authority (DPA) and the defendant exchanged several letters and e-mails□
e-mails related to the handling of data breaches by the defendant and with□
with regard to how the defendant exercises the right to object to direct marketing□
offered. The reason for the communication about the right of objection was an e-mail that the GBA□
from a customer of the Defendant and which showed that this person was experiencing difficulties□
to find information on the defendant's right to object to directly□
marketing and the way to exercise this right.□

2. After all, the GBA was put in a copy of an e-mail exchange, in which a customer asked the defendant□
how he could exercise his “opt-out” (i.e. right to object) against direct marketing. On March 12□
2019, the defendant replied to the customer: “Thank you for your request. Your privacy rights□
can only be exercised via My Telenet. For questions you can go to a Telenet shopping point”. The customer□
replied shortly afterwards: “Thank you for your answer. I went to look at My Telenet, but I find□
not immediately where I can opt-out.”□

3. Taking into account this exchange as well as reports of data breaches,□
the Board of Directors of the GBA on February 27, 2019 to bring a case before the□
Inspection service of the GBA on the basis of Article 63, 1° of the WOG. The Executive Committee requested□
verify whether the right to object has been respected and, with regard to data breaches, whether the risk□
based approach (Articles 32-36 GDPR) was complied with.□

4. The reasons for this included (1) possible flaws in the way in which the law□

of objection to direct marketing (Art. 21.2 GDPR1) can be exercised and (2) whether the

the defendant complied with Articles 32 to 36 GDPR. In the investigation of the Inspectorate

With regard to the second point, findings were also made with regard to the role of the DPO

(Art. 37-39 GDPR).

5. The Inspectorate made its observations on the abolition/lack of facilitation of the

right of objection in the period between 10 May and 6 June 2019.

6. With regard to the risk-based approach, the Inspectorate sent a letter with questions to the

Defendant's data protection officer on 9 July 2019. The Defendant

replied on August 9, 2019. On September 17, 2019, the Inspectorate concluded its report of the

investigation, together with a technical report (hereinafter jointly: Inspection report).

1 The mission of the Executive Committee concerned art. 21.3 GDPR. The Inspectorate – which is of course free to raise new g

investigations - also examined compliance with Article 21.2 GDPR.

7. The Inspection Report makes the following seven findings, among other things:

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1. The use of a large number of documents, which means the

information provision complex, unclear and difficult to understand

makes;

2. The presence of incorrect information;

3. The use of techniques that can have an impact on the

choices of the data subject, including the granting of a free

consent and whether or not to take cognizance of the information or the

exercise of rights;

4. The construction of the information in the form of a maze in which the

the person concerned cannot gain easy access to the information;

5. The standard choices set by Telenet that are not the most

be privacy-friendly and always allow profiling;

6. The mandatory quasi-automatic acceptance of communication from

data via cookies;

7. In combination with the missing possibility to click on a simple

way to exercise the right of objection.

8. The Inspection Report specifies that the final findings do not only relate

on compliance with and facilitation of the right to object, but also on the obligation to provide information (Articles

13 and 14 GDPR), the duty to facilitate the exercise of rights (Article 12.2 GDPR) and

granting protection by default and by design (Article 25 GDPR).

9. On March 23, 2020, the Disputes Chamber decided that the file was ready for handling. Considering

the large number of grievances listed in the Inspection Report, some of which are still

legal or factual support, the Disputes Chamber decided to overturn its decision

to focus on certain grievances:

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compliance with the right to object to direct marketing in combination with information

and transparency obligations (art. 21.2 GDPR in conjunction with art. 12 and 13-14 GDPR): the Disputes Chamber

clarified the GDPR provisions against which the defendant could defend itself, and suggested

other that Title 1 of the Inspection Report had to do with the right to object to

direct marketing under Article 21.2 GDPR. The Disputes Chamber also asked further questions

clarification of the complaint of the Inspectorate about the lack of possibility to

a simple way to exercise the right of objection. The Disputes Chamber asked with

in particular on which platforms the data subject had the possibility to exercise his right to object

under Article 21 GDPR with regard to the processing of his viewing behavior and/or the

surfing behavior by Telenet, which offers both internet services and television services.

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the way in which the consent – if required – is displayed on the defendant's website

was collected, via cookies and/or via the privacy settings (Art. 7 in conjunction with Art. 12 and 13 GDPR).

the obligation to report: the Disputes Chamber asked the defendant to state its position

with regard to the findings of the Inspectorate on the risk-based approach

(focus on notification obligation) and the security obligation (Art. 32 GDPR), in connection with the notification

of data breaches.

10. In a letter to the defendant, the Disputes Chamber asked a number of additional questions and offered:

the defendant the option to limit his answer to the amount determined by the Disputes Chamber

points of attention.

11. On May 22, the Defendant submitted its claim and requested in the context of a hearing

to be heard. The defendant chose not to answer the questions of the

Dispute Chamber and responded to all findings of the Inspectorate. at 12

August 2020, the Disputes Chamber notified the defendant of the date of the hearing,

which was established on September 23. In the same letter, the Disputes Chamber requested that by 9

September a short answer to additional questions about the exercise of the right of objection

To deliver.

12. On September 9, the defendant submitted its answers to these questions. After becoming aware of this

On September 21, the Disputes Chamber decided to reopen the debates and sent a letter

to the defendant with additional questions about how the defendant exercises the right to

objected to direct marketing. The Disputes Chamber also asked how those involved who do not

customer can exercise their right of objection with the defendant. At the request of the defendant

the Disputes Chamber subsequently set a later date for the hearing, which date by letter

of 23 September 2020.

13. The hearing took place on October 7, 2020. The official record of the hearing was published on 23

December 2020 and took note of the fact that the pleas were limited to explaining

of the written arguments set forth in the defendant's claim and subsequent letters

to the Disputes Chamber. The official report summarizes some elements to clarify this

previously submitted written arguments.

14. In this decision, the Disputes Chamber examines the grievances and facts withheld by the

Inspectorate as supplemented by the defendant's answers to the questions posed by

the Disputes Chamber in its letters of 12 August, 9 and 21 September 2020.

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II. REVIEW IN RIGHT

1.

Purpose and structure of the decision

15. This decision relates to a priority sector as indicated in the Strategic Plan 2020

of the GBA, namely telecom and media.

16. With this decision, the Disputes Chamber mainly aims to provide clarity about the meaning

of the transparency requirements of the GDPR for providers of services to natural persons. The

considerations in this decision therefore have a wider interest for other providers.

Providers in the sector have an exemplary function, partly because the processing of

personal data is a core activity for them.

17. This decision contains comments on the jurisdiction of the Disputes Chamber, taking into account

with the applicable legislation and the processing of personal data concerned (Title 2). In

Title 3, the Disputes Chamber rules on the right to object to direct marketing processing

(21.2 GDPR), in connection with transparency obligations (Art. 12.1 GDPR) and information obligations

(Art. 13 and 14 GDPR) as well as the obligation to facilitate the exercise of the rights under the GDPR

(Article 12.2 GDPR).

18. The Disputes Chamber deals with the lack of right to object to processing in Title 4

based on the legitimate interest and which do not constitute a direct marking, as well as the defect

to information about the method of exercising this right of objection (Art. 21.1 GDPR in conjunction with Articles

12.1, 13 and 14 GDPR).

19. The Disputes Chamber then answers the complaints regarding cookies (Title 5) and the notification of
data leaks (Title 6). In Title 7, the Disputes Chamber responds to the defendant's arguments
with regard to the right to a fair trial and the principles of good administration. Finally
the Disputes Chamber motivates the sanctions and measures.
2. Jurisdiction of the Disputes Chamber - clarification regarding the
applicable legislation in relation to the processed personal data
2.1 The processed personal data

20. The findings of the Inspectorate relate to the processing of the defendant
between 10 and 14 May 2019. At that time, the Privacy Policy of 25 May 2018 was applicable.
According to this privacy policy, the defendant processes traffic data, user data and data
regarding the use of its customers.2
21. The Disputes Chamber takes note of the fact that the defendant provides data on viewing behaviour
collects, including information about the opt-out of TV program recommendations. The
The Disputes Chamber also takes note of the fact that the "data about your use" of the products of
the defendant in a non-exhaustive manner in the Privacy Policy and thus3
potentially also data about the use of the internet products or, in other words, surfing behaviour
include. The defendant creates profiles based on surfing behavior, as indicated in Article 7
of the Privacy Policy. The defendant does this in cases where the customer concerned is in the
Defendant offered privacy settings (general – targeted – personal – unique) for the
select "unique" privacy setting.4
22. Indeed, it is apparent from the inspection report that the defendant provided both television services and internet services
offers. The defendant therefore has the option of requesting data about both viewing behavior and
to process the surfing behavior of its customers, as evidenced by a quote quoted in the Inspection Report
press release of 24 April 2018 in De Standaard “Congratulations, you have opted for tailor-made TV advertising”. According to
that press release, the defendant then informed its customers with a major e-mail advertising campaign

that they would receive tailor-made TV advertising in the future. Defendant's TV viewers with a

decoder would receive personalized TV advertising based on viewing behavior and, where appropriate,

also based on browsing data, with regard to customers who would choose the privacy level “unique”.

2.2 Applicable law

2 The different categories of data processed - with regard to the defendant's customers - are described in the Privacy Policy

defined. These include:

traffic data: “we need this special technical data to transfer your traffic over electronic

to settle communication networks, such as your IP address or MAC address”

user data (“personal data that can identify you as a user of our products and services,

e.g. your name") and the choices the customer makes in the course of using the defendant's products

(“for example, your opt-out of TV program recommendations”);

data about your use: “the data we receive when you use our products and services.

For example: the (mobile) phone numbers called, the date, time, duration and location of a

conversation or internet connection, how you use our newsletters or websites or data concerning

the use of our TV services (such as which movies you watch and order from our TV library, what you record, pause,

fast forward and rewind or delay watching, what your favorite TV channels are or which apps on our decoder you want

recently used).” […]

As for non-customers of the Defendant, the data processed is limited, as stated by the Defendant in its letter of 6

October 2020 explained to the Disputes Chamber.

3 Art. 3.C of the Defendant's Privacy Policy “In addition, our systems also record personal data that is

generated during your use of our products and services (e.g. […]”..

4 On the privacy settings, see title 3.4.3 point 80 of this decision.

23. There is uncertainty about the applicability of the rules from the ePrivacy Directive5, such as
implemented in the Act of 13 June 2005 on electronic communications (hereinafter
"WEC") to the processing of data regarding surfing behavior and viewing behavior by
telecom operators. Article 122 of the WEC, transposing the ePrivacy Directive, provides specific
obligations on transparency prior to processing traffic data (such as
data regarding surfing behaviour) as well as consent obligations.
According to Opinion 01/2017 of the Data Protection Group, the ePrivacy Directive is in principle of
applies to the processing of data collected when providing digital
broadcasting services (such as viewing behavior data), even though the ePrivacy Directive
broadcasting services out of its scope6.
24. In view of the defendant, according to its Privacy Policy and the press, both viewing behavior and data regarding
surfing behaviour, the Disputes Chamber has asked the defendant to state his reasons
position on the applicable law.
25. The defendant further clarified that for the purpose of personalizing TV advertising, he only
processed traffic data, TV viewing behavior and sales profiling, and that he ultimately decided
not to process data concerning surfing behavior for the purpose of personalizing TV advertising7. The
The Disputes Chamber takes note of this and exercises its authority with regard to the processing of
not to investigate data regarding surfing behaviour.
26. With regard to data regarding viewing behaviour, the Disputes Chamber is authorized to supervise
on compliance with the GDPR rules on the right to object (Art. 21.1 and 21.2 GDPR) and the
transparency obligations (Art. 12 and 13-14 GDPR).
27. For the sake of clarity, the Disputes Chamber establishes that the fact that the right of objection and the
transparency rules are partly regulated in the WEC (right to withdraw consent)
does not affect its authority to monitor the application of the GDPR which
concerns the transparency obligations and the right to object, also in the event that the WEC also
are applicable. As the EDPB explains, data protection authorities remain empowered to

assessing – elements of – processing operations for which the ePrivacy Directive does not contain specific rules

5 Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 on the processing of

personal data and the protection of privacy in the electronic communications sector (Directive

on privacy and electronic communications), OJ L 201/37, as amended by Directive 2009/136.

6WP247, available at: https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=610140.

7 Defendant's claim, p. 38; letter from the defendant to the Disputes Chamber dated. October 6, 2020, p. 6.

stilt. The mere fact that part of the processing falls within the scope of the ePrivacy Directive

does not limit the authority of the DPA.8

3. The right to object with a view to direct marketing and transparency

3.1 The investigated grievances

28. The Disputes Chamber investigated the Inspectorate's grievances about

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the right to object to processing for direct marketing purposes (Art. 21.2 GDPR,

and not art. 21.3 GDPR, as originally stated in the mandate of the Executive Committee of

the Inspection report9);

the transparency of the information based on art. 12.1 GDPR ;

the information obligations based on art. 13 and 14 GDPR.

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29. In addition, the Disputes Chamber examined the right to object to processing based on

the legitimate interest (Art. 21.1 GDPR). With regard to the right to object to direct marketing

the Disputes Chamber also examined the defendant's obligations to facilitate the

rights of data subjects under Article 12.2 GDPR, and in particular the right to object on the basis of

of Article 13.2.b GDPR.

3.2 Qualification of the processing involved and competence of the

Dispute room

30. Pursuant to Article 21.2 of the GDPR, the data subject whose personal data is used for direct marketing

purposes are processed at any time the right to object to the processing of him

regarding personal data, including profiling related to direct marketing.

31. The GDPR does not define what is meant by “direct marketing”. To date there is no

legal, official or generally accepted definition of this term at European level. The GBA

clarified its interpretation of this legal concept in Recommendation 1/202010: “Any communication,

in any form, solicited or unsolicited, originating from an organization or person and directed

to the promotion or sale of services, products (whether or not for payment), as well as brands or

ideas addressed by an organization or person acting in a commercial or non-commercial

8 Group 29, WP 29, Opinion 5/2019 on the interplay between the ePrivacy Directive and the GDPR, para 69.

9 The Disputes Chamber clarified the provisions that it considers relevant in its letter to the defendant of 23 March 2020.

10 GBA, Recommendation no. 01/2020 of 17 January 2020 on the processing of personal data for direct

marketing purposes”, p. 9, available on the GBA website.

commercial context, addressed directly to one or more natural persons in a private or

professional context and which the processing of personal data entails”. Under “directly”

marketing” is therefore understood to mean various forms of promotion, such as newsletters by e-mail,

commercial phone calls or text messages or emails, or online advertising and this, whether or not in a commercial

context.

32. The defendant does not dispute that it processes customer data for direct marketing purposes,

and therefore under art. 21.2 GDPR must offer a right of objection to these processing operations.

33. Under Article 4.B of its Privacy Policy of 25 May 2018, the defendant announces that the processed

data is used for the following direct marketing (promotion) purposes:

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to inform the customer about (new) products and services of the defendant and other companies

within the defendant's group.

An example of promotion for own products and services and special promotions is:

“You can receive a text message when your bundle is used up with a

proposal to switch to a new rate plan.”

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and to provide personalized TV advertising.

An example of personalized TV advertising is: “based on your profile

can we offer some of the TV channels we work with the standard TV

adapt advertising to your interests and preferences. The combination of

user data (for example your age, language, zip code, product mix and socio-

demographic data such as family composition and statistical data on

street level) and your data about your use (being your TV viewing behaviour) allow us to

to personalize your TV experience”.

34. The Disputes Chamber decides how the right of objection under the GDPR should be provided in

connection with these direct marketing processing operations through various channels, even if direct marketing is

via electronic form (e.g. e-mails) regulated in Article VI.111 of the Code of Economic Law

which implements article 5.3 of the ePrivacy Directive in Belgian law.11

35. In particular, the Disputes Chamber is authorized to judge whether the exercise of the right of

objection to direct marketing by the defendant, whether or not in accordance with Article 12.2 GDPR (obligation

to facilitate the law) and whether or not in accordance with the obligations regarding transparency

information (article 13.2.b GDPR) is provided.

11 See title 2.2 above.

3.3 Infringements of the right to object to direct marketing as such (Art.

12.2 and art. 21.2 GDPR) - Lack of consolidated objection options

(“opt-out”) in the period between the entry into force of the GDPR and March 18

2019

36. The Disputes Chamber has established that Article 7.c of the Privacy Policy of 25 May 201812

offered the possibility to object to all possible forms of marketing listed in

the Privacy Policy, i.e. SMS, e-mail, telephone, letters, newsletters by e-mail. For that, the

customer express his objection by form of marketing: on the website of a third-party provider

(Robinson list for commercial letters, Belmeniet register for telephone calls), in marketing

message itself for text messages and newsletters (respond with “STOP” to the number that sent the text message,

or use the unsubscribe option in the commercial emails)13.

37. If the customer does not wish to receive any form of commercial communication, the

Article 7.c of the Privacy Policy from the customer to contact the customer service of the

defendant or to go to one of the defendant's retail outlets14.

38. The Disputes Chamber rules that the right of objection has not been sufficiently facilitated in this case, because

the data subjects against all forms of direct marketing separately (e.g. via email, telephone, etc.)

object without being given the opportunity to easily (e.g. by clicking on a box)

click) to object to all forms of direct marketing at the same time and without such objection via

appropriate communication channel.

39. After all, the right to object must be offered through appropriate communication channels, taking into account

taking into account the channels through which the controller and the data subject interact

in the context of the services offered. In Recommendation 1/2020 on direct marketing

the DPA also states that the data subject must easily exercise his right to object to direct marketing

exercise, taking into account the means by which the controller

communicates with the data subject: “if the mandatory information is provided digitally or if you

person contacts through digital channels, a single click should suffice”15.

12 Technical report Inspection Service, p. 22.

13 Defendant's Document 1, p. 12.

14 Ibid.

15 GBA, Recommendation no.01/2020 of 17 January 2020 on the processing of personal data for direct

marketing purposes, marginal number 162, p. 54.

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40. The Disputes Chamber has established that, in accordance with the GDPR, the right to object to a proper

should be facilitated through appropriate communication channels. There is a parallel with

Article 7.3 GDPR, which prescribes that withdrawing consent must be as easy as

giving it. The Disputes Chamber rules that it should be just as simple to express its objection

as to provide his data or the controller in the context of his

contact products and services. The Disputes Chamber rules that for the exercise of

the right of objection to the communication medium made available must be proportionate to the

means by which the controller communicates with the data subject: if the

controller the mandatory information pursuant to Articles 13 and 14 via his

website and/or if the data subject of the controller digitally

marketing messages, the right to object should also be able to be exercised online.

41. In the present case, the Disputes Chamber therefore finds that the defendant must offer the opportunity to

express an objection to direct marketing online, as the personal data was made online

provided and the direct marketing communication takes place online: it is not sufficient to inform the data subject

require the customer to go to a defendant's store, or telephone customer service

of the defendant, if his personal data was collected online and/or the

direct marketing messages are sent online.

42. In summary, having regard to the facts set out above and having regard to the obligation to exercise the right of

object to direct marketing communication in accordance with 12.2 GDPR, the Disputes Chamber

considers that the controller should not only provide the possibility to

objection granularly per communication channel (e-mail, SMS, etc.), but that he also has a

should provide a simple way to easily handle all forms of commercial communication

refuse, and this, through appropriate communication channels, taking into account the channels through which the

the defendant sends its direct marketing messages and/or collects the personal data.

43. On the basis of the findings of the Inspection Report, the Disputes Chamber establishes that a

such consolidated online opt-out option between May 25, 2018 through at least 17

March 2019 did not exist16. Therefore, during this period an infringement of art. 21.2 Juncto

12.2 GDPR.

44. This infringement is all the more important since the CPP nevertheless notified the defendant in its letter of 4 May

2018 had warned: “The right of objection must be facilitated according to the GDPR, which

means that there should be an easy-to-find unsubscribe option. Others

those responsible apply this consistently through simple tools such as, an online

16 See decision of the Disputes Chamber 72/2020, paras. 23-26.

unsubscribe form, a customary opt-out web link in correspondence, the mobile phone or a helpline. […]

The reference to numerous external lists (Robinson list, do not call me list) is an additional

complicating the law, which apparently is fragmented into subcategories according to the form

of marketing by or on behalf of the Telenet group.”.

45. The defendant should have had this consolidated unsubscribe option of its own accord

implement, in accordance with the responsibility of the controller at

pursuant to Article 24 GDPR. Nevertheless, the Defendant has waited for the comments of the

Inspection service until March 18, 2019 before remedying this shortcoming. The Dispute Room

therefore finds, for the period up to and including 18 March 2019, a breach of the duty to exercise the right

of objection to direct marketing in accordance with Art. 12.2 GDPR in conjunction with Art. 21.2 GDPR to facilitate.

46. The defendant explains that he has provided an unsubscribe button since March 18, 2019, and that this button

is available from various parts of its website17: “For ease of finding the

To enlarge the online unsubscribe form for users, Telenet has several options on the website

worked out through which the data subject can exercise his right to object. This is how the person concerned can be

exercise the right to object (i) via the Privacy Settings (ii) via the page 'What does GDPR mean for

me'? and (iii) via the separate unsubscribe button that data subjects will see on the Contact page

for Telenet customer service.". This unsubscribe button does indeed offer the option of "a full"

unsubscribe from all commercial communications".

47. On the basis of the defendant's documents, the Disputes Chamber determines that this unsubscribe button is

follows in the section "managing your personal data" is offered: various requests regarding

personal data is proposed (e.g. deletion or modification of personal data),

including the right to object to all communication channels.

17 Defendant's claim, p. 45.

18 Letter from the defendant dated. September 9, 2020, p. 7.

3.4 Breaches of information and transparency obligations

3.4.1 Context

48. The Inspectorate considers that the information architecture on the defendant's website is

"maze" is similar in view of the excess of information and the frequent repetition.19 The

Inspection service underlines that the defendant has to click 14 times to enter the Privacy Policy

to be able to consult it in its entirety, which according to the Inspectorate is an infringement of Articles 13 and 14

GDPR, as well as a violation of Article 12 GDPR, to the extent that this information

of rights, including the right to object.

49. Articles 13 and 14 list information to be provided depending on the circumstances

(when personal data has been collected from the data subject or, alternatively, not

be obtained directly from him). Articles 13.2.b and 14.2.b GDPR prescribe that the

controller the data subject when obtaining the personal data, or, when

the data was not obtained directly from him, within a reasonable time and at the latest on the

time when the personal data is first provided, must provide information

about the right to object to the processing, in order to ensure a fair and transparent

to ensure processing.

19 Findings 1 and 4 of the Inspection Report.

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50. Article 12.1 GDPR requires the controller to take “appropriate measures”

“so that the data subject receives the information referred to in Articles 13 and 14 … in connection with the

processing in a concise, transparent, comprehensible and easily accessible form and in

receive clear and simple language, especially when the information is specific to a child

is intended”. Article 12.2 prescribes that the controller must exercise the

rights of the data subject, including the right to object. According to consideration

39 of the GDPR, the obligation of transparency means that the persons in an accessible and

should be informed in an understandable way, including about the way in which their rights are exercised

could be.

51. The Disputes Chamber must decide whether the content and structure of the privacy-related information

the defendant's website is sufficiently reader-friendly and clear to meet the requirements of

Articles 13, 14 and 12.2 GDPR.

52. The Disputes Chamber understands from the Inspection Report, the technical report and the arguments of the

defendant that the relevant operational information about the right to object is not in the

Privacy policy of the defendant, but mainly in the customer portal My Telenet. The

The Disputes Chamber does not have any findings from the Inspectorate about Mijn Telenet

application. The Disputes Chamber emphasizes that because of the information, the defendant is mainly in the

decided to provide customer section of its website, does not sufficiently fulfill its obligations

to facilitate the exercise of the rights, including the right to object. Non-customers

must also, before contracting with the defendant, on the public part of the website of

defendant can get a good idea of the way in which the defendant as a future

service provider will process their personal data. In accordance with Group guidelines 2920

the controller must provide detailed information about the right to object

expressly draw the attention of the data subject in accordance with Article 21 GDPR, paragraph 2, and

this at the latest at the time of the first contact with the data subject. In doing so, this information

be presented clearly and separately from any other information (Article 21(4)). The

information about the right to object and the way to exercise this right should therefore be easy

be found on the public part of the defendant's website and not just in My Telenet.

20 Group 29, WP251, Guidelines on Automated Individual Decision-Making and Profiling for the Application of

Regulation (EU) 2016/679, 3 October 2017, p. 21.

3.4.2 Structure of the website in layers of information and lack of a clear

first layer synthesis page

53. The Defendant argues that its documentation architecture is well designed, with the first offering

information (first layer of information) are Privacy Policy consisting of fold-out chapters, conform

the requirements of the GDPR as interpreted by the EDBP21. The defendant cites as an example the fact

that the Data Protection Authority also publishes its own Privacy Policy in fold-out chapters such as

first layer offers information22.

54. The Disputes Chamber rules that the defendant may use its Privacy Policy as the first document

to comply with the information obligations of art. 13 and 14, as far as this first layer of document

sufficiently clear (not too detailed) and well-arranged for the average internet user.

55. The Group 29 also believes that a first layer of information is clear, well-arranged and not too detailed

should be: “The design and layout of the first layer of the privacy statement/notice should be

be such that the data subject has a clear overview of the information about the processing

of his or her personal data made available to him or her and of the place

where/how he or she can find that detailed information within the layers of the

privacy statement/communication”23.

56. Furthermore, the Disputes Chamber rules that the defendant has published its Privacy Policy in fold-out chapters

may propose provided that this information is sufficiently clear (simple) and accessible

is. Recital 39 of the GDPR states: “In accordance with the principle of transparency,

information and communication in connection with the processing of those personal data easily□

accessible and intelligible, and use clear and plain language." That the□

internet user had to click 14 times at the time of the Inspection Report to get a complete overview□

obtain the Privacy Policy provided in the form of hyperlinked chapters,□

the Disputes Chamber does not consider it problematic, to the extent that the defendant also has a consolidated□

version of the Privacy Policy on its website – via a hyperlink on each webpage of the website –□

made available with an overview of the relevant titles24.□

57. The Disputes Chamber has three versions of this Privacy Policy, dated. 25 May 2018 , dated. 17th of March□

2019 and dated. May 19, 2020, which do not differ with regard to the points raised here.□

21 Defendant's claim dated. May 22, 2020, p. 15 and 34.□

22 Defendant's claim dated. May 22, 2020, p. 20.□

23 EDPB, Guidelines on Transparency (WP260rev01), § 35.□

24 Defendant's claim, p. 17.□

58. However, the Disputes Chamber finds that the Defendant's Privacy Policy is insufficient in this case□

is clear to function as the first layer of information. The Privacy Policy contains a very detailed□

level of information, which is illustrated by the frequent internal cross-references that□

hinder the concrete exercise of a right, such as the right to object. Instead of□

provide a direct link to the operational page where the right of objection can be exercised□

exercised, the reader is provided with a descriptive explanation of how to exercise the right to object□

to practice. This description is not sufficient to facilitate the data subject's right to object□

to be practiced concretely.□

59. An example is chapter 8 of this Privacy Policy on the right to object which refers to chapter 7□

refers to, while Chapter 7 then refers again to Chapter 8 of the Privacy Policy.□

60. With regard to the reader-friendliness of this document, the Disputes Chamber notes that the internal□

cross references in the Privacy Policy with the numbers of the titles of the fold-out chapters□

correspond, which makes browsing the Privacy Policy using these numbers somewhat

facilitated. Nevertheless, the Disputes Chamber notes that the Privacy Policy is internal

contains cross-references with no ability to click through (no added hyperlinks).

61. The Disputes Chamber also notes that the presentation of the privacy settings contains errors.

The defendant gives the choice between 4 levels of privacy with different degrees of direct

marketing match. The classification “general”, “personal”, “targeted” and “unique” was

not always consistent at the time of the Inspection Report

applied25. It

is however the

defendant's responsibility to ensure the accuracy of this privacy information.

62. With regard to the structure of the website, the Disputes Chamber notes that the Privacy Policy

hierarchically unclear

contains information related to

to the protection of the

personal data on the defendant's website. At the time of the determinations of the

Inspectorate contained several windows on the same webpage of the defendant's website

with hyperlinks to privacy-related information that was offered separately and not integrated,

as a result of which the information is excessive and not clearly structured, because many more or less, but

not complete, identical notices are included, such as “GDPR First Aid: Important

concepts”; “What does GDPR mean to me”; “GDPR First Aid”; “Your privacy is important to

U.S"; "Privacy"; “I have WIGO and multiple privacy levels”; “Network management: how does Telenet respect

my privacy”26. That the Defendant's Privacy Policy at the bottom of any Defendant's web page

25 Inspection report, p. 15.

26 Report of the findings and Technical analysis, p. 7, screen shot 9..

can be found in a hyperlink does not alter the fact that the publicly accessible information,

other relating to the right to object, is not clearly structured.

63. More fundamentally, the Disputes Chamber finds that the level of information and the multiple internal cross-references in the Privacy Policy are difficult to reconcile with a reader-friendly first layer of information regarding the exercise of rights within the meaning of Articles 12.1, 12.2, 13 and 14 GDPR can facilitate. On the public part of the website (1) is not an easily available find operational information for exercising the right of objection in the first layer information, taking into account (2) a complex and not sufficiently transparent interaction between the privacy settings and the right to object to all forms of direct marketing.

64. The Disputes Chamber has established that there are examples of a fold-out privacy policy that provides appropriate transparency, with accessible and operational communication about the way of exercising the rights, such as the website of the French regulator CNIL.27 The first page of the CNIL's Privacy Policy contains, with a brief description of the contents of the policy, a clear link to a web form through which it is possible to exercise rights exercise, and this, under a clear title “exercer vos droits” (free translation: “exercise your rights”) that attracts enough attention.

27 Defendant's claim, p. 19.

The Disputes Chamber would like to make a number of recommendations in this regard:

(a) With regard to the reference to the mode of exercise of the rights including the right to object to direct marketing

65. It is true that the defendant has to manage a specific complexity: the data of the website users and the defendant's customers are not processed in the same way, and Defendant's customers have access to a specific assigned application “My Telenet” which is only accessible by logging in28.

66. The Disputes Chamber makes the following suggestion as best practice: The defendant should can offer his public page a link to the part of his website (the My Telenet

28 Defendant's claim, p. 33.

customer application) where the rights can be managed by customers. To exercise the right to object

To facilitate this, for example, a link can be provided to My Telenet where the customer (after

identification and authentication) directly on the page where he can exercise his right of objection

exercise. This is therefore not the home page of My Telenet, but it is the page where the right of

objection to direct marketing can be exercised in a consolidated or granular manner.

67. The defendant can use this webpage on My Telenet with regard to the right of objection (and

possibly other rights) in such a way that the customer can properly exercise his right of objection

exercise (see title 3.3.1). Obviously, the defendant is not obliged to submit only a consolidated

offer the right to object to all forms of direct marketing: it is up to the defendant

also free to offer a right of objection per type of marketing (e.g. e-mails).

(b) Regarding the level of detail in the first layer of information and the lack of

synthesis page regarding the available privacy information

68. The Disputes Chamber understands that the defendant presented its Privacy Policy as the first layer of information

in the hope of providing complete mandatory information under Articles 13 and 14 GDPR.

The Disputes Chamber understands that choosing the appropriate information is a difficult exercise,

the duty to provide complete information on the one hand, and the duty to provide sufficiently

information on the other, and that this choice is a matter of appreciation. At the

assessment of whether Article 12.1 of the GDPR is complied with, in particular the

obligation to provide concise, transparent, comprehensible and easily accessible information in a

clear language, the Disputes Chamber assumes an average person involved

internet user.

69. By way of recommendation or best practice, the Disputes Chamber refers to the defendant's

pleading bundle cited page “What does GDPR mean to me”. This can serve as an example of a good

beginning of the first layer of information (to the extent that all information is integrated in an integrated way

is offered of course, see also under marginal number 62). On this page you will find a□

clear and in lay-out customer-friendly presentation where the user can find all the necessary information□

to manage his rights concretely, in addition to the privacy settings and (since added)□

the cookie preferences29.□

print□

screen□

29□

9-12-2020□

(https://www2.telenet.be/nl/customer service/wat-metekent-gdpr-voor-mij/), that with the findings of the Inspectorate in□

his Inspection Report.□

defendant□

website□

audience□

part□

by□

by□

by□

the□

on□

the□

70. If the website visitor clicks on the “manage your personal data” window, he will arrive at a□

webpage where can manage its rights (described as “requests”) as follows30.□

71. At the bottom of these windows, the website visitor will find a link to the page where he/she requests it,□

the right to object, among other things31:□

30 Ibid.□

31 Ibid.

72. On this page you will find direct links to operational functionalities related to

the rights. However, this page is currently, given the structure of the website of the

defendant, not the first layer of information that the internet visitor can find.

73. The Disputes Chamber has asked the defendant how this webpage can be found on its website

accessible, to verify that this web page does not de facto act as the first layer of information.

This would partially address the grievances of the Disputes Chamber regarding the transparency of the website

can take away. In his letter dated September 9, 2020, the defendant states that the page “What

means GDPR to me” does not constitute official information under Articles 13-14 GDPR, and that it

capstone of the privacy information that acts as the first layer, the Privacy Policy webpage

of the defendant is32. The defendant's reply disputes the arguments of the

This does not mean that the Disputes Chamber with regard to transparency.

74. The defendant adds that all privacy-related documentation is the subject of a

revision and that the availability of all privacy-related information is part of

constitutes this revision33.

75. The absence of a clear first layer of information that can easily be transferred to the operational

exercise of the rights (including the right to object to direct marketing), therefore has

a negative impact on the transparency of information on the right to object that

ideally should be provided in several layers. The defendant is, of course, free to

technology to improve this: for example, making the privacy policy more reader-friendly

and provide the necessary direct links, or a page such as “What does GDPR mean to me”, which is already

direct links to the right to object, use as the first layer of information.

32 Defendant's letter, September 9, 2020, p. 8.

33 Defendant's claim, p. 8.

3.4.3 Risk of confusion regarding the scope of the privacy settings

76. The Disputes Chamber takes note of the fact that the customer who exercises his right to object to all forms

of marketing through the consolidated unsubscribe button automatically exercises by the defendant on

Privacy level 1 (“general”) is set34. The Disputes Chamber rules that the interaction between

this consolidated right to object and the privacy settings, more specifically the Privacy Level 1

of the defendant, is not clearly described. As explained below, the data subject who

does not know the existence of a right to object to direct marketing, given the structure and content

of the privacy information available on the website, get the impression that the privacy setting

“general” is the most protective choice on the data subject's website.

77. The privacy settings are described as the best way to enjoy the “Telenet experience”.

and the privacy setting becomes “general” as the most protective privacy experience of

defendant, which means that the data subject regarding the scope of the privacy settings

and their relationship to the right to object is misunderstood.

78. On the webpage “What does GDPR mean to me” you can read: “You choose what your Telenet experience looks like

you all by yourself. From most privacy-protective to 100% personalized.”35, and among these

phrases lists the four available privacy levels, General, Targeted, Personal and

Unique36.

34 Letter from the defendant to the Disputes Chamber dated September 9, 2020, p. 7.

35 Bundle of pleadings, piece 2, p. 9.

36 Ibid.

79. Level 1 (“general) is thus - wrongly - described on this page as if it were the most

was a favorable privacy choice, while there is also the possibility to exercise a right of objection

against direct marketing under art. 21.2 GDPR as well as – as further explained below37

– a right to object to processing carried out under the legal basis of legitimate interest

under art. 21.1 GDPR.

80. The defendant explains that the exercise of the right to object to all forms of direct

marketing is an additional protection in addition to the privacy settings on the defendant's website38:

81. The Disputes Chamber therefore understands that the defendant has exercised the right to object to

enables all forms of marketing, without commercial communication, so that it

privacy level “General” is not the most protective privacy experience. The description of the

Privacy level “General” as “the most protective” setting can therefore lead to confusion.

(a) There is no clear information to be found regarding the existence and mode of operation of the

right of objection on the My Telenet page where the privacy levels are chosen

37 See under title 4.

38 Bundle of pleadings, piece 2, p. 7.

82. The My Telenet privacy settings do not appear to be a clear invitation to exercise the right of objection

to contain practice. Once the data subject selects his privacy settings in My Telenet, it is

according to the Disputes Chamber, it is not clear to him that he also has a right of objection

features39. The introduction banner at the top of the page explains the privacy settings,

showing that the My Telenet settings are the ideal way to determine which

personal data the customer shares with the defendant40.

83. At the very bottom of the page there is a button: “A request about your personal data

to steer". However, it is not directly stated that this button gives the possibility to disable the privacy

to nuance the setting and the processing of the communicated personal data by the defendant

through an objection to direct marketing. As an illustration, the Disputes Chamber shows the

relevant screenshot.

39 See document 30 in conjunction with document 21 of the defendant.

40 This introductory banner reads as follows: « We believe that you are careful with your personal data at Telenet

logical. We think the same. Your data is yours. Point. You therefore decide for yourself which personal data you want to share w

and how personal your Telenet experience may be. There are 4 privacy levels for that: “General”, “Focused”, “Personal” and

"Unique". The better we get to know you, the better we can ensure a Telenet experience that really suits you. That makes sense

[…]" (Defendant's Document 21, p. 1)

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84. It appears from the documents submitted by the defendant that only if the person concerned clicks the button "One"

send a request about your personal data", he will end up on the page "Your personal data

to manage". There he is given the opportunity to select a box, which means that he concretely receives "a"

complete unsubscribe from all commercial communications", among other possible options

questions regarding his personal data (an overview of the processed personal data, the

delete it, etc.).

85. According to the Disputes Chamber, the structure of My Telenet is therefore such that for the average

customer who lands on the page about the privacy levels, it is not immediately clear that the button "a

request about your personal data"41 offers him an extra opportunity to get more

privacy protection, unless the customer clicks through this button or the detailed

privacy policy (first layer of privacy information of the defendant) has exactly read what according to

the Disputes Chamber cannot be expected of an average customer.

86.

Even for customers who are aware of the existence of a right of objection, it is not always

easy to find the relevant webpage where he can concretely exercise this right, as the

defendant refers him from the webpage with the privacy policy to "My Telenet" without direct

link to the relevant web page. There is therefore on behalf of the user of the website of the defendant

a risk of not finding the right of objection.

(b) The impression is created that the privacy settings allow to obtain the advertising (direct

marketing) to determine

87. Article 4.B of the Privacy Policy always contains the same message under each privacy level, both what

concerns advertising for own products as well as for personalized TV advertising: "Your privacy setting

(more about this in point 7 of this privacy policy) determines to what extent you receive this type of advertising,

and how you can log in and out”42. In its own submission, the defendant states the various

privacy options as a “privacy dashboard”43.

88. The Disputes Chamber rules that this way of presenting the privacy settings in the Privacy Policy

poses a risk of confusion, due to the concealment of the interaction between the

privacy settings and the right to object.

89. This is not affected by the fact that the defendant argues that the privacy settings on its website are in fact nothing

have to do with the right to object. In response to the question of the Disputes Chamber Mijn

41 Defendant's Document 21, p. 2.

42 Privacy Policy, Defendant's Document 1.

43 See the defendant's claim, 22 May 2020, p. 30 and 31.

Telenet settings (“general”, “targeted”, etc.) may or may not be a way to exercise the right of objection

under art. 21.2 or 21.1 GDPR, the defendant argued that the choice between

different levels of privacy offered by the defendant (“general”, “targeted”, “personal”,

“unique”) is not intended to replace the right to object to direct marketing44.

90. The Disputes Chamber considers this explanation problematic, to the extent that the privacy settings according to the

privacy policy – as shown above – determine the messages that the customer may or may not receive

receives and how to unsubscribe, both with regard to messages about products and services within

the defendant's group as with regard to third-party TV advertising, which, on the basis of the profile

created by the customer.

91. Also within the web page “Manage your settings”45 the settings are described as a

way of managing commercial communications (albeit with a focus on the

defendant's information).

92. Under the webpage “Manage your personal data”46 it is explained that the customer who has exercised his right to

objected and changed his mind can change his privacy level to

“focused”, “personal” or “unique”. The Disputes Chamber therefore determines that the privacy

settings are a way to reactivate commercial communication, but not to

to deactivate it. According to the Disputes Chamber, in the absence of a more clear explanation, this can lead to

lead to misunderstandings, in the context where the privacy level “General” has been repeatedly regarded as the “most”

protective” privacy level is described.

93. Chapter 7 of the Privacy Policy contains a reference to the right to object (“opt-out for

direct marketing") in response to the question "How do you determine which personal data we

for commercial purposes and how”? The Disputes Chamber establishes that the person concerned

who would consult the Privacy Policy as the first document, in that document, in the preamble of the explanation

about the right to object, is encouraged to choose his privacy settings, as if he were there

will be able to manage all aspects of his personal data, from the most to the least

protective privacy option.

44 Letter from the defendant to the Disputes Chamber, 6 October 2020, p. 3.

45 Piece 2 of the defendant's pleading bundle, p. 9.

46 Defendant's Document 4, p. 2.

94. The Disputes Chamber considers the interaction between the right to object and the privacy institution

“General” confusing, as the user may get the impression that this is the most

protective option. This confusion is all the greater in the case where the customer directly

My Telenet ends up in the privacy settings.47 In addition, the interaction between the law

object to all forms of direct marketing and the privacy level “General” on a non

presented in a coherent manner (the “General” Privacy Level still leaves “general commercial”

communication”).

3.4.5. Violations of Articles 21.2 GDPR in conjunction with Articles 12.1 and 12.2, 13 and 14 GDPR

95. The Disputes Chamber rules that the defendant's choice to waive the right to object

linking the privacy settings can lead to confusion for data subjects to the extent that it

first (level “General”) as the “most protective” privacy level is described. With this

is the defendant insufficiently transparent with regard to the existence and manner of exercise of the

right of objection under Article 21.2 GDPR in conjunction with Articles 12.1, 12.2, 13 and 14 GDPR.

96. The Disputes Chamber underlines that it is the defendant's duty to provide an accessible and

provide comprehensible information about the existence and exercise of the rights, including

the right to object, which must be intelligible and easily visible and accessible from

all parts of the website, from wherever the customer surfs. The controller has a

choice between the appropriate means of information that reveal the existence and concrete exercise of the

rights of the data subject, including the right to object to direct marketing, on his website

to make understandable. However, he has an obligation to exercise the

data protection rights on its website by facilitating its privacy information.

97. The Disputes Chamber therefore finds that the structure of the website and of Mijn Telenet cannot be regarded as a

can be considered best practice and needs to be improved in order to better meet the

obligation to exercise a right to object to direct marketing in accordance with Article 21.2 in conjunction with 12.2 GDPR

to facilitate as well as transparent information in accordance with art. 12.1, 13.2.b and 14.2.b GDPR.

4. Right to object to processing based on legitimate interest

98. In his letter of 9 July 2018 to the defendant, a distinction between the granting of the right of

objection to direct marketing (Art. 21.2 GDPR) and granting of the right to object to

other forms of processing, for which the defendant – according to his own statements –

47 According to the navigation chart submitted by the defendant in documents 21 juncto 30.

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was developing a web form with a free text field (Art. 21.1 GDPR). The Disputes Chamber has

about these processing operations based on a legitimate interest, requested an explanation in her letter from

12 August 2020, using its authority to review the documents submitted to it

and facts and if necessary reopen the debates about this.48

99. Indeed, the right to object can also be exercised outside the context of processing

for marketing purposes, for processing operations based on the processing grounds in general

interest and legitimate interests (Article 6.1 under e) resp. under f) GDPR). To Article 21.1 GDPR

valid, the data subject must be able to justify his objection, on the basis of reasons

specifically related to reasons related to his situation.

100. The Inspection Report has not examined the right of objection under Article 21.1 GDPR, but the

In his letter of 9 September 2020, the defendant himself mentioned this aspect of the right of objection

explained: “with regard to the possibility to object to processing operations that take place on the basis of Article 6.1

(f) GDPR (with the exception of processing for the purpose of direct marketing) Telenet

in the implementation phase of the implementation of this free text webform” 49. The Disputes Chamber takes

thus a document of the fact that the defendant has not yet offered an opportunity to object to

processing carried out on the basis of Article 6.1.f AVG, which is nevertheless required under Article 21.1 AVG.

101. On the basis of the documents in the file, the Disputes Chamber cannot determine whether

are processing operations that take place on the legal basis of “legitimate interest”. By lack of

on evidence, the Disputes Chamber does not establish a breach of the obligation to exercise a right of objection

under Article 21.1 GDPR. The Disputes Chamber will act on the basis of good faith

states that the defendant has intended to provide for this possibility to

but currently not using it.

102. The Disputes Chamber also underlines that the defendant did not answer its question about

“how and where on the Telenet website” the customer/internet visitor is informed about the existence

and purposes of the processing pursuant to Article 6.1.f GDPR. The Disputes Chamber recommends that,

should the defendant still use personal data on the basis of legitimate interest

process, they must provide an appropriate opportunity to exercise the right of

objection using a web form with free text field.

5. The mandatory quasi-automatic acceptance of communication of data via cookies

48 See more detailed decision of the Disputes Chamber 17/2020 of 21 February 2020.

49 Letter of 9 September 2020 from the defendant, p. 4.

103. At the time of the Inspection Report, the defendant requested the consent of the website visitor for placing cookies through the following cookie banner: “By continuing to use of this website you agree to the placing of cookies”50. As by the Inspectorate described, it sufficed as permission for those involved to close the window and continue surfing. The The Disputes Chamber rules that such a way of obtaining permission does not comply with the requirements of the GDPR. After all, Articles 4.11 in conjunction with 7.1 GDPR require an unambiguous and specific permission. 51

104. As explained by the EDPB, the requirement of an unambiguous and specific consent that neither silence nor lack of action/action on the part of the data subject nor the simple use of a service can be regarded as valid consent52. The The Disputes Chamber also points to Recital 32 of the GDPR, according to which an implicit consent is out of the question.

105. In the Planet4953 judgment, the Court of Justice ruled that pre-ticking a box did not can be regarded as active consent: “the requirement of an “expression of will” on the part of the data subject” refers “clearly to an active and not a passive behavior”. Consent through however, a checkbox checked by default does not imply active behavior on the part of the user of a website”54. The Court also refers to recital 32 of the GDPR.

106. In that judgment, the Court interpreted the fact that the expression of will in Article 2(h) of the Directive 95/46 "must be 'specific' in the sense that it precisely relates to the processing of the data concerned must be directed and cannot be deduced from a general expression of will pertaining to something else has."

107. The Court also found that this interpretation was all the more urgent in the light of the GDPR55, “since a 'free, specific, informed and unambiguous' expression of will by the person concerned is here required, in the form of a statement or an “unambiguous act” giving his consent for a processing of personal data concerning him."

50 Report of the findings and technical analysis, paper 20, p. 20.

51 “In this context, it is difficult to assume that the term “consent” corresponds to the requirements of the GDPR”, Report of the findings and technical analysis, piece 20, p. 20

52 “The use of pre-ticked opt-in boxes is invalid under the GDPR. Silence or inactivity on the part of the data subject, as well as merely proceeding with a service cannot be regarded as an active indication of choice.”, Guidelines 5/2020 on consent under Regulation 2016/679, May 4, 2020, § 79.

53 CJEU, 1 October 2019, C-673/17, Planet49, ECLI:EU:C:2019:801, § 52.

54 Ibid, § 52.

55 Ibid, § 62.

108. In line with this judgment and with recent decisions of other data protection authorities 56, the Disputes Chamber rules that at the time of the Inspection Report the defendant did not have a valid requested permission to continue surfing the website, in the circumstances as in the Inspection report described, because the permission was not specific, as the user with one act gave permission to use information or services offered on the website and to have its personal data processed via cookies.

109. The Disputes Chamber therefore establishes an infringement of Article 7 in conjunction with 4.11 GDPR, but decides not to sanction, taking into account the fact that the defendant has his own cookie banner movement and since 8 December 2019 – i.e. within a reasonable period of time after the Planet49 judgment – has amended. The new cookie banner no longer assumes implicit consent (“by further use this website") but gives the choice between "accept recommended cookies" and “adjust cookie preferences”57.

6. The right to a fair trial and the alleged violation of the General Principles of good governance

110. The defendant complains about negligence in the Inspection Report, as well as about contradictions between this report and the letter of the Disputes Chamber of 23 March 2020 in which the

The Disputes Chamber considered the grievances of the Inspectorate based on additional questions
clarify and supplement where appropriate58. The defendant also disputes the fact that the
Dispute chamber made its own determinations. According to the defendant, the authority to
to make determinations only with the Inspectorate.

111. In its Decision 17/2020, the Disputes Chamber explained the essence of its competence.59 It
It is part of its duty, as a supervisory body, to verify the facts presented to it
can qualify and further investigate. The Disputes Chamber can therefore use publicly available information
or use information presented to a large number of customers to make inquiries
set. The Disputes Chamber is of the opinion that such an extension of the debate to include the rights of
the defense is compatible to the extent that the right to contradict is assured60.

7. Sanctions and measures

56 CNIL, Délibération 2020-091 du 17 September 2020, art. 2, §27.

57 Defendant's claim, p. 41.

58 Defendant's claim.

59 GK, decision on the merits no. 17/2020, 28 April 2020

112. The Disputes Chamber is authorized to impose all sanctions and measures listed in Article 100 WOG
lay. In view of the established infringements, the Disputes Chamber has, in determining the appropriate
measure and sanction in this case, taking into account the circumstances of the case, and decided
because of the limited seriousness of the indications of infringement and the willingness of the defendant to
and not to impose a fine.

113. The Disputes Chamber also rules that it is appropriate to impose a reprimand for infringement
to the right to object for direct marketing purposes (Art. 21.2 GDPR) in conjunction with Art. 12.2 GDPR, and
in particular the lack of a consolidated possibility of objection in the period between the
entry into force of the GDPR and 18 March 2019. The Disputes Chamber considers it important that
the defendant did not voluntarily provide a consolidated online unsubscribe option

and awaited the notice from the Inspectorate. However, the Disputes Chamber takes into account

the fact that this breach has meanwhile been resolved by the consolidated unsubscribe button, and this, still

before the Inspectorate submitted its inspection report to the Disputes Chamber.

114. Also

the Disputes Chamber states limited

breaches

fixed

on the

information and

transparency obligations under Article 12.1, 12.2, 13 and 14 GDPR with an impact on the exercise

of the rights including the right to object (21.2 GDPR) (Title 3.4) and more specifically, the lack of

a clear first layer synthesis page with regard to the available privacy information, which

would provide easy access to the concrete way of exercising the rights from this

page, as well as the unclear relationship between the privacy settings and the right to object

against direct marketing messages because the privacy settings on the defendant's website are

be described in a potentially confusing way.

115. The Disputes Chamber also makes recommendations regarding the lack of a right to object to

processing operations based on legitimate interest and which do not constitute direct marketing,

lack of information as to how this right to object is exercised, and failure to do so

right to facilitate (Art. 21.1 GDPR in conjunction with Articles 12.1, 13 and 14 GDPR) (Title 4.)

116. The Disputes Chamber rules, however, that these infringements are not of such a nature that a sanction

must be imposed for and orders the dismissal (Article 100 § 1, 2 ° WOG).

117. In doing so, the Disputes Chamber takes into account the efforts of the defendant on the website to

offer privacy information, as well as the willingness of the defendant and its cooperation

in the proceedings. In this context, the Disputes Chamber mentions, for example, submitting relevant

documents in addition to the findings of the Inspectorate and in response to the questions of

the Disputes Chamber in the context where the Inspectorate does not make any findings in the customer area of

made the website.

118. The Disputes Chamber considers this case especially important as an opportunity to

make recommendations to practices on certain actions to be taken to increase transparency,

especially in the telecommunications sector. The Disputes Chamber contributes to the explicit task of

supervisory authorities to better known controllers and processors

related to their obligations under the GDPR, pursuant to Article 57.1.b) of this

regulation.

119. In view of the importance of transparency with regard to the decision-making of the Disputes Chamber,

this decision will be published on the website of the Data Protection Authority. Given the

reasoning in this decision to the content and features of the defendant's website

however, it is impossible to indirectly identify the defendant

even if his name were not directly disclosed. Therefore, the

Litigation Chamber that the direct identification of the defendant in this decision no longer disadvantage him

would bring than the

indirect

identification. That is why the Disputes Chamber decides to

disclose the defendant's identification information.

FOR THESE REASONS,

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

o to formulate a reprimand pursuant to Article 100, §1, 5° WOG, pursuant to

the infringement of art. 21.2 GDPR in conjunction with Art. 12.2 GDPR;

o otherwise pursuant to Article 100 § 2 1° WOG a

recommended outdoor follow-up setting.

Against this decision, pursuant to art. 108, §1 WOG, appeals must be lodged within a

period of thirty days, from the notification, to the Marktenhof, with the

Data Protection Authority as Defendant.

Hielke Hijmans

Chairman of the Disputes Chamber