

Litigation Chamber

Decision on the merits 39/2020 of 28 July 2020

the Data Protection Authority, made up of

File number: DOS-2018-05780

Subject: Complaint relating to the processing of personal data of voters during

municipal elections

The Litigation Chamber 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 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:

□ X, hereinafter: "the complainant"□

□ Y, hereinafter: "the defendant"□

## 1. Scope of the procedure□

1. In addition to the examination by the Litigation Chamber of the facts to which the complaint relates, the□  
this decision also analyzes the findings made by the Inspection Service□  
outside the scope of the complaint. All the findings are indeed found to be related□  
strong, if not inseparable, from the complaint, and the Litigation Chamber therefore considers it necessary□  
to address all of these findings simultaneously.□

## 2. Facts and procedure□

### Complaint□

2. On October 12, 2018, the complainant filed a complaint with the Authority for the Protection of□  
data.□

3. The complaint can be summarized as follows. As the municipal elections approach□  
October 14, 2018, the complainant received a letter at her postal address containing□  
electoral propaganda. The mail is addressed to him directly and comes from the party for which□  
the defendant appears at the top of the list (hereafter: the local party). The responsible editor□  
mentioned on the envelope is the defendant. At the time of sending the mail, this defendant□  
is also mayor of the municipality where the complainant has her main residence and where the□  
plaintiff will have to take part in the aforementioned municipal elections. The complaint is□  
initially directed against the local party.□

4. The aforementioned letter is addressed to the complainant as a "potential new resident"□

[Editor's note: all the passages from the file are free translations made by the□

Secretariat of the Data Protection Authority, in the absence of an official translation].□

In her complaint, the plaintiff draws attention to the fact that the mail was "especially□  
addressed". According to the complainant, it was impossible for the local party to know, on the basis of□  
the list of voters for the 2018 municipal elections, that the complainant was a□

new resident of the town.□

5. The complaint also contains several supporting documents, including the letter which is the subject□  
of the complaint, as well as several screenshots of the social networking site Facebook. On the□  
screenshots, we can read that a person writes the following:□

"[...] anyone who gets a list of voters (every candidate) and knows□  
a little use of Excel can filter it, with of course some effort [...]"□

Subsequent investigation by the Inspection Service reveals that the person (hereinafter: person Z)□  
who owns the Facebook profile ranks fifth on the party's list of candidates□  
local.□

Procedure□

6. On October 17, 2018, the complaint was declared admissible by the Front Line Service.□  
...□

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7. During its meeting of November 14, 2018, the Litigation Chamber decides to request a□  
investigation by the Inspection Service, pursuant to Articles 96, § 1, j° 94, 1° of the LCA.□

8. On February 13, 2019, the Inspection Service contacted the Respondent in his capacity as□  
mayor of the municipality concerned. The Inspection Service asks the defendant to□  
send the following information:□

□ an extract from the list of voters which may have served as a basis for the October communication□

□□

by the local party;□

any "additional list" containing personal data□

concerning the citizens of the municipality where the local party is standing for election□

communal;□

□□

the name and contact details of the municipality's data protection officer;□

□ explanations on the method for filtering the citizens of the municipality by □

as new voters. The Inspection Service refers in this respect to the □

reaction of a candidate from the local party list on Facebook. □

9. On March 14, 2019, the Inspection Service received a response from the Respondent as □

mayor as well as the director general of the municipal administration. The mail □

includes in particular in the appendix an extract from the list of electors for the elections □

communales of 2018. According to the mail, it is "possible" that this served as the basis for the □

communication from the local party. □

A supporting document is also attached which demonstrates that between August 1, 2018 and □

October 14, 2018, no other personal data was accessed from □

the "population" application or the National Register. □

The data of the data protection officer of the municipality are also □

communicated. □

10. On April 9, 2019, the Respondent sent an e-mail to the Inspection Service "in [his] capacity as □

head of the list for the last municipal elections". □

The defendant states in this message that "a letter has indeed been sent to the new □

inhabitants" of the municipality concerned. The defendant specifies that the "concrete addresses of the □

new residents were taken from the 2018 voter lists". □

11. In this same e-mail, the Respondent further adds: □

"Besides, the identity of the new inhabitants was sufficiently and almost □

fully known to our party's current officers, all of whom work in a □

small rural community." □

at □

12. In a registered letter of May 7, 2019 addressed to the defendant, the Inspection Service □

asks which proxies have added the status of new resident to the lists of □

voters in order to create a "list of new residents". The Inspection Service □

request□

concerned.□

The Inspection Service also asks which person within the defendant's party□

was responsible for printouts and the address list, as well as explanations□

information on how the party processes the personal data of□

data subjects in accordance with the principles of the GDPR.□

confirmation□

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13. On June 4, 2019, the Inspection Service recalled by registered letter the questions asked□

a month earlier. The Inspection Service attracts attention on this occasion - just as in□

its previous letters - on the obligation of cooperation for data controllers□

in accordance with Article 31 of the GDPR as well as the obligation of national law provided for in□

Article 66, § 2 of the LCA.□

14. On June 17, 2019, the Respondent sends an e-mail to the Inspection Service in response to the letters□

of the last. The defendant points out that the personal data which has been□

used for sending mail to new residents were simply taken over from the□

list of voters for 2018. The respondent indicates that several candidates on the list of his□

party have removed voters from the voters list so that only the voters remain on the list.□

new voters. According to the defendant, this was done on the basis of "knowledge□

available". In this regard, it may be noted that the Inspection Service has established that the municipality□

has more than 10,000 inhabitants. The defendant specifies that the knowledge available mentioned could be put to good use because "many candidates are active in politics for 18 to 30 years and especially in civil society".

15. The Respondent further adds:

"At the end of the 'suppression exercise', I compared the 2018 voter list with that of 2012 in an attempt to avoid major errors or certain confusions. It is certain that the "summary" comparison of these 2 lists did not allow that the list of new inhabitants is completely correct, since some "errors" were then also communicated by our candidates: some new inhabitants had obviously not received the mail."

16. For the use of voter lists, the defendant refers to Article 17, § 3, paragraph 2 of the Electoral Code of April 12, 1894 which provides:

"The specimens or copies of the list of voters issued pursuant to §§ 1 and 2 may only be used for electoral purposes, including outside the period between the date of issue of the list and the date of the election."

17. The respondent draws attention to the fact that the processing of all personal data took place solely for electoral purposes and declares: "the personal data personnel from the 2012 voters list have not been used or misappropriated."

18. Furthermore, the Respondent points out that the local party is a de facto association where "no specific manager" was appointed for sending the mail. The defendant declares assume legal responsibility for the local party for sending mail.

19. On July 31, 2019, the Inspection Service sent its report to the Litigation Chamber, in accordance with article 91, § 2 of the LCA.

20. In addition to the findings of fact relating to the complaint, the Inspection Service finds also that the local party does not provide any public information regarding the protection of personal data. The Inspection Service also notes that mail to

new inhabitants "made no reference to the rights of the complainant concerned".

The Inspection Service concludes that "there is no sufficient serious indication or evidence to substantiate the merits of the complaint".

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21. On September 25, 2019, the Litigation Chamber decides that the file can be processed on the merits, in accordance with articles 98 e.s. of the ACL.

22. On October 28, 2019, the Litigation Division received the submissions in reply from the complainant.

23. The complainant refers to the report of the Inspection Service and qualifies the defense according to which the list of new inhabitants was drawn up on the basis of available knowledge such as being "far-fetched". The complainant emphasizes that she is not active in any social association in the municipality and there are no (public) settings available allowing it to be characterized as a new resident.

24. The Complainant also points out that:

"the respondent acknowledges in the email of June 17 [2019] having 'briefly' compared the 2012 list with the 2018 list. To my knowledge, it is not allowed to use this list after the elections. Not even 'briefly'.

The complainant refers to the website of the Data Protection Authority where it is explained that the principle of finality means that a list of voters can only be used for the elections in which the list was originally supplied<sup>1</sup>.

25. In addition, the Complainant points out that one of the people (person Z) who transmitted a dated and signed declaration indicating that it had participated in the development of the "list of new inhabitants" is the same person whose reaction she forwarded on Facebook to the Data Protection Authority by means of a screenshot attached to its

complaint.□

In her submissions, the complainant again attaches a screenshot of Facebook where□  
this aforementioned person Z states, in the words of the complainant, "that it is a game□  
children by 'simply' filtering the list of voters, if you know how to use Excel and□  
ESPECIALLY, with some effort". The complainant concludes: "that [person Z]□  
did not seem to have realized at the time that she was thus recognizing that they had juxtaposed the□  
two lists and compared them with the correct Excel feature/formula."□

26. On November 28, 2019, the Respondent filed its submissions. He declares that the data to be□  
personal character of the 2012 voters list "were not used" to establish the□  
list of new residents in 2018:□

"Only the 2018 voters list and the 'crossed out' list with the [new residents]□  
potential established by the candidates themselves on the basis of their knowledge□  
available were used as a medium for sending mail".□

27. And in addition:□

"The defendant did compare the lists for verification, in order to avoid□  
mistakes ('self-embarrassing mistakes') and obvious confusions. He recognizes it□

1 By reference to: Data Protection Authority GDPR legal notice, May 2018, available via this link□  
:<https://www.autoriteprotectiondonnees.be/publications/note-juridique-sur-les-elections.pdf>, 9.□  
...□

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(...). This therefore does not mean that the information from the old voters list□  
of 2012 was used for (propaganda for) the 2018 elections."□

28. The Respondent points out that the letters were only sent to people who□  
were potential new inhabitants of the commune. In this context, the defendant□  
points out that the knowledge available concerning the new inhabitants of the□  
common are "very large". This is explained as follows in the conclusions of the□



defendant:□

"The defendant has indeed been [doctor] in the commune for 41 years and he is active□  
in politics for 30 years. On the basis of his available knowledge and with the help□  
of Google Streetview (it knows more or less who lives in which house), the defendant□  
crossed out names on the 2018 voters list."□

29. As to the written statements made by the aforementioned person Z on Facebook, the□

Respondent states in the pleadings:□

"Once the names were crossed out, the list of voters in the Excel file was already□  
considerably reduced. This gave the impression to [person Z], at the origin of□  
this misunderstanding in the Facebook discussion, that an Excel processing had already been□  
applied to the voters list. This is not correct, it was actually□

"manual" deletions, the result of which was included in an Excel file. Any□

Excel algorithm was used. The defendant can at most apply a few□

simple calculations via Excel, he is far from being able to perform complex operations."□

30. Regarding the lack of information on the protection of personal data, the□

Respondent states in its pleadings that this situation has in the meantime been rectified and□

that before, "the party was still completely traceable". He adds: "In case of complaints,□

it was easy to join the party [...], for example at the town hall."□

31. Concerning the defendant's obligation to inform the data subjects□

when the personal data was not obtained from the person□

concerned, the respondent declares that its identity and contact details have always been clear□

for the person concerned. The defendant states that the plaintiff has always been able to oppose□

to treatment, but that she never did. The defendant concludes:□

"The fact remains that the defendant had to provide information with regard to the□

data subjects (right of opposition) in order to guarantee the loyalty and□

transparency. The defendant draws a lesson from this for the future that the□

data subjects must always be informed of their rights."□

32. The Respondent also expressed the wish to be heard. The Litigation Chamber□

therefore organizes a hearing on May 8, 2020. The defendant informs the Litigation Chamber□

that he will not be present or represented at the hearing. The complainant is present at□

the hearing. The plaintiff insists that she has no connection with the defendant or with□

his side. The Complainant also alleges that the Respondent failed to communicate to her his□

conclusions, as previously imposed by the Litigation Chamber. The Complainant□

confirmed□

the Litigation Chamber.□

heard by□

enough□

feel□

to□

...□

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33. In order to allow the defendant to defend himself concerning the amount of the fine□

administrative set by the Litigation Chamber, the latter decided to list the□

violations in question in its standard form "reaction form against a□

proposed fine". This "fine form" was sent to the defendant by e-mail on□

June 16, 2020, mentioning that the defendant could react regarding the circumstances□

particularities of the case and the envisaged amount of the fine (in this case EUR 5,000).□

34. In its Response, the Respondent argues that the fact that the Service□

of Inspection carried out a different analysis of the facts from that of the Litigation Chamber,□

"therefore, the alleged duration of the infringement is not a valid argument".□

The defendant states that the proceedings before the Litigation Chamber were already□

sufficiently dissuasive in itself and that the proposed amount of the fine is "exorbitant".□

Furthermore, the Respondent argues that the reasoning that in similar cases the amount of the fine imposed is always the same demonstrates a lack of appreciation concrete on the part of the Litigation Chamber.

35. Finally, the defendant also sends the declaration form showing the expenses of the local party from which it appears that less than EUR 20,000 in total have been spent by the party "over a whole legislature". The Respondent therefore asserts that "the financial means real local party have not been taken into account."  
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### 3. Motivation

#### 3.1.

The data controller (Article 4, point 7) of the GDPR)

36. The Litigation Division first notes that the mail that is the subject of the complaint in this dossier does not mention any specific responsible signatory or editor. the defendant indicates that the mail that is the subject of the complaint in this file mentions the address of the defendant. The defendant explains vis-à-vis the Inspection Service that "no specific manager" had been designated for the mail but that as head of the list, the defendant assumes responsibility for the complaint, since no responsible had not been appointed.

37. Furthermore, the Respondent states that the "removal" to obtain the list of new residents was carried out by several local party candidates. According to his own declarations, the defendant is however the only one to have drawn up the list of new inhabitants by comparing the list of electors from 2018 and that of 2012.

38. Based on the concrete elements of this case and the statements of the Respondent, the Litigation Chamber finds that it is the defendant who is responsible for the processing at meaning of Article 4, point 7) of the GDPR for the processing operations which are the subject of this

complaint.□

39. This qualification is also important since the defendant as a person□

physical refers in its response to the declaration of the local party's election expenses.□

The defendant in the present case, however, concerns the head of the list as a person□

physical, given that the local party is a de facto association. The defendant declares□

even as head of the list, he assumes responsibility for the processing in the□

present case2.□

3.2.□

The principles relating to the processing of personal data and the□

lawfulness of processing (Articles 5 and 6 GDPR)□

a) Processing personal data from old voters lists□

40. In his statements to the Inspection Service, the defendant refers to the Code□

election of April 12, 1894, but this reference is erroneous in law. For the provisions□

legal provisions relating to the use of voter lists for local elections, it is the decree□

local and provincial electoral decree of July 8, 2011 (hereinafter the local electoral decree) which applies3.□

41. Article 3 of the local electoral decree provides that the decree applies to the organization of□

municipal bodies in all municipalities of the Flemish Region. The situation in□

which the Respondent and his local party are running as candidates in the elections□

of 2018 for a Flemish municipality, and send electoral propaganda□

- including the disputed mail - during this period falls within the scope of the□

aforementioned decree.□

2 Room 17.□

3 Decree on the organization of local and provincial elections and amending the municipal decree of July 15, 2005,□

the provincial decree of December 9, 2005 and the decree of December 19, 2008 relating to the organization of public assistance□

social, M.B. of August 25, 2011.□

...□

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42. Article 20, § 3 of the local electoral decree provides the following:

"§ 3. The college of mayors and aldermen may not put electoral lists

available to persons other than those who requested it

in accordance with paragraph 1 or paragraph 2, first

indentation. Persons with an electoral list can only use it

from

during

the period between the date the list is made available and the date of the election."

uniquely

electoral,

purposes

this,

and

43. The lists of voters that are made available in the context of a specific election

can therefore only be used until the date of this election. The purpose of the list

of voters is therefore not only limited to its use in the context of elections

('electoral purposes') but cumulatively also to the election for which the list of

voters was created. Applied to the facts of the case, this means that a list of voters

of 2012 cannot be used in the context of the municipal elections of 2018.

44. The Respondent states that it compared the voter lists of 2012 and 2018 and adds that

information from the 2012 voters list was not "used or misappropriated during

the establishment of the 'new' list of 'potential' new inhabitants."

The Litigation Chamber emphasizes that the simple fact of recording and consulting the data

of a personal nature included in the 2012 list of voters also constitutes a

processing of personal data within the meaning of the GDPR, in accordance with Article 4,

point 2) of the GDPR.□

45. The processing did not only constitute a breach of this principle relating to the processing□  
of personal data for data subjects whose data to be□  
personal character appeared on the 2012 voters list, but also for□  
persons concerned - such as the complainant - who were not on the voters list□  
of 2012. The observation of the absence of personal data of persons□  
concerned on an old list of voters, by consulting this old list,□  
in order to modify and structure the personal data of the same persons□  
concerned on a new list of voters in 2018, must be considered as a□  
diversion of the purpose of the old list of voters, in accordance with Article 5,□  
paragraph 1, point b) of the GDPR.□

46. The Litigation Chamber notes that the registration and consultation of the list of□  
voters of 2012 by the respondent constitutes a violation of the principle of limitation of□  
purposes in accordance with Article 5(1)(b) GDPR.□

47. Furthermore, it can be established that the processing of personal data from the list□  
voters of 2012, regardless of the purpose, constitutes ipso facto unlawful processing in the□  
meaning of Article 6(1) GDPR. In this regard, the Litigation Chamber considers□  
illegality as being sufficiently clear, since the local electoral decree excludes the use□  
- and therefore also the consultation and use for comparison - of the lists of□  
voters for an election other than the one for which they were made available.□

For this reason, it is not envisaged to include article 6, paragraph 4 of the GDPR in□  
the analysis because the legal provision of article 20 of the local electoral decree does not allow□  
verify the other interests of the defendant, just as the legal provision does not allow□  
...□

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take other circumstances into account in order to process the personal data nevertheless□

staff.□

48. Although non-compliance with the legal provisions relating to the lists of voters is already in□

itself sufficiently clear to find the illegality, for the sake of completeness, the Chamber□

Litigation also draws attention to the reasoning set out in part b) below,□

in which she explains why the establishment of a "list of new inhabitants" using□

personal data included in a list of voters is not lawful in□

this case, even if it happens in the period in which the lists of voters□

can be viewed and used. This motivation applies a fortiori to the processing of□

personal data appearing on an old voters list from 2012, including□

illegality can be established in a similar way for the establishment of a 'list of new□

inhabitants'.□

b) Establish a list of new inhabitants using the personal data contained in□

on a voters list□

49. In accordance with article 16 of the local electoral code, the list of voters mentions the□

first name(s), surnames, date of birth, sex, main place of residence and in some cases,□

the nationality of voters. Candidates for elections may use the data to□

personal character appearing on these lists of voters for the purpose of political canvassing□

the approach of the elections under the applicable electoral legislation, which makes this□

concerned.4□

processing□

predictable□

anybody□

some□

for□

little□

the□

50. The Respondent and several other local party candidates of which the Respondent is the lead candidate

declare having modified and structured on the basis of their "available knowledge" the

personal data appearing on the list of voters for the municipal elections

of 2018 in order to extract a list of (potential) new inhabitants of the municipality.

The list was then used by the defendant and his local party to send letters to

these new (potential) inhabitants.

51. The Respondent does not refer to a specific basis for the lawfulness of the processing described

above, and more specifically under one of the conditions set out in Article 6, paragraph 1 of the

GDPR. Attention should be drawn to the fact that the use of voter lists by voters

candidates for election is a possibility regulated by law - in other words, the treatment is not

not a legal obligation for the candidate for an election, in this case for an election

municipal, within the meaning of Article 6, paragraph 1, point c) of the GDPR.

52. For the processing, the defendant may furthermore not invoke any other legal basis

referred to in Article 6, paragraph 1, points a) to e) inclusive of the GDPR. 5 Thus, there is no mention

nowhere - and even less demonstrated - that the plaintiff would have given her consent in

pursuant to Article 6 (1) (a) of the GDPR, and the absence of consent applies

also to other persons concerned. Furthermore, there is no contract between the

data subjects and the respondent and its local party which makes the processing necessary

(Art. 6(1)(b) GDPR) and the processing is also not necessary for

4 See also on this subject the legal note of the Data Protection Authority, Processing of personal data

personnel for the purpose of personalized mailings of electoral propaganda and respect for the privacy of citizens: principles

fundamentals, May 2018, available via this link: <https://www.autoriteprotectiondonnees.be/elections>, 2.

5 See also: Ibid., 3-5/

...

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safeguarding the vital interests of the data subject or of another natural person



(Art. 6 (1) (d) GDPR). Nor can it be a question of

the performance of a task in the public interest or in the exercise of official authority, of which

is vested with the data controller, since it is only a question of interests

individual or limited to the local party in the context of the 2018 municipal elections (article 6,

paragraph 1, point e) of the GDPR).

53. The Litigation Division finds that the processing of personal data of

lists of voters and in this case the modification, structuring and subsequent use of

this personal data can only take place if this processing is necessary

for the purposes of the legitimate interests pursued by the defendant within the meaning of Article 6(1),

point f) of the GDPR.

54. The Litigation Chamber understands that the defendant has an interest in processing the data

personal character appearing on the list of voters of a municipality in such a way that

the modification, structuring and subsequent use of the voters list results

to a list of new inhabitants forming part of the electorate for the municipal elections

of 2018 in the municipality where the defendant is running as a candidate.

55. Article 6(1)(f) GDPR provides that the legal basis may be

used on condition that "the processing is necessary for the purposes of the legitimate interests pursued

by the controller or by a third party, unless the interests or

fundamental rights and freedoms of the data subject which require protection of the

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

56. The case law of the Court of Justice of the European Union requires that recourse to Article

6, paragraph 1, point f) of the GDPR meets three cumulative conditions, "namely,

firstly, the pursuit of a legitimate interest by the controller or by the

or third parties to whom the data is communicated, secondly, the necessity of the

processing of personal data for the achievement of the legitimate interest pursued

and, third, the condition that fundamental human rights and freedoms

concerned by data protection do not prevail"<sup>6</sup>.☐

57. The controller must in other words demonstrate that:☐

1)☐

2)☐

3)☐

the interests it pursues with the processing can be recognized as legitimate☐

(the "finality test");☐

the intended processing is necessary to achieve those interests (the "necessity test");☐

and☐

the weighing of these interests against the fundamental interests, freedoms and rights☐

data subjects weighs in favor of the controller or a third party☐

(the "weighting test").☐

1) The finality test☐

58. In this case, it is important to emphasize that the legal predecessor of the Committee☐

European Data Protection Authority (hereafter: the Committee) declares that the interest of the☐

6 CJEU, Judgment of May 4, 2017, "Rigas", C-13/16, ECLI:EU:C:2017:336, pt. 28; CJEU Judgment of December 11, 2019 "TK☐

Asociatia de Proprietari bloc M5A-ScaraA", C-708/18, ECLI:EU:C:2019:1064, pt. 40.☐

...☐

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controller is closely linked to the purpose of a processing operation.<sup>7</sup> The purpose of the☐

processing of personal data by the defendant is to strategically write☐

to some of the voters in order to present themselves to them in a more attractive light as☐

as a candidate for elections.<sup>8</sup>☐

59. For the use of personal data appearing on voter lists, the☐

Flemish legislative legislator recognizes in article 20 of the local electoral decree that the data☐

of a personal nature may be used for such electoral purposes<sup>9</sup>.☐

60. We can therefore effectively find an interest for the defendant, an interest explicitly  
subscribed by the Flemish decree legislator. Since the municipal elections  
had yet to take place at the time when the processing of the personal data  
intervened, it can also be seen that there was a real and present interest at the time  
facts.

61. The Litigation Division therefore finds that there was indeed a legitimate interest  
for the defendant to process the personal data contained in the lists of  
voters when the events took place.

## 2) The necessity test

62. The Court of Justice has emphasized that in order to pass the test of necessity, it is necessary to verify "that the interest  
legitimacy of the data processing pursued [...] cannot reasonably be achieved from  
as effectively by other means less detrimental to the freedoms and rights  
fundamental rights of the persons concerned, in particular the rights to respect for private life  
and the protection of personal data guaranteed by Articles 7 and 8 of the  
Charter"<sup>10</sup>.

63. The requirement of necessity must be considered together with the principle of  
data minimization in accordance with Article 5(1)(c) GDPR by  
as a general principle in the processing of personal data<sup>11</sup>.

64. At no time does the Respondent explain why the modification, structuring and  
further use of personal data from the 2018 voters list in  
as a "list of new residents" would be needed for electoral purposes.

The Respondent merely states that "there is no legislation prohibiting parties  
policies to draw up a list of potential new inhabitants on the basis of their  
available knowledge."

7 Opinion 06/2014 of Group 29 on the notion of legitimate interest, 9 April 2014 (WP 217), 29.

8 Or as formulated elsewhere: "political propaganda in order to canvass votes" in the Legal Note of the Authority of

data protection, Processing of personal data for the purpose of personalized propaganda mailings□

electoral□

from□

citizens: fundamental principles, May 2018, available via this link: <https://www.autoriteprotectiondonnees.be/elections>, p. 8.□

respect□

private□

life□

of□

and□

the□

9 See also *ibid.*, 30: an interest cited in this recommendation is the sending of "unsolicited non-commercial messages,□  
including for the purposes of political campaigning or raising funds for charities" (own bold).□

10 Judgment *TK c Asociația de Proprietari bloc M5A-Scara A*, pt. 47.□

11 With analogous reasoning in *TK c Asociația de Proprietari bloc M5A-Scara A*, pt. 48.□

...□

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65. The legislative legislator has specified the limits within which personal data□

appearing on a list of electors can be used by listing in a limitative manner□

personal data that may be obtained and further processed by□

candidates in the context of electoral propaganda; at the same time, the legislator□

decree considers that the provision to candidates for elections of certain data□

of a personal nature is not necessary to carry out their campaign<sup>12</sup>.□

66. The Litigation Chamber considers that the modification, structuring and use□

subsequent voter lists by the respondent, thereby creating a list of□

new inhabitants, are not necessary for the campaign of the defendant and his party□

local. The use of voter lists is outside the scope of the use envisaged by the□

decree legislator, and therefore outside the use expected by the persons concerned,□

which is relevant for the weighting test. The campaign can be conducted just as□

effectively, since the defendant can also address voters without writing to them□

specifically and individually as new inhabitants.□

### 3) The weighting test□

67. The Court of Justice has indicated that a legitimate interest such as that of the defendant, in this case,□

"requires a balancing of the conflicting rights and interests involved□

depending on the concrete circumstances of the particular case concerned, in the context of which□

account must be taken of the importance of the rights of the data subject resulting from the□

Articles 7 and 8 of the Charter." 13□

68. The criterion relating to the seriousness of the infringement of the rights and freedoms of the data subject□

constitutes an essential element of the weighting or balancing exercise on a case-by-case basis□

case, required by Article 6, point f) of the GDPR. As such, according to the Court of Justice, it must□

in particular to be taken into account "the nature of the personal data in question, in□

particular of the potentially sensitive nature of this data, as well as the nature and□

concrete terms of the processing of the data in question, in particular the number of□

who has access to this data and how to access it"14.□

69. The Court of Justice considers that are also relevant for the purposes of this weighting□

"the data subject's reasonable expectations that his personal data□

personal will not be processed where, in the circumstances of the case, that person□

cannot reasonably expect further processing thereof."□

70. In this sense, the Litigation Chamber also refers to recital 47 of the GDPR:□

"The interests and fundamental rights of the data subject could, in particular,□

prevail over the interest of the data controller when personal data□

12 In this context, the following elements can be considered relevant: the Flemish decree legislator considers□

the National Register number as sensitive data for the protection of the privacy of the voter, accordingly□

of which he does not appear on the list of electors, see the Draft decree amending the provincial decree of

December 9, 2005 and others, Doc. Speak. Flemish Parliament, 2016-17, n° 1128/1, 7.

13 StopTK c Asociația de Proprietari block M5A-ScaraA, pt. 52.

14 Ibid., 57.

...

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are processed in circumstances where data subjects do not expect

reasonably not to further processing."

71. The Litigation Division considers that the defendant's legitimate interest in modifying, structuring and

subsequently using the voters list as described above does not pass the test of

weighting.

72. The Litigation Division draws attention in particular to the nature and methods

concrete reasons for the processing of the data concerned: given that the defendant and other

candidates of his local party have assumed for (many) years different

mandates of aldermen and the mandate of mayor, it can be expected that

knowledge acquired during the exercise of these mandates is used for processing.

73. The Respondent further declares himself that his available knowledge of the inhabitants of

the commune come from his decades-long career as a doctor and from

the exercise for years of political mandates within the municipality, including the mandate

of mayor.

74. Apply knowledge acquired, particularly in the context of the practice of the profession

doctor or within the framework of the defendant's mandate as mayor to modify,

structuring and subsequently using a voters list does not comply with the principle of

purpose limitation.

75. The Litigation Division also observes that in the present case, there is a large number of

persons concerned, given the number of inhabitants of the municipality mentioned by the Service

of Inspection and having regard to the number of voters on the list of voters that the defendant transmitted to the Inspection Service. In the "Fine Reaction Form envisaged", the defendant himself mentions that the commune has 8,074 voters, a considerable number of data subjects whose personal data have been processed later.

76. Furthermore, it is important to note that the persons concerned could not reasonably expect further treatment<sup>15</sup>. Thus, the complainant refers in his complaint to the information on a website of the Flemish Authority, which explains legislation relating to voters lists and municipal elections<sup>16</sup>. We can repeat here that, on the basis of the legal provisions, the lists of voters indicate only the first name(s) and surname(s), date of birth, gender, main residence and, in certain cases, the nationality of the voters.

77. Data subjects can therefore reasonably expect that the use of these lists of voters is limited to the personal data listed in comprehensively in legislation. In view of the legislation relating to the protection of personal data, it is indeed possible, on the basis of the data to be

<sup>15</sup> Supra, p. 63

<sup>16</sup> Available via this link: <https://www.vlaanderenkiest.be/faq/hoe-gaat-de-afgifte-van-kiezerslijsten-zijn-werk>.

...

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personal character that can be viewed in the voters list itself, to write to some of the voters. However, the plaintiff did not expect the defendant and the other candidates of his local party still use his personal data later and modify, structure and use them in other ways.

78. The Litigation Division further notes that the Respondent argues that the new list

modified and structured may not entirely correspond to reality and that all

new residents may not have received mail. Conversely, residents who have already

voted in the commune during a previous communal ballot may have ended up on

the list of new residents.

79. The possible inaccuracy of the personal data "new inhabitant" (by the

modification and structuring of the list of electors), personal data

used to establish the list of "new inhabitants", is not an argument which plays into the

favor of a data controller but rather indicates unfair processing of data

personal data, as the accuracy of such personal data cannot be

guaranteed. This can be considered in itself a violation of the rights of persons

concerned. The processing of accurate personal data constitutes a

principle relating to the processing of personal data, in accordance with Article 5,

paragraph 1, point d) of the GDPR. This strengthens the Litigation Chamber in its analysis

that processing on the basis of a legitimate interest does not pass the test of

weighting.

4) Closing

80. On the basis of the purpose test, the necessity test and the weighting test, the Chamber

Litigation notes that there can be no question of lawful processing on the basis of the interest

legitimate within the meaning of Article 6(1)(f) GDPR. There is no lawful treatment

within the meaning of Article 6, paragraph 1 of the GDPR when the defendant modifies and structures

personal data of data subjects so as to extract a "list

new inhabitants", this list being used to send letters in a way

individual to voters supposed to be new inhabitants of the commune. In addition,

the accuracy of such lists cannot be guaranteed.

17 We can think, for example, of sending letters to voters of a certain municipality, of a certain age, etc.

...



### 3.3.

Information to be provided when personal data has not been

collected from

the data subject (Article 14 of the GDPR)

81. A few months before the events (and the related processing), the Data Protection Authority

data has clarified the data protection legislation in the context of

of elections.<sup>18</sup> On this occasion, she also emphasized the right of the voter to receive

transparent information from political parties and candidates who, when approaching

elections, write to voters on the basis of data from voter lists,

regarding how their personal data is processed.

82. In the legal note, it is explained in particular that according to Article 14 of the GDPR,

the voter has the right:

- o to know who is contacting him (name and address of the controller);

- o to know the purpose for which their personal data are used

(in this case electoral purposes)

- o to know the origin of their data (in this case voter lists)<sup>19</sup>.

83. The defendant declares that the flyers and the envelopes used for sending the letters

of his local party's electoral propaganda mentioned the defendant's data as

as controller. The mail (without envelope) at the origin of this complaint

however, only included the name and contact details of the local party, an association of

do.

84. The Litigation Division draws attention to the need to mention the identification of the

controller on the mail itself, possibly under the name "publisher

responsible", in order to avoid any confusion concerning the responsibility for the processing.

The Litigation Chamber therefore finds that the identification of the controller in

the case was not sufficiently clear to the plaintiff, which means that the defendant

commits a violation of

Article 14(1)(a) GDPR.

85. With regard to the purpose of the processing, the Litigation Chamber notes that -

pursuant to Art. 14(1)(c) GDPR - it is clear enough

clear from the mail that it is electoral propaganda aimed at obtaining votes during

of the 2018 municipal election. There is explicit mention of the hoped-for support for the

local party "October 14" and reference is made to the previous and next legislature

of the local administration.

86. The Litigation Chamber then points out that the letter in no way indicates that the

data subjects have the right to submit a request for access and rectification of

personal data to the controller and that they have the right to

object to the processing. In addition, it can also be pointed out that it is worth mentioning

the existence, for the persons concerned, of the right to lodge a complaint with the

the Data Protection Authority. The Litigation Chamber therefore finds a violation

18 On the website of the Data Protection Authority, under the theme "Elections", and more specifically in the Note

aforementioned law of the Data Protection Authority, Processing of personal data for the purpose of sending

propaganda

personalized

electoral

:

fundamental principles, May 2018, available via this link: <https://www.autoriteprotectiondonnees.be/elections>.

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19 Ibid., 11.□

...□

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respectively of Article 14, paragraph 2, point c) and Article 14, paragraph 2, point□

e) GDPR.□

87. Furthermore, in accordance with Article 14(2)(f) of the GDPR, it is also□

important to provide the data subject with information regarding the origin of the□

data when the personal data has not been obtained from this□

concerned person. In relation to this aspect, the letter indicates that the data has been□

found on "the list of voters" [Ndt. : "kieslijst" in Dutch]. Although the term□

"kieslijst" in Dutch is not quite correct, the Litigation Chamber finds□

that it is sufficiently clear that certain data came from a list of voters,□

as governed by the local electoral decree.□

88. On the other hand, the disputed letter does not mention that the list of voters has been modified□

later and structured in such a way as to obtain a list of the new inhabitants and that at□

For this purpose, use was made of knowledge that had been collected for other purposes.□

The processing of personal data from the 2012 voters list is not□

no longer mentioned. However, these aspects are essential to be sufficiently informed□

of the "origin" of the personal data<sup>20</sup>.□

89. Although the Respondent is adamant that "no Excel algorithm was used",□

incomplete information in the mail and subsequent public communication on□

Facebook led the Complainant to have justified concerns about how the personal data has been obtained and further processed. Bedroom Litigation therefore considers that the origin of the personal data is not sufficiently clear to the persons concerned and that the defendant thereby commits a violation of Article 14(2)(f) GDPR.

90. For the sake of completeness, it may be mentioned that the Respondent itself acknowledges that "the defendant had to provide data in respect of the data subjects (right of opposition) in order to guarantee fairness and transparency. The defendant derives as lesson for the future that the persons concerned must always be informed of their rights."

91. The information referred to in Article 14(1)(c), (d) and (e) and in Article 14, paragraph 2, points a), b), d), g) of the GDPR do not have to be provided by the defendant in the present factual context, and more specifically that of electoral propaganda on the voters list database. In accordance with Article 14, paragraph 5, point c) of the GDPR, the information referred to in Article 14, paragraphs 1 and 2 of the GDPR must not be mentioned when obtaining or communicating the data is explicitly provided for in the law of the Member State.

92. The local electoral decree does indeed sufficiently specify:

20 The exhibits provided by the complainant clearly demonstrate why it is also important to provide this information. The complainant alleges, among other things, that the parameters available on the list of electors were not sufficient for the complainant to consider as a new resident. The complainant's suspicion was further heightened when she read on Facebook a comment from a local party candidate who claims that some lists have been "filtered" in Excel.

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o what is the legal basis for the processing of personal data via voters lists (candidate interest in using voters list is -

read with purpose - legally defined);☐

o what are the categories of personal data concerned (the content☐

of the list of voters);☐

o which are the recipients or categories of recipients of the data to be☐

oh☐

personal character (candidates eligible for the specific municipal election);☐

the period during which the personal data will be retained (in☐

the occurrence only within the framework of the observation, the exercise or the defense of☐

legal rights);☐

o What are, as in this case, the legitimate interests of the controller☐

(an interest recognized by electoral legislation, see points 55-58 above);☐

o why the processing cannot be based on consent (obtaining lists of☐

voters is governed by decree and their use does not require☐

consent);☐

o that on the basis of the provisions and terms of use established, it cannot☐

be about automated decision-making.☐

93. Article 14, paragraph 1, point f) of the GDPR does not apply, since there is no question☐

an international transfer described in any way in this provision.☐

94. In view of all of the foregoing, the Litigation Division finds a violation of☐

GDPR Article 14. Specifically, information provided pursuant to Article 14☐

are insufficient, unclear or non-existent with regard to Article 14, paragraph 1, point☐

a) GDPR and Article 14(2) c), e) and f) GDPR.☐

21 See "Article 29" working group, Guidelines on transparency under Regulation 2016/679, latest version adopted:☐

April 11, 2018☐

:☐

[https://ec.europa.eu/newsroom/article29/item-detail.cfm?item\\_id=622227](https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=622227), 27-33.☐

uniquely□

available□

(WP260□

rev.01),□

English]□

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3.4.□

Findings outside the scope of the Inspection Service report:□

the absence of a privacy statement (article 12, j° 14 of the GDPR)□

95. The obligation to inform within the meaning of the GDPR implies that the controller must□

provide information to data subjects within the meaning of Article 12 j° 14 of the GDPR.□

This is often done comprehensively by means of a privacy statement□

publicly available, although information may also be provided as□

his own free will. It should be noted that the European Data Protection Board□

has taken up the recommendation of the "Article 29" Working Party which states that it is preferable to put□

information available in "one place" or "one document"23.□

96. Respondent acknowledges that his local party does not have a privacy statement,□

but declares that this has meanwhile been rectified. In its conclusions, it appends a□

document which demonstrates that, after the findings made by the Inspection Service,□

Steps have been taken to draw up a privacy statement.□

97. The Litigation Chamber considers that the lack of information within the meaning of Article 12 j° 14□

of the GDPR, due in particular to the total absence of a declaration of confidentiality, constitutes a□

violation of these provisions. The Litigation Chamber takes note of the steps taken by the□

respondent and his local party have undertaken to provide a privacy statement□

public on their website.□

22 For the sake of completeness, the Litigation Chamber specifies that this is not the same thing as a policy of□

confidentiality, see a.o.: Considerati, “Wat is het verschil tussen een privacyverklaring en een privacybeleid onder de AVG?”,□

available via this link: <https://www.considerati.com/nl/kennisbank/wat-is-het-verschil-□>

tussen-een-privacyverklaring-en-een-privacybeleid-onder-de-avg.html.□

23 "Article 29" working group, Guidelines on transparency under Regulation 2016/679, latest version adopted: 11 April 2018□

(WP260 rev.01), available via this link: <https://ec.europa.eu/newsroom/article29/item-□>

detail.cfm?item\_id=622227, 18.□

...□

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3.5.□

The observed violations of the GDPR and the sanctions (Articles 58 and 83 of the GDPR;□

articles 100 e.s. of the ACL)□

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

defendant are proven:□

at.□

b.□

vs.□

Articles 5 and 6 of the GDPR, since the processing of personal data□

does not take place in a lawful manner when the defendant uses a list of voters□

outside the period during which this was authorized, which does not correspond□

not to the legally defined purpose of this list (a specific election). Furthermore, it

there is also no lawful processing of the personal data contained on

a list of electors when the defendant uses his knowledge from a

other professional or political/social quality to modify and structure a list

voters in order to create a list of new residents;

Article 14 of the GDPR, since the information provided to the data subject is

insufficient, unclear or non-existent while the personal data

have not been obtained from it, as required by Article 14, paragraph 1,

point a) of the GDPR and by article 14, paragraph 2, point c), point e) and point f) of the

GDPR;

Article 12 j° 14 of the GDPR, since the defendant and his local party have not provided in

any way transparent information to data subjects on the

processing of their personal data and the exercise of their rights, by

example by means of a privacy statement.

at

established

99. The Litigation Chamber has already dealt with the unlawful processing of personal data

in previous cases, namely in decisions 04/2019, 10/2019, 11/2019 and the

most recently in decision 30/2020.

In each of these cases, the Litigation Chamber proceeded to the imposition of a

administrative fine, more specifically for non-compliance with the principle of limitation of

purposes,

GDPR.

100.

The Litigation Chamber considers that due to the violations explained above, a

administrative fine within the meaning of article 100, § 1, 13° j° article 101 of the LCA, as well as



of Article 83 of the GDPR is justified, and in this regard takes into account the following elements.□

101.□

Taking into account Article 83 of the GDPR and the case law of the Market Court,□

the Litigation Chamber justifies the imposition of an administrative sanction in a□

concrete :□

paragraph□

the article□

point□

from□

b)□

5,□

1,□

a) The seriousness of the breach□

102.□

the reasoning set out above demonstrates the seriousness of the offence. Violations of□

basic principles of Articles 5 and 6 of the GDPR give rise to the highest fines of□

Article 83(5) GDPR.□

Also with regard to violations of Article 14 of the GDPR regarding transparency□

and information on personal data, the Litigation Chamber observes□

that the incomplete information in a letter to the persons concerned underlines the□

seriousness of violations.□

Violations of these data subject rights are also subject to fines.□

the highest under Article 83(5) GDPR.□

...□

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b)□

the extent to which the controller has taken technical or

organizational

103. Attention can be drawn here to the fact that the defendant is active in municipal politics

for many years already and that the relevant provisions in the legislation

election should be sufficiently known.

104. It appears, however, that the Respondent does not properly perform its task of being responsible for the

processing when it emerges from the findings of the Inspection Department that measures

technical and organizational measures have not been or not sufficiently taken to respond

to the obligations arising from the GDPR. Thus, not only is the defendant not sufficiently

accurate when processing personal data, but it also provides

insufficient information and does not offer enough transparency vis-à-vis the persons

concerned.

c) The duration of the breach:

105. Given the specific nature of the processing of personal data for the purpose of (preparing)

the sending of electoral propaganda in the run-up to the 2018 municipal elections,<sup>24</sup> the

treatment has only taken place for a short period of time. It should, however, be emphasized

that the list of voters from a previous election, in 2012, was again used to

modify and structure the 2018 voters list (see above, 3.2., part a).

106. Nevertheless, the legislation of the local electoral decree provides that the list of voters cannot

be used only until the date of the election for which the list of electors is intended

; for this reason, the processing of personal data from a list of voters for

an election in 2012 is not possible for an election in 2018. Regarding the

lack of transparency and information, it can be pointed out that the defendant waited

that the Inspection Service has sent its report to take the necessary measures

in order to put

the provisions of the GDPR.

processing in accordance with□

d) The deterrent effect necessary to prevent further offences:□

107. Given that in the light of the various findings, it appears that the Respondent demonstrates□

gross negligence in respecting fundamental rights with regard to□

protection of privacy and in particular the provisions of the GDPR, the Chamber□

Litigation considers that an administrative fine is justified, in order to underline and□

penalize serious breaches and produce a deterrent effect.□

108. In the "Reaction form against a proposed fine", the defendant invokes□

party spending is limited. It also presents the supporting documents necessary to□

this regard. The defendant declares that, given that the processing took place within the framework of a□

local election campaign, a proposed fine of EUR 5,000 would be disproportionate.□

The Litigation Chamber takes these new elements into account in its deliberation and□

therefore decides to reduce the amount of the fine, given that in view of the□

24 By definition, this is therefore only the period between obtaining the list of voters and the date of the election.□

...□

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alleged new circumstances of the case, an amount of EUR 3,000 is sufficient□

deterrent to prevent subsequent violations. The Litigation Chamber emphasizes□

however, since the local party constitutes a de facto association, the decision is□

taken solely on the part of the defendant as a natural person and that the□

party expenses are only taken into account in the analysis as part of the□

factual.□

109. The Litigation Chamber underlines 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.□

110. Considering the importance of transparency with regard to the decision-making process□

of the Litigation Chamber, this decision is published on the Authority's website□

data protection by deleting direct identification data□

parties and natural persons named.□

3.6.□

Guarantees for the correct conduct of the procedure during the examination□

on the merits by the Litigation Chamber□

111. For the sake of completeness, the Litigation Chamber emphasizes, as the complainant points out,□

that the defendant filed his conclusions with his means of defense at the registry of the□

Litigation Chamber within the time limit, but that he did not send them at the same□

time to the other party, as explicitly requested by the Litigation Chamber in its□

letter of September 25, 2019.□

112. Since the complainant did not object to the consideration of the document containing□

the conclusions of the defendant and that the complainant declares that she feels sufficiently heard□

and in order to be able to take into account all the relevant elements in the deliberation of the□

Litigation Chamber, the latter decided not to exclude from the proceedings the□

conclusions containing the defenses of the defendant.□

...□

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FOR THESE REASONS,□

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

-□

-□

-□

to call the defendant to order, in accordance with Article 58, paragraph 2, b) of the□

GDPR and Article 100, § 1, 5° of the LCA, for the unlawful processing of personal data□

personal character by creating a "list of new residents" within the meaning of article□

6, paragraph 1 of the GDPR, by unlawfully accessing and comparing data with  
personal character of an old list of voters from 2012 on the one hand and by modifying  
and by structuring the personal data of a 2018 voters list  
on the other hand ;  
to call the defendant to order, in accordance with Article 58, paragraph 2, b) of the  
GDPR and Article 100, § 1, 5° of the LCA, for having provided people  
concerned such as the complainant of incomplete information with regard to Article 12  
and Article 14 of the GDPR when sending election propaganda mail, given that  
the personal data had not been obtained from the persons  
concerned;  
to impose on the defendant, in accordance with Article 58(2)(i) of the  
GDPR, Article 83 of the GDPR and Article 100, § 1, 13° of the LCA, a fine  
administrative charge of EUR 3,000, given the substantiated violations of Articles 5, 6, 12 and 14 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