



Litigation Chamber Decision 14/2026

of 27 January 2026

File number: DOS-2023-04397

The Litigation Chamber of the Data Protection Authority;

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 referred to as "GDPR";

Having regard to the Act of 3 December 2017 *establishing the Data Protection Authority*, hereinafter referred to as "WOG";

Having regard to the rules of procedure, as approved by the Chamber of Representatives on 20 December 2018 and published in the *Belgian Official Gazette* on 15 January 2019;

Having regard to the documents in the file;

Has taken the following decision regarding:

The complainant: [REDACTED] hereinafter referred to as "the complainant"

The defendant: [REDACTED]
[REDACTED], hereinafter referred to as "the defendant"

I. Facts and procedure

1. On 25 October 2023, the complainant lodged a complaint with the Belgian Data Protection Authority (hereinafter: "DPA") against the defendant.
2. In his complaint, the complainant states that he created an account on the controller's website. He claims that when creating this account, the option to receive marketing emails was already pre-selected. According to the complainant, he disabled this option, but nevertheless continued to receive marketing emails. On 19 and 23 October 2023, the complainant contacted the controller about this. The latter stated that the complainant had subscribed to its newsletter by failing to disable the pre-ticked option.
3. On 27 October 2023, the complaint is declared admissible by the First-line Service on the basis of Articles 58 and 60 of the WOG and is referred to the Litigation Chamber on the basis of Article 62, § 1 of the WOG.
4. On 27 October 2023, the First-line Service contacts the controller as part of a *preliminary vetting* procedure. The defendant responds on the same day.
5. On 22 April 2024, the GBA initiates a procedure in accordance with Article 56 of the GDPR with a view to determining the lead supervisory authority (hereinafter: "LSA") and the supervisory authorities concerned (hereinafter: "CSA"). On 7 May 2024, the Dutch Data Protection Authority (hereinafter: "AP") confirms that it will act as LSA.
6. The AP investigates the defendant's website by creating an account. In that context, it finds that the option to receive marketing emails, as argued by the complainant, is pre-ticked. When the AP disables this option, it does not receive any marketing emails from the defendant, unlike the complainant.
7. On 10 July 2025, the AP questions the defendant. The defendant states that it cannot find any data concerning the data subject in its databases. It further argues that it relies on Article 6.1.f) of the GDPR and the Dutch and Belgian transpositions of Article 13 of Directive 2002/58/EC¹ for sending direct marketing emails.
8. On 16 October 2025, the AP requests the GBA to ask the complainant whether his complaint has been resolved, as it appears that the defendant does not process any personal data concerning the complainant. The GBA sends this email on 20 October 2025, but receives no response from the complainant. On 26 November 2025, it informs the AP of this.

¹ Where applicable: Article XII.13 of the Code of Economic Law and Article 1, 1°, of the Royal Decree of 4 April 2003 regulating the sending of advertising by electronic mail

9. In accordance with Article 60.3 of the GDPR, the draft decision was posted on the IMI platform by the AP on 19 December 2025. In its draft decision, the AP decides that it is not competent to deal with the complaint insofar as it relates to the Belgian transposition of Directive 2002/58/EC, and that the complaint has been sufficiently investigated and should be closed.
10. Neither the GBA nor the other supervisory authorities concerned have objected to the draft decision submitted by the AP within a period of four weeks, which means that they are deemed to agree with it and are bound by it.

II. Reasons

11. On the basis of the elements in the file known to the Litigation Chamber and on the basis of the powers conferred on it by the legislator pursuant to Article 95, § 1 WOG, the Litigation Chamber decides on the further follow-up of the file; *in this case*, the Litigation Chamber decides to dismiss the complaint in accordance with Article 95, § 1, 3° WOG, based on the following reasoning.
12. When a complaint is dismissed, the Litigation Chamber must justify its decision in stages² and:
 - declare a technical dismissal if the file contains no or insufficient elements that could lead to a conviction, or if there is insufficient prospect of a conviction due to a technical obstacle, as a result of which it cannot reach a decision;
 - or declare a policy dismissal if, despite the presence of elements that could lead to a sanction, the continuation of the investigation of the file does not seem appropriate in light of the priorities of the Data Protection Authority, as specified and explained in the Dismissal Policy of the Litigation Chamber.
13. The GBA Litigation Chamber finds that the complaint has been rejected by the lead supervisory authority, the AP. Pursuant to Article 60.8 of the GDPR, the GBA Litigation Chamber adopts this decision and closes the case.
14. In addition, the Litigation Chamber finds that the lead supervisory authority considers that it does not have jurisdiction over the complaint insofar as it relates to the

² Court of Appeal of Brussels, Markets Court Section,^{19th} Chamber A, Market Affairs Chamber, judgment 2020/AR/329, 2 September 2020, p. 18.

³ In this regard, the Litigation Chamber refers to its dismissal policy as set out in detail on the GBA website: <https://www.gegevensbeschermingsautoriteit.be/publications/sepotbeleid-van-de-litigation-chamber.pdf>

Belgian transposition of Directive 2002/58/EC (*in this case* applicable: Article XII.13 of the Code of Economic Law and Article 1, 1°, of the Royal Decree of 4 April 2003 regulating the sending of advertising by electronic mail). The Litigation Chamber must therefore decide on this part of the case itself.

15. The Litigation Chamber also decides to dismiss the complaint in respect of this part of the case, on grounds of expediency.
16. The AP investigated the defendant's website by creating an account. It found that the option to receive marketing emails, as claimed by the complainant, was pre-selected. The AP disabled this option and, unlike the complainant, did not receive any marketing emails from the defendant. Furthermore, the defendant informed the AP that it does not process any personal data relating to the complainant.
17. The Litigation Chamber communicated the above information to the complainant, asking whether he wished to maintain his complaint and explaining that the complaint could be closed if he did not respond. The complainant did not respond.
18. Given that the AP's investigation contradicts the complainant's allegations, that the defendant claims not to process any personal data relating to the complainant, and that the complainant has not confirmed that he wishes to maintain his complaint, the Litigation Chamber considers an in-depth investigation to be disproportionate. The Litigation Chamber decides to dismiss the complaint on the basis of dismissal ground B.7 of its dismissal policy⁴.

III. Publication and notification of the decision

19. This final decision constitutes an act in accordance with Article 60.8 of the GDPR. Since the complaint is rejected, the supervisory authority to which the complaint was submitted adopts the decision, communicates it to the complainant and informs the controller thereof.
20. Given the importance of transparency with regard to the decision-making process of the Litigation Chamber, this decision will be published on the website of the Data Protection Authority. However, it is not necessary to disclose the identification details of the parties directly for this purpose.
21. In accordance with its dismissal policy, the Litigation Chamber will forward the decision to the defendant. The Litigation Chamber has decided to notify defendants of its dismissal decisions ex officio. However, the Litigation Chamber refrains from

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⁵ Cf. Title 5 – *Will the dismissal of my complaint be published? Will the other party be notified of this?* of the Litigation Chamber's policy of discontinuing proceedings.

such notification when the complainant has requested anonymity vis-à-vis the respondent(s) and the notification of the decision to the respondent(s), even if pseudonymised, nevertheless makes it possible to (re)identify the complainant⁶. However, this is not the case in the present case.

FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority, after deliberation, decides to dismiss the present complaint on the basis of Article **60.8 of the GDPR** and Article **95, § 1, 3° of the WOG**.

An appeal may be lodged against this decision in accordance with Article 108, § 1 of the WOG, within a period of 30 days after notification thereof, with the Market Court (Court of Appeal of Brussels), with the Data Protection Authority as the defendant. Such an appeal may be lodged by means of a petition for review, which must contain the elements listed in Article *1034ter* of the Judicial Code (Ger.W.)⁷. The petition for intervention must be submitted to the registry of the Market Court in accordance with Article *1034quinquies* of the Ger.W.⁸, or via the e-Deposit information system of the Ministry of Justice (Article *32ter* of the Ger.W.).

⁶ *Ibid.*

⁷ The petition shall state, on pain of nullity: 1° the day, month and year;

2° the surname, first name and place of residence of the applicant and, where applicable, his capacity and his national register or company number;

3° the surname, first name, place of residence and, where applicable, the capacity of the person to be summoned;

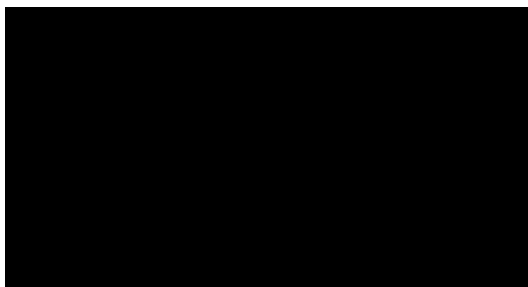
4° the subject matter and a brief summary of the grounds for the claim; 5°

the court before which the claim is brought;

6° the signature of the applicant or his solicitor.

⁸ The application and its annex shall be sent by registered letter to the registrar of the court or deposited at the registry in as many copies as there are parties involved.

In order to enable the complainant to consider other possible legal remedies, the Litigation Chamber refers the complainant to the explanation in its policy on dismissing cases⁹.



Hielke HIJMANS

Director of the Litigation Chamber

⁹ Cf. Title 4 – *What can I do if my complaint is closed?* of the Litigation Chamber's dismissal policy.