



Data Protection Moot Court (DPMC) Case

Variant 2: Controller Teams

30 September 2023

Green Incentives

The town of Woodville lies in the picturesque mountain ranges of the Republic of Randomistan. Woodville's economy traditionally centers on the production of lumber, animal husbandry and winter tourism. The latter has been suffering a lot in the past years, due to warm and arid winters. At the same time, the lumber industry has been complaining about massive damages due to bark beetle infestations of the local forest. Experts agree that both phenomena are attributable to global warming. Due to these economic and environmental problems, many locals lost their jobs or quit them resentfully. This led to a shrinking of Woodville's population from 52,000 in 2008 to 41,000 in 2018.

However, since the start of the Covid-19 Pandemic, there has been a significant increase in migration from Randomopolis, the smog-ridden capital of Randomistan, to Woodville. This movement of mostly high-qualified young professionals and young families shows no signs of ceasing and Woodville's population has recovered to 47,000 inhabitants today. In surveys amongst the new citizens of Woodville, 86% state Randomopolis's lack of measures for environmental protection and the lush nature surrounding Woodville as "very influential" for their decision to move to Woodville.

The municipal council of Woodville (consisting of 37 members of five political parties) sees this development as a chance. For the first time in the town's history, there is political consensus that Woodville should go beyond environmental measures that are mandatory under EU law or Randomistan domestic law and do its part to actively combat global warming and to preserve existing ecosystems. Hence, in January 2022, the municipal council brings to life the campaign "Woodville goes Green!" and declares that Woodville will aim to become Randomistan's first carbon-neutral town.

For this purpose, €7 Million from the municipality's budget for infrastructure and energy is dedicated to funding of local businesses interested in conducting sustainable "green investments". The campaign is generally well perceived and successful, with more than 27 local businesses receiving funding for investments such as the installation of thermal heat pumps or photovoltaic panels, the setting up of electronic car pools or the unsealing of parking lots.

However, the campaign is overshadowed by a political scandal: In August 2022, the investigative newspaper UUU ("Uncovered, Uncensored, Unbelievable") publishes an article that shows that a construction company owned by the mayor's son had been awarded € 240.000 of the "Woodville goes Green!" money to renovate the town's soccer stadium – without even remotely meeting the funding criteria of the campaign. Besides criminal investigations and impeachment procedures against the mayor and two members of the municipal council, there is a public outcry for a more objective and transparent funding procedure.

In 2023, the municipal council wants to do better. After having negotiated satisfying agreements with several providers of green technology, on 9 January 2023 the municipal council passes a new **municipal decree** outlining the funding criteria and procedure (**Attachment 1**). Furthermore, the municipal council raises the funding to €9 million and hires an IT company to set up a new system aimed at safeguarding an efficient, transparent and objective selection process.

On 11 January 2023, the municipal council puts the following information on the subsection “Woodville Goes Green!” of www.woodville.gv.rd (the municipality’s official website):

“Woodville Goes Green!”

We are proud to announce that the municipal council has again decided to support green investments in our beautiful town of Woodville. Whether you want to get new insulation for that tattered warehouse, replace your sales teams’ stinky BMWs with smooth electric BYDs, or unseal those ugly concrete parking lots of your store – you name it, we fund it (as long as it meets our funding criteria ;)). Any company that has been established in Woodville for more than 2 years can apply – no matter what business you are in!

We are especially happy to announce that we managed to get exclusive contracts with some providers of green technology, such as BYD and Chen's Photovoltaic Ltd. These partners have guaranteed to deliver their products in less than six weeks if the contract has been established via “Woodville Goes Green!”.

Below are an online form for applicants and two hyperlinks. One to the mentioned decree and one to a **privacy policy (Attachment 2)**.

In order to exclude businesses that will most likely not meet the funding criteria, the municipal council implements an automatic background check into the application process. For this purpose, it uses the services provided by “Green Yayy or Nayy” (GYON):

GYON is a not-for-profit organization funded by the State Ministry of Infrastructure and Environmental Protection of Randomistan and around 6,000 private donors. It offers a smartphone app, where users can rate the sustainability of any company established in Randomistan by answering a survey. To avoid fake reviews, users are required to take a picture of a receipt that proves a transaction with the relevant company. The receipt is automatically read by optical character recognition and deleted as soon as it has been established that the user is allowed to rate the company. Additionally, users can only rate a company once every three months. Users can also write short comments, explaining their ratings.

Based on the users’ ratings, publicly available information from the commercial registry and the insolvency registry of Randomistan, and research on the carbon emissions of different industry and trade branches, GYON calculates a so-called “GYON score”. This score is intended to indicate the likelihood of a business becoming sustainable (i.e. carbon-neutral) within the next ten years. The scores are published on the website www.gyon.rd and updated on a daily basis. The website also provides a search bar with the text “” for anyone to search for businesses. Furthermore, GYON provides an API that allows others to integrate the information available on www.gyon.rd into IT-supported processes. As GYON is not-for-profit, all their services are free of charge and subject to their **terms and conditions (Attachment 3, excerpt)**.

The municipality of Woodville uses GYON’s API to automatically obtain the GYON score and other information provided by GYON whenever someone fills out and submits the online form for “Woodville goes Green!” on www.woodville.gv.rd. Besides that, data from the publicly available commercial registry and publicly available insolvency registry are also automatically obtained.

The three employees tasked with handling applications for “Woodville goes Green!” funding have been told to only present those applications with a GYON score of 400 or higher to the funding and procurement committee of the municipal council for further assessment. Only if the employees think that “something seems wrong with the score”, are they allowed to forward the application to the committee despite the low GYON score. As foreseen in Woodville’s municipal constitution, the funding and procurement committee of the municipal council, which finally decides on the success of an

application, consists of one member of every political party represented in the municipal council and six external experts in the fields of environmental sciences, public infrastructure and energy supply.

On 02.06.2023, Charlotte Winter, one of three employees handling the applications for “Woodville goes Green!” funding, is assigned the following application as an auto-generated PDF:

APPLICATION:		[sent: 27.05.2023]
Name of company/entrepreneur	<i>Karl's Butchery Ltd</i>	
Email	office@karlsbutchery.rd	
Legal form	Limited Company	
Commercial register no. (if any)	H789.2330f	
Shareholders (if any)	A) Karl Simmons	
	13.11.1966	
	Townstreet 22	
	1234 Woodville	
	100%	
	B) NONE	
	C) NONE	
...		
Business line (please select)	Food Processing and Sales (Retail)	
Year of establishment	1959	
Envisaged investment (please select)	Photovoltaic Panels and Inverter	
Estimated costs:	€ 27,500	
I herewith confirm to have read the funding criteria and the privacy policy	Yes	
Electronic Signature valid?	Yes	

GYON INPUT:

Karl's Butchery Ltd.

Summary:

SME based in Woodville. Butcher shop and food retail.

GYON score: **234/600** (overall non-sustainable; <17% chance of becoming sustainable within next 10 years).

Details:

Address:	Townstreet 22, 1234 Woodville
Business Lines:	Butchery, Meat Processing, Food Processing, Food Retail
Ownership Structure:	Family owned, shareholder-managing director
Supply Chain Rating:	3/10 (self-collector, combustion engine vehicle)
Waste Management:	5/10 (highly perishable goods, subject to high hygiene standards)
Public Appearance:	4/10 (semi-progressive, potential greenwashing)
Accessibility by Public Transport:	5/10 (mediocre connection, favors individual transport)
Overall Customer Report Rating:	6/10 (based on 427 customer reports; see below)

All information and values displayed above are the result of calculations based on publicly available data and customer reports via the GYON app. GYON takes no decisions based on this information but provides it free of charge according to our terms and conditions.

All liability is excluded.

© Green Yay Or Nay Association, Shore Alley 142, 1234 Woodville.

Customer Comments (Most recent):

Anne: 3/10: "I can't believe they use a freaking SUV to get their meat. Hello, it's 2023!!"

Richard: 6/10: "Best spare ribs in town, but seem to throw away a lot of meat by the end of the day."

Kenneth: 7/10: "I'd go there more often if I had a car. It's kind of a hassle with only a bus and no tram line there."

Sharon: 1/10: "Would give zero points if possible. The owner is an asshole who kills cute deer!"

Maurice: 6/10: "Improved a lot in the last years. Love their new veggie line. Not sure if they are for real though. At least on Insta they were boasting about striking a deal with AIDA Cruises and selling meat to those dickheads."

Berta: 10/10: "Finally a butcher that's not stuck in the 1950s. Almost everything comes from local farmers, and even their vegetarian products are not this highly processed junk but real quality goods, mostly even from organic farming."

COMMERCIAL REGISTRY:

Number	H789.2330f
Name	Karl's Butchery Ltd
Legal Form	Limited Company
Address	Townstreet 22, 1234 Woodville
Capital Stock	EUR 40.000
Shareholders	100%: Karl Simmons, 13.11.1966, Townstreet 22, 1234 Woodville
Chief Executive	Karl Simmons, 13.11.1966, Townstreet 22, 1234 Woodville
Revenue 2023	EUR 383,338.23

Charlotte drags the application into the "rejected" folder, because the GYON score is below 400. She feels a bit sorry for Karl Simmons, with whom she is acquainted, as he and his family are members of the same tennis club as she and her husband. On 05.06.2023, using the email greenfunding@woodville.gv.rd, Charlotte sends the following email to office@karlsbutchery.rd:

Hi Karl,

This is Charlotte. Template message incoming ;)

Thank you for your funding request – we appreciate that you want to be part of Woodville's mission to become Randomistan's first carbon neutral town.

Taking into account the information you provided us with, publicly available information and GYON's sustainability score for your business, we regret to inform you that we have to turn down your request this year. But keep your eyes open: "Woodville Goes Green!" will continue in 2024!

Kind regards,

Charlotte Winter

on behalf of the municipal council of Woodville

On 12.06.2023, Karl Simmons calls Charlotte on her private mobile number and asks why his funding request has been denied. After Karl has vented for a while and expressed his frustration with GYON, Charlotte explains to him that the municipal council is very keen on relying on public domain data to ensure a transparent selection process for this year's "Woodville goes Green!" campaign. As Karl has certainly heard, there was quite a scandal in 2022 after an investigative journalist discovered that the mayor's son had been given € 240.000 of the "Woodville goes Green!" money to renovate the town's soccer stadium. So, this year, the council hired an IT company to set up a system that automatically checks the commercial register and the information provided by GYON to then suggest which project to fund. The council wants to support climate-friendly business models, so those that have a bad GYON score usually don't make it far in the selection process. Charlotte has been told to provide no other information than what's available online, so she says sorry and that she hopes to see Karl and his family at the tennis club on the weekend.

Charlotte reports this phone call to the funding and procurement committee of the municipal council, which ask her to reach out to GYON to get all written communication between Karl's Butchery and GYON on the matter. Charlotte calls a representative of GYON, who sends her **two emails (Attachment 4)**.

After that, things are silent for a while. However, on 13.10.2023, the Data Protection Authority of Randomistan serves the municipal council with a complaint from Karl Simmons and orders it to submit a written reply no later than 19.11.2023.

A representative of the municipal council comes to your law firm and asks you to take all necessary legal steps to fend off the complaint.

Please note the following:

- You will receive the complaint on 13.10.2023. Take the time until then to familiarize yourself with the case above and send request for clarifications by 06.10.2023 at the latest.
- Assume that the municipality's decree is generally in line with EU law and the national law of Randomistan and that the municipality has the power to pass such a decree.
- Under the law of Randomistan, decisions by a municipal council in matters of public funding and procurement can be appealed with the Procurement Senate for a fee of €50. The Senate's decisions can be challenged before the State Administrative Court, with an average expense risk of €1,500.
- There is no privacy policy that describes how GYON processes the information displayed on www.gyon.rd. They claim not to process any personal data and only provide a privacy policy that regards visits of the website. It contains no information relevant to the case at hand.
- Equally, the parts of GYON's terms and conditions that are not part of attachment 3 contain no relevant information.
- GYON also convinced the municipal council that it is not necessary to conclude any agreement under Article 26 or 28 GDPR.
- The case brought to you must be reviewed based on the GDPR.
- You can use (upcoming) EU legislation to support any legal argument you bring, but be aware of the competence of the DPA of Randomistan, which only has the tasks and powers assigned under Articles 57 and 58 GDPR.
- In any case, make sure to comply with point 8 of the [Rule Book](#).

ATTACHMENT 1**Decree of the municipal council of the Republic of Randomistan****Municipal Council Decree 65/2023****Woodville, 09.01.2023****"Woodville Goes Green!" 2023***Article 1 – Purpose*

Woodville continues its agenda to become Randomistan's first carbon-neutral town. For that purpose, public funding of green investments by local businesses shall be provided with a total of € 9 Million from the municipality's budget for infrastructure and energy for 2023.

Article 2 – Subject of Funding

- (1) The municipality funds any kind of voluntary green investment, i.e., investments that aim at reducing carbon emissions, improving local air quality, or unsealing cemented areas.
- (2) A business can only apply for funding for one project. Mandatory investments are not subject to this decree.
- (3) The minimum funding per business is € 8,000; the maximum is € 50,000, depending on the planned investment and the kind of business (see Article 4).

Article 3 – Supported Businesses

- (1) Businesses that have been established within the perimeter of Woodville for more than two years can apply.
- (2) Businesses with multiple establishments can apply as long as the envisaged investment primarily concerns one or more establishments within the perimeter of Woodville.
- (3) Businesses currently subject to insolvency proceedings are excluded.

Article 4 – Application and Selection

- (1) Applications are open until 30.10.2023. Any funding request will be decided on within 2 months.
- (2) Businesses have to fill out an application form provided on the municipality's website. The municipality will conduct an automatic preselection based on the information provided by the applicant, publicly available official information on the business (commercial register, insolvency register), and publicly available information on www.gyon.rd.
- (3) Businesses not excluded in the preselection process will be presented to the municipality's infrastructure and energy committee, which will decide on the allocation of the funding among the most promising envisaged investments by these businesses.
- (4) The municipality can request additional information on the envisaged investment or on the business as such at any time and set a reasonable deadline no shorter than ten days for the business to reply.
- (5) The details of the funding and the amount funded are subject to an agreement between the selected business and the municipality.

ATTACHMENT 2**Privacy policy for the “Woodville Goes Green!” campaign**

This privacy policy explains which data we (the municipality of Woodville) collect in the context of Woodville goes green!” funding campaign, how your data is processed, and what rights you have in connection with this data processing.

Contact Details: The municipality of Woodville is the sole controller for any data processing described in this privacy policy. Contact: Town Square, 1234 Woodville, Randomistan, greenfunding@woodville.gv.rd. Our DPO can be reached at dpo@woodville.gv.rd.

Collected Data: We collect information on your business, such as the field of business, commercial registry number, contact details, information on shareholders, information on the envisaged project, and information on the overall sustainability of your business. Some of this information may qualify as personal data within the meaning of EU Regulation 2016/679.

Purpose and Legal Basis: We process your personal data for the purposes of selecting and funding green investments in Woodville; this includes the closure and fulfilment of the funding agreement between selected businesses and us. The legal basis for processing complies with our legal obligations under Municipal Council Decree 65/2023, the public interest in the reduction of carbon emissions, which includes the legitimate interests of the inhabitants of Woodville, and the steps necessary to enter into a funding contract with your business and the performance of the funding contract. Without your data, we might not be able to enter into a funding agreement.

Sources and Recipients: We collect data via the online form on our website, the commercial register and the insolvency register of Randomistan and from Green Yay or Nay Association, Shore Alley 142, 1234 Woodville, www.gyon.rd. All data processing happens within the municipality of Woodville, so there are no third-party data recipients or data transfers to third countries.

Storage Period/Criteria: Data regarding unsuccessful funding requests is deleted after 3 months. Data regarding successful funding requests is stored for 7 years after the fulfilment of the funding agreement.

Your Rights: You have the right to request access to and rectification or erasure of your personal data or restriction of processing or to object to processing as well as the right to data portability. Please send any requests to greenfunding@woodville.gv.rd.

Competent Data Protection Authority: You have the right to lodge a complaint with the data protection authority if you consider that the processing of your personal data by us infringes data protection law. The competent data protection authority in Randomistan is the Randomistianian Data Authority (RDA), Dataprotectionstreet 1, 679 Randomia, Randomistan.

ATTACHMENT 3

Terms and Conditions of GYON (excerpt)

[...]

Article 5 – Scored entities

GYON only provides scores for companies (i.e. corporations or partnerships) registered in the commercial registry of Randomistan; this excludes individuals registered there.

[...]

Article 17 – No processing of personal data

All data provided on the GYON website or via the GYON API are non-personal data. Our algorithms automatically prevent user comments containing the names of natural persons, dates of birth or other identifiers from publication.

[...]

ATTACHMENT 4**Email exchange between Karl's Butchery and GYON**

Date and Time: 07.06.2023, 11:56

From: support@gyon.rd

To: office@karlsbutchery.rd

Dear Sir or Madam,

We are very unhappy with the incorrect information regarding Karl's Butchery Ltd. displayed on your website. Karl's Butchery Ltd. is a family-owned butcher shop run by my father, Mr. Karl Simmons, who is an honest businessman. We are suffering reputational damage due to the things you say about us online, and apparently, we didn't get public funding because of you. Please delete everything you have on us; otherwise, we will have to take legal action!

Sincerely,

Tim Simmons

On 12.06.2023, Tim receives the following reply from support@gyon.rd:

Date and Time: 12.06.2023, 16:02

From: support@gyon.rd

To: office@karlsbutchery.rd

Dear Mr. Simmons,

Thank you for your email. All information displayed on our website regarding your company comes from publicly available sources or has been reported by customers of your company via the GYON app. Green Yay or Nay (GYON) is a not-for-profit organization funded by donations or public funding. We do not make any money from assigning sustainability scores, but we do it to stop greenwashing and to ensure that only businesses that are actually climate-friendly and sustainable are perceived as such.

We do not process any data on individuals and, after consulting with our legal department, see no grounds for deleting any information on your company. If your company has suffered any disadvantage due to the use of information provided by GYON, we kindly ask you to contact the source of such disadvantage.

Kind regards,

The GYON team