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Litigation Chamber

Decision on the merits 37/2020 of July 14, 2020

File number: DOS-2019-03780

Subject: X vs. Google (delisting/right to be forgotten)

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

Hijmans, chairman, and Messrs. Yves Poullet and Christophe Boeraeve, 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 GDPR;

Considering the law of December 3, 2017 creating the Data Protection Authority, hereinafter LCA;

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;

made the following decision regarding:

the plaintiff "X", represented by Me Carine DOUTRELEPONT;

the controller: Google Belgium SA, Chaussée d'Etterbeek 180, 1040 Brussels,

represented by Me Louis-Dorsan JOLLY and Me Gerrit VANDENDRIESSCHE.

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1. The facts and retroacts of the procedure

1. The complainant, a Belgian resident, filed a complaint signed on August 12, 2019, against Google Belgium

SA, a Belgian company, concerning the delisting of a series of content numbered from 1 to

12 and whose twelve URLs are listed in the complaint. This complaint was declared admissible on August 14

2019 by Front Line Service.

2. In essence, the plaintiff complains of the refusal of “Google” to grant his requests for

delisting sent via online forms to request deletion of information

personal. While according to him, a search carried out on the basis of his surname and first name leads to

the referencing of content detrimental to its honor and reputation in the written press

Belgian.

3. Two categories of content in Google's indexes are more specifically criticized. On the one hand, it is

content presenting the complainant “as a person labeled party Y” (a political party

Belgian), whereas it would be a processing of special categories of personal data in the

meaning of Article 9 of the GDPR not covered by the exceptions provided for in the GDPR and furthermore, incorrect.

4. And on the other hand, content referring to information revealing that the

complainant was the subject of a harassment complaint, when this complaint would have been declared not

founded in 2010 by the organization in charge of examining this complaint, ARISTA1, and that consequently,

the information concerned is no longer up to date.

5. As for the first category of content, content Nos. 1 to 8, Google replied: that it cannot

access content n° 22 (Google therefore requests the sending of a screenshot of the content

of the page in question in order to be able to examine the request in more detail); that the content

No. 7 has been deleted or the page is not displayed; and decides not to block content

nos. 1, 3, 4, 5 and 83, as well as content no. 64.

1 SPMT-ARISTA is an external service for prevention and protection at work which since January 1, 2020 has become cohezio

(see https://www.cohezio.be/fr, last consulted on February 20, 2020).

2 Google therefore requests the sending of a screenshot of the complete content of the page in question in order to be able to

review the request in more detail.

3 For this reason: “After considering the balance between the interests and rights associated with the content in question, includ

factors such as the latter's relevance to your professional life, Google has decided not to block them

".

4 For this reason: “After considering the balance between the interests and rights associated with the content in question, includ

factors such as the latter's apparent relevance, Google decided not to block it".

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6. As for the second category of content, content nos. 9 to 12, Google also decided

not to block them.

7. On August 30, 2019, the Litigation Chamber decided pursuant to Article 95, paragraph 1, 1° and

Article 98 of the LCA that the complaint could be dealt with on the merits. The parties were invited to

conclude. Google's findings were received on September 30, 2019. On October 15, 2019, the

plaintiff asked the registry of the Litigation Chamber, in the absence of any clarification in the

LCA, about the possibility of involving Google Ireland Ltd and Google LLC in the case.

He was told on October 21, 2019, that without prejudice to the decision that will be taken on this subject by

the Litigation Chamber, the plaintiff was invited to introduce his request in his conclusions, which

which will also allow the opposing party to position themselves with regard to it. On the same day, the complainant

submitted its submissions in response, without requesting the intervention of other parties. November 12

2019, Google released its summary findings.

8. On several occasions and most recently in a letter dated November 21, 2019, Google asked to be

heard. The parties were invited by the Litigation Chamber to be heard. In accordance

in article 93 of the LCA, the Litigation Chamber can hear the parties concerned. On this basis

and given the conclusions exchanged by the parties, it also offered the possibility to Google LLC to

participate in the planned hearing in order to present any arguments. A hearing was

organized on 6 May 2020 in the presence of Google Belgium SA and the complainant represented by a

replacing Me Carine DOUTRELEPONT. Google LLC did not respond to the invitation sent to it

sent and at the hearing. When questioned on this point, Google Belgium SA explained that this

invitation had reached Google LLC but nothing was manually signed in California

due to the epidemic caused by the Coronavirus Covid-19. However, the Litigation Chamber wrote

by paper mail to Google LLC and the latter responds in the same manner as that by which

she is requested. The e-mail address of the Litigation Chamber was however known to Google, which
could have used it to answer him. Due to the aforementioned epidemic, the hearing was held at
distance, by videoconference.
9. A record of the hearing was sent to the parties on May 11, 2020. On May 13, the complainant
informed the Litigation Division that it has no observations. On 22 May 2020, Google Belgium NV has
communicated its remarks concerning the minutes of the hearing of May 6 in the form of a 'track
changes'.
10. On June 4, 2020, the Litigation Chamber sent an e-mail to Google Belgium SA, informing it
the amount of the fine envisaged against him as well as the reasons for which the breaches
5 For the following reason: "after considering the balance between the interests and rights associated with the content in questio
factors such as your role in public life, Google has decided not to block it".

found in the GDPR justify the said amount. Google Belgium SA was invited, by this same e-mail, to
assert its means of defense with regard to the amount of the fine envisaged. The Litigation Chamber
received such means by e-mail of June 24.
11. On June 9, 2020, the Litigation Chamber introduced an informal notification of mutual assistance
voluntary under Article 61 of the GDPR in the system of cooperation between supervisory authorities,
asking for a response within two weeks. The Spanish, Portuguese, Hungarian,
Slovak, German (Hamburg, as well as Baden-Württemberg), French, Italian as well as Irish
submitted comments within this period.
2. Structure of the decision
12. By this decision, the Litigation Chamber examines the issue of delisting
by an Internet search engine, of content following searches relating to a
Physical person. This question is the subject of case law of the Court of Justice of the European Union.
European Union (hereinafter CJEU) well known, in particular in the judgments Google Spain6,
Google/CNIL7 and GC et al./CNIL8. The Belgian Court of Cassation has also ruled on the

delisting and the right to be forgotten.9

13. For the Litigation Chamber, this is an opportunity to adopt a decision of principle and to decide

some fundamental aspects related to delisting, based on the case law of the

CJEU on the matter, or on other points relating to the determination of its jurisdiction to act

(in particular the judgment of the CJEU Wirtschaftsakademie10).

14. Firstly, the Litigation Chamber analyzes the jurisdiction of the Authority for the Protection of

Data (APD) in the case submitted with regard to Article 55, 1., and Recital No. 122 of the GDPR.

To this end, the Litigation Chamber demonstrates that the specific case should not be submitted to the

GDPR “one-stop-shop” mechanism (Section 3 below).

6 CJEU, 13 May 2014, C-131/12, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and

Mario Costeja Gonzalez

7 CJEU, September 24, 2019, C-507/17, Google LLC v Commission nationale de l'informatique et des libertés (CNIL).

8 CJEU, 24 September 2019, C-136/17, GC e.a. v Commission nationale de l'informatique et des libertés (CNIL).

9 See, in particular, Cass., 29 April 2016.

10 CJEU, 5 June 2018, C-210/16, Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v Wirtschaftsakademie

Schleswig-Holstein GmbH.

15. Second, having found that such jurisdiction exists, the Chamber turns to the notion

of data controller within the meaning of Article 4, (7), of the GDPR, with the objective of deciding whether

Google Belgium NV – the defendant in this case – can be considered responsible for the

processing and/or having its activities inseparably linked with those of the data controller

(Google LLC), and whether the DPA can exercise its powers with regard to Google Belgium (Section 4 below).

16. Third, it determines the territorial application of the delisting, with a view to stopping

Google/CNIL. (Section 5 below).

17. Fourth, the Litigation Chamber examines requests for delisting

brought by the complainant, which relate to political labeling and the harassment complaint

(Section 6, below).

18. Fifthly, the Litigation Chamber considers that certain facts which have been brought to its knowledge in this case constitute a breach of the GDPR (Section 7 below) and details the related corrective measures.

3. Competence of DPA and the inapplicability of the “one-stop shop” mechanism

19. The competence of the DPA is defined and framed in Chapter VI of the GDPR.

20. In accordance with Article 55, 1., of the GDPR, a supervisory authority is competent to exercise its missions and powers in the territory of the Member State to which it belongs. Recital 122 provides that this must cover - among other things - the processing of data in the context of activities carried out by an establishment of the controller in this territory, as well as processing affecting persons concerned in this territory.

21. Territorial jurisdiction is a major principle of the GDPR, which should be read in conjunction with Article 3, 1., of the GDPR on the territorial application of the GDPR. The territorial jurisdiction of the authority is a rule of jurisdiction which stems from the principle in public international law that a State has the power to impose the law on its own territory. This principle of the GDPR should be read with the objective (ratio legis) of the Regulation to ensure effective and comprehensive protection of fundamental human rights

concerned. Territorial jurisdiction may include the activities of a local subsidiary of a company established in a third country11.

22. Territorial jurisdiction also applies in the event that the processing is carried out by a controller who is not established in the territory of the European Union, as provided and in accordance with the conditions of Article 3, 2., of the GDPR. This is confirmed by the European Committee for Data Protection (EDPB)12.

23. On the other hand, an exception to this founding principle of the GDPR is provided for in Article 56, 1., read together with Article 60, on the cooperation of the lead authority and the authorities of concerned (the "one-stop shop"). In a situation of cross-border processing in

European Union, the lead authority guides the cooperation. The scope of this
exception is limited to situations of “cross-border processing”, defined in Article 4, (23), of the GDPR,
that is, processing that is carried out in more than one establishment in the European Union
of a data controller, or processing that materially affects data subjects
in several Member States (or is likely to affect them). In this case, the complaint
is brought against Google Belgium SA, a subsidiary of Google LLC (USA). This Belgian establishment,
a corporate subsidiary of Google is the defendant. However, Google Belgium SA defends
the position that only Google LLC (USA) is the data controller.

24. The Litigation Chamber underlines that even in the event that Google LLC and not Google Belgium
SA would be the data controller (hypothesis not followed by the Litigation Chamber13), the DPA
would be competent to deal with the complaint of a Belgian national. The processing of data to
personal nature within the framework of an establishment of a controller outside
of the European Economic Area is not covered by Articles 56.1 and 60 of the GDPR. The company
“Google” based in the United States does have a main establishment in the European Union:
in Ireland more precisely via the company Google Ireland Ltd. In the event that the processing in
at issue in this case would be carried out within the framework of the activities of this principal establishment,
this processing would fall within the scope of Article 56, 1., of the GDPR, and in the system of
“one-stop-shop” cooperation, with the Irish authority as lead authority.

25. At the hearing, the allocation of responsibilities within the “Google” group of companies was
part of the debate, as provided for in the letter of invitation sent by the Chamber
Litigation. In this letter, the Chamber had clearly expressed the wish to be informed of the

11 THE EU GENERAL DATA PROTECTION REGULATION (GDPR), A Commentary, Edited by Kuner, Bygrave and Docksey,
2020, p. 903, 906-908. See also the Google Spain judgment, paragraphs 34 and 53.

12 Guidelines 3/2018 on the territorial scope of the GDPR (Article 3) - for public consultation, adopted on 12 November
2019 available at www.edpb.europa.eu.

13 Infra, n° 32-53

roles and responsibilities of the establishments of the “Google” group, including with regard to the existence of a

any main establishment (within the meaning of Article 4 (16) of the GDPR)14.

26. Google Belgium SA has acknowledged that Google Ireland Ltd is the main establishment of Google within the meaning

of Article 4 (16) of the GDPR, namely the place of central administration of Google LLC in the Union

European. Although the role of Google Ireland is mentioned in these proceedings, the Chamber

Litigation considers that the data processing in the present case is not carried out within the

framework of the activities of Google Ireland Ltd.

27. Indeed, firstly, during the hearing, Google Belgium SA maintained that the reference to Google

Ireland Ltd was off the table. According to Google Belgium SA, this reference did not appear in the

conclusions of the complainant and the debate is between Google Belgium SA and Google LLC: it is therefore not

no question that Google Ireland Ltd intervenes. In these proceedings, the parties have not

exchanged on "Google Ireland or Google BE", the debate is between Google Belgium SA and Google

LLC. Therefore, for procedural reasons, the Litigation Chamber should not rule

on the role of Google Ireland Ltd. The Litigation Chamber repeats, however, in this regard, that it has

expressly invited the parties to decide on the existence of a possible main establishment of

Google in the territory of the European Economic Area15, and that it appeared during the hearing

that Google Ireland Ltd was that establishment.

28. Secondly, in the course of the pleadings, Google Belgium SA insisted on the fact that the activity of

Google Ireland Ltd as controller concerns a different scenario from that which

concerns the indexing activities of the search engine. It concerns the processing of data

“users”, i.e. for example, when a person uses the search engine, his

search history may be processed by Google for the adaptation of search results. He

This is then a processing for which Google Ireland Ltd is the controller. For the

Google search engine and the processing corresponding to the three steps necessary for the

operation of the search engine (crawling, indexing, selection of search results,

searches) involved in the proceedings, Google Ireland Ltd is not the data controller.

This distribution of roles is explained by the fact that Google Ireland Ltd plays an interface role with

users residing in the EU but does not intervene in the development and management of the engine of

research, exclusive jurisdiction of Google LLC.

14 The letter of invitation contained the following passage: “Without prejudice to the arguments they would like to develop

before the Litigation Chamber, all parties are invited, in the context of this case, to express themselves on the

activities, roles and responsibilities of Google LLC, Google Belgium SA, and the existence of a possible main establishment

(within the meaning of Article 4, 16) of the GDPR) of Google on the territory of the European Economic Area”.

15 Supra, footnote 14.

29. Thus, the elements mentioned by Google Belgium SA during the hearing, according to which Google Ireland

Ltd would be responsible for processing users' data where for example, their

search histories are processed in order to adapt the results communicated to them by the

search engine are potentially contradictory with the position defended by Google

Belgium SA according to which Google LLC would indeed be the sole data controller in the context of the

operation of the search engine and its three phases, namely the exploration phase, the

of indexing and selection of results.

30. Therefore, data processing (i.e. delisting) in the present case is not

not carried out as part of the activities of Google Ireland Ltd. In conclusion, in the present case,

the Irish supervisory authority cannot be the lead authority, within the meaning of Articles 56 and 60

of the GDPR, which implies that the “one-stop shop” mechanism is not applicable and that the

jurisdiction of the Litigation Chamber can be assessed on the basis of the principle of territoriality

enshrined in Article 55, 1., of the GDPR.

31. This conclusion is supported by the position taken by Google LLC in a letter to the authority of

Irish control dated June 23, 2020, in which Google LLC explains that it will no longer oppose

that a local supervisory authority exercises local jurisdiction over the processing of

personal data which falls within the sphere of responsibility of Google LLC.16 This decision

position does not mean that the cooperation system cannot be applied17.

4. About the data controller

32. The purpose of this section is to establish whether Google Belgium NV – the defendant in this case – can

be considered responsible for the processing relating to requests for delisting of the

complainant, i.e. the entity which determines the ends and means, and/or whose activities are

inseparably linked with those of the data controller, here Google LLC.

33. At this stage, the Litigation Division makes a preliminary observation on the territorial application

of the GDPR. Article 3 of the GDPR covers two distinct scenarios regarding its applicability

territorial:

at.

the first scenario concerns the application of the GDPR to the processing of personal data

personal character carried out within the framework of the activities of an establishment of a

16 This letter is added to the file by the Litigation Division.

17 Infra, n° 89.

controller on the territory of the Union, whether or not the processing takes place

in the Union (Article 3.1);18

b.

the second scenario concerns the application of the GDPR to processing

personnel relating to persons who are in the territory of the Union by a

controller who is not established in the Union (article 3.2).

34. The Litigation Chamber notes that these two paragraphs should be aligned. Otherwise, based

on a purely textual reading, a certain legal vacuum could exist in the circumstances or

processing is carried out by a data controller who has an establishment in

Union, and the processing is not carried out in the context of the activities of that establishment but

by a data controller established in a third country.

35. In the present case, it is undeniable that the person concerned (the complainant) is on the
the territory of the European Union (in this case, in Belgium). Google LLC having various
establishments in the Union, Article 3.2 does not apply. Therefore, the territorial application is
triggered by article 3.1 GDPR. Indeed, if it is considered that none of these provisions is
applicable, the effective and comprehensive protection of data subjects as required by the Court of Justice
of the European Union19 would not be guaranteed.

36. In addition, the Litigation Chamber points out that, given that the GDPR and the case law of the
Court of Justice provide for effective and complete protection of individuals, the application of Article
3.1 should be regarded as the primary rule, for the sole reason that effective control becomes
complex if the processing of personal data is carried out by an establishment at
outside the European Union. For example, it is not easy for a supervisory authority to
exercise investigative powers or adopt corrective measures with respect to such
establishment referred to in Article 58 of the GDPR with regard to an establishment outside the Union.

4.1 Position of the data controller and stoppage of Google Spain

37. In essence, Google Belgium SA considers the complaint against it to be unfounded since the only
responsible for the processing of personal data related to the search engine service

18 The scope of the GDPR is extended to the 3 States of the European Economic Area (EEA), namely Iceland,
Norway and Liechtenstein by a decision of the EEA Joint Committee of July 6, 2018, which entered into force on July 20, 2018.
This decision has no consequences in the present case. However, this Decision refers to the EEA in several ways.
occasions.

19 CJEU, 13 May 2014, C-131/12, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and
Mario Costeja Gonzalez. Item 58.

Web offered by Google is not Google Belgium SA but the American company Google LLC. She
relies in support of its argument on the judgment in Google Spain 20.

38. In this case, the Court of Justice considered that an establishment such as Google Spain satisfied
the criterion provided for in Article 4, paragraph 1, a), of Directive 95/46/EC21, considering in substance
that the activities of the search engine operator (then Google Inc., now Google LLC) and
those of his establishment located in the Member State concerned were inseparably linked from then on.
that the activities relating to advertising spaces constituted the means to make the engine of
research in question economically profitable and that this engine was, at the same time, the means
enabling these activities to be carried out.
39. The Court also held in this same case, as argued by Google Belgium SA, that the
"operator of a search engine" is responsible for the processing of personal data
personnel carried out within the framework of its activity, which is distinct from and in addition to that carried out by the
website editors23.
40. The objective of this case-law is to “ensure, by a broad definition of the notion of “responsible
“, effective and complete protection of the persons concerned”24. According to Google Belgium NV, this
stoppage would imply that Google LLC would be the sole data controller. This position does not convince
not. The Court of Justice did not clearly distinguish the responsibilities of the American company from its
European establishment, but – on the contrary – underlined that the activities of the two entities were
inseparable. Even on the assumption that such a theoretical distinction of the responsibilities of the
parent company and the subsidiary company would be valid, the questioning of Google Belgium SA would remain
valid, precisely because of these inseparable links and the requirement of effective and
completeness of the persons concerned.
41. Furthermore, Google Belgium SA argued during the hearing that the processing is covered by Article 3.1.,
of the GDPR, which provides that "This Regulation applies to the processing of personal data
personnel carried out within the framework of the activities of an establishment of a controller or
of a processor on the territory of the Union, whether or not the processing takes place in the Union", such
so that the aforementioned case law of the Court of Justice can be transposed there, to which the Court of
20 CJEU, 13 May 2014, C-131/12, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and

Mario Costeja Gonzalez.

21 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of natural persons

with regard to the processing of personal data and on the free movement of such data, OJ L281/31. .

22 CJEU, 13 May 2014, C-131/12, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and

Mario Costeja González, paragraph 56.

23 Ibid, paragraphs 32 to 38.

24 Ibid, paragraph 34.

justice has also proceeded in its Google / CNIL judgment concerning the scope of delistings

liable to be imposed on Google25.

42. The Litigation Chamber underlines that this position implies that Google Belgium SA seems

admit that the processing is carried out within the framework of the activities of an establishment of the controller

processing in the European Union, i.e. Google Belgium NV. Another reading of this

position would have - as ruled in the Google/CNIL ruling - "as a consequence that the processing of

personal data […] be exempted from the obligations and safeguards provided [by the

Directive 95/46 and] by the GDPR". In other words, such a reading would jeopardize the useful effect

of the application of the GDPR.

43. The Litigation Division admittedly recognizes that this case law concerning the application of the principle

of the "indissociable link" was developed within the framework of the application of Directive 95/46/EC, the

territoriality provisions are distinct from those of the GDPR. Nevertheless, in the Google/CNIL judgment

cited above, the Court confirms its desire to extend its case law in this matter to the GDPR. Bedroom

Litigation quotes the following paragraphs:

"50. Indeed, in such circumstances, the activities of the engine operator

research and those of its establishment located in the Union are inseparably

linked […]. 51. Under these conditions, the fact that this search engine is

operated by an enterprise of a third State cannot have the consequence that the

processing of personal data carried out for the purposes of the

operation of said search engine in the context of advertising activity and

commercial activity of an establishment of the person responsible for this processing in the territory of a

Member State is exempted from the obligations and guarantees provided for by the Directive

95/46 and by Regulation 2016/679 […]."

Moreover, it is clearly established and recognized that the will of the authors of the GDPR was to increase

the protection of data subjects and to make it more effective.

4.2 Role of Google Establishments.

44. In its submissions in response, the complainant maintains in particular that Google Belgium SA is a

subsidiary of Google LLC. mainly active in digital marketing, whose head office is located in

25 CJEU, 24 September 2019, C-507/17, Google LLC v Commission Nationale de l'Informatique et des Libertés (CNIL), points

48 to 52.

Brussels and its activity targets the inhabitants of Belgium, and that the activities of Google Belgium SA and

of Google LLC are inseparable within the meaning of the Google Spain judgment mentioned above.

45. Google Belgium NV does not dispute this. Nor is it disputed that Google Belgium SA/NV exercises

really and effectively activities in Belgium.

46. During the hearing, Google Belgium SA/NV was questioned about the different roles of the establishments of

Google. It confirmed that it does not play any role with regard to the data processed within the framework of the three

phases of the operation of the Google search engine, namely its exploration phase, its phase

of indexing and its phase of selection of the results according to the request introduced by the user.

Google LLC would be solely responsible for processing in this context. In substance during the hearing,

Google Belgium SA explained that it was a subsidiary of Google established in Belgium likely to

lead to the application of European and Belgian law. Google Belgium SA considers that Google LLC is

therefore subject to the GDPR in application of its article 3.1., and consequently, must not designate a

representative in accordance with Articles 3, 2., and 27 of the GDPR.

47. Google Belgium NV explained that it only offered consultancy services related to the
marketing the services of other Google entities on the Belgian market. The requests for
delistings are directly and exclusively processed by Google LLC from the
online forms entered by data subjects without any involvement of Google
Belgium NV. The latter explains that when requested by data subjects
requesting delisting, it systematically redirects them to online forms which
are sent (and addressed) to Google LLC. Based on the country and language chosen by the person
concerned in the form, agents of the first line service of Google LLC are selected
to answer the case in question. In cases where the content concerned requires an evaluation
more in-depth, a process of “escalation” (escalation) is followed and, in this case, it is a
Belgian person established in the United States (who is not an employee of Google Belgium SA) and working
for Google LLC that was accessed. The analyzes carried out by this Google employee are on
the information base from public sources and its good knowledge of the particularities specific to
to the relevant country of which he is a national.
48. The Litigation Chamber concludes that on the basis of the preceding elements, that by applying in
In this case the Google Spain judgment, the GDPR is indeed applicable to Google LLC pursuant to Article 3, 1.,
of the GDPR and that the subsidiary Google Belgium SA is indeed an establishment likely to lead
the application of the GDPR under Article 3, 1., of the GDPR. The Litigation Chamber invokes in this
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context the Google/CNIL judgment26 in which the Court emphasizes that it is irrelevant that this processing has
place or not in the Union.
49. Although it is true that Google Belgium SA does not determine the purposes or means of the processing
in the strict sense - these are determined by Google LLC -, Google Belgium SA is a subsidiary of Google
LLC and it follows from the position of Google Belgium SA that the activities of this subsidiary trigger
the application of article 3.1 of the GDPR. In other words, the processing in question is carried out in the
framework of the activities of the establishment of Google in Belgium. Another interpretation would imply

the application of article 3.2 of the GDPR, as well as the obligation of Google to designate a representative

in the European Union under Article 27 of the GDPR. This is not intended by Google and is not

not necessary either given the role of Google Belgium NV.

50. The Litigation Chamber points out that this interpretation is corroborated by the Google Spain judgment,

although the scenario is not identical. In this judgment, the Court ruled – under the rules of

Directive 95/46 – "that processing of personal data is carried out in the context of

activities of an establishment of the controller in the territory of a Member State, in the

meaning of this provision, when the operator of a search engine creates in a Member State

a branch or subsidiary intended to ensure the promotion and sale of advertising space

offered by this engine and whose activity is aimed at the inhabitants of this Member State. »27

51. Moreover, since its activities are inseparably linked to those of Google LLC., this subsidiary in Belgium,

having regard to the role it plays and describes, may be treated in the same way as a data controller.

data processing carried out as part of the operation of the Google search engine and

management of delisting requests in Belgium.

52. In short, the Litigation Chamber considers that Google Belgium SA should be treated in the same way

manner as a data controller on the basis of the elements of the file and the case law

Google Spain of the Court of Justice of the European Union.

53. In any case, even if Google Belgium SA could not be considered as

responsible for the processing, the Litigation Chamber would remain competent with regard to Google

Belgium SA due to the presence of this entity on Belgian territory, such as the following

demonstrate it.

26 CJEU, 24 September 2019, C-507/17, Google LLC v Commission Nationale de l'Informatique et des Libertés (CNIL), point

48.

27 CJEU, 13 May 2014, C-131/12, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and

Mario Costeja González, item 60.

4.3 The competence of the DPA regarding Google Belgium

54. Account should now be taken of the Wirtschaftsakademie judgment delivered by the Court of Justice on 5 June 201828 regarding Directive 95/46 which grants a supervisory authority the power to exercise its powers with regard to an establishment of the controller even if this institution is not a joint controller. Later developments demonstrate that it is appropriate to extend the application of this case-law to the present case29.

55. In the Wirtschaftsakademie case, the Court held that the German supervisory authority was competent, for the purpose of ensuring compliance on German territory, with the rules on the protection personal data, to implement, with regard to Facebook Germany, all the powers it has under the national provisions transposing Article 28, paragraph 3 of Directive 95/46 (recitals 50 et seq.). However, in the same case, the Court had also clearly held that "Facebook Inc. and, as regards the Union, Facebook Ireland must be considered as determining, on a principal basis, the purposes and means of the processing of personal data staff of Facebook users as well as people who have visited the hosted fan pages on Facebook, and thus fall within the concept of 'controller', within the meaning of Article 2, under d), Directive 95/46"30 (italics added by the Litigation Chamber). In other words, Facebook Germany was not controller (or joint controller) of the disputed data processing.

56. The Court granted this jurisdiction to the German supervisory authority following the verification of satisfaction of the two conditions set out in Article 4(1)(a) of Directive 95/46:

"in order to determine whether a supervisory authority is justified, in circumstances such as those in the main proceedings, to be exercised with regard to an establishment located on the territory of the Member State to which it falls the powers conferred on it by national law, it is necessary to verify whether the two conditions laid down in Article 4(1)(a) of Directive 9[5]/46 are met, namely, on the one hand, whether it is an 'establishment of the controller', within the meaning of this provision, and, on the other hand, if said processing is carried out "in the context of the activities" of this establishment, within the meaning of the same provision".

57. As for the first condition, the Court deemed it met, considering that it was “constant that

Facebook Inc., as responsible for the processing of personal data,

28 CJEU, 5

Wirtschaftsakademie Schleswig-Holstein GmbH.

June 2018, Case C-210/16, Unabhängiges Landeszentrum

für Datenschutz Schleswig-Holstein against

29 Infra, n°64 et seq.

30 CJEU, 5

Wirtschaftsakademie Schleswig-Holstein GmbH, point 30.

June 2018, Case C-210/16, Unabhängiges Landeszentrum

für Datenschutz Schleswig-Holstein against

31 Ibid, paragraph 53.

together with Facebook Ireland, has a permanent establishment in Germany, namely

Facebook Germany, located in Hamburg, and that the latter company actually exercises and

actually carrying out activities in that Member State”.

58. Mutatis mutandis, this is also the case of Google Belgium SA33, which actually exercises and

actually have activities in Belgium.

59. As regards the second condition, with a view to ensuring effective and complete protection of persons

concerned and applying the Google Spain case law mentioned above, the Court has

consider that

the activities of

the establishment of Facebook located in Germany were

inseparably linked to those of the joint data controllers Facebook Inc. and

Facebook Ireland34.

60. Mutatis mutandis, this is also still the case for Google Belgium SA, as the latter has moreover

confirmed, since it does not refute the complainant's argument on this point35.

61. On these bases, the Court concluded in the Wirtschaftsakademie case that German law was

applicable under Article 4, paragraph 1, a) of Directive 95/46, and that the authority of

German control was competent, in accordance with article 28, paragraph 1, of this directive

to apply German law to the processing, and that it therefore had all the powers

available to it under its national law transposing Article 28(3) of Directive

n° 95/46 with regard to the German establishment of Facebook36.

62. The Court also considered that “the circumstance […] according to which the decision-making strategies regarding

the collection and processing of personal data relating to persons residing in the

territory of the Union are taken by a parent company established in a third country, such as, in

this case, Facebook Inc., is not such as to call into question the competence of the authority of

control governed by the law of a Member State with regard to an establishment, located on the territory of this

same State, of the controller of the said data”37.

63. The entry into force of the GDPR does not change the relevance of this case law, or even reinforces it,

at least in the context of this case. Article 3, 1., of the GDPR is considered as

32 Ibid, paragraph 55.

33 Supra, nos. 44-47.

34 CJEU, 5

Wirtschaftsakademie Schleswig-Holstein GmbH, paragraphs 56 to 60.

June 2018, Case C-210/16, Unabhängiges Landeszentrum

für Datenschutz Schleswig-Holstein against

35 Supra, n° 44-47, in particular n°45.

36 CJEU, 5

Wirtschaftsakademie Schleswig-Holstein GmbH, paragraphs 61 and 62.

June 2018, Case C-210/16, Unabhängiges Landeszentrum

für Datenschutz Schleswig-Holstein against

37 Ibid, paragraph 63.

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the successor to Article 4, 1., a), of Directive 95/4638. In the Google/CNIL judgment these two

provisions are also mentioned together39.

64. The Litigation Chamber considers that for the three reasons developed below, it is appropriate, in view

to guarantee the effective application of the GDPR, to follow the lessons of the Wirtschaftsakademie judgment

in the present case, and that it is therefore competent to exercise its powers against Google

Belgium SA on the basis of a complaint lodged against the latter with the Authority.

65. First: the controller is established outside the Economic Area

European. Mutatis mutandis, and a fortiori with a view to guaranteeing effective and complete protection of

data subjects in a situation such as the one in question where the legal person which is

controller is not located on the territory of the European Economic Area (the

controller being in casu, Google LLC), it is necessary to transpose the case law

Wirtschaftsakademie under GDPR. The new rules enshrined in the GDPR do not

do not call into question the principles established by the Court in this case law: the GDPR standardizes

the missions and powers of the supervisory authorities (see its Articles 57 and 58) whose competence remains

subject to the principle of territoriality (see Article 55, 1., of the GDPR).

66. On the contrary, the GDPR intends to reinforce the effectiveness of data protection rules and

best protect the people concerned. However, if the Court has ruled that even when the person responsible

the processing was established on the territory of a Member State, the supervisory authority of another Member State

Member where an establishment which is not a joint controller is located was

competent with regard to such an establishment, this reasoning applies a fortiori when the person in charge of the

processing is established outside the European Union.

67. Second: the controller should not appoint a representative, since it is established

in the territory of the European Economic Area. In view of the roles played by Google Belgium SA40

and Google LLC, the latter being a data controller subject to the GDPR pursuant to

its Article 3, 1. Google LLC therefore did not have to appoint a representative in accordance with Article 27 of the

GDPR. Recital 80 of the GDPR provides that:

“The representative should be expressly designated by a written mandate from the head of the

processing or of the processor to act on its behalf with regard to the obligations

are incumbent under this Regulation. The designation of this representative does not carry

38 THE EU GENERAL DATA PROTECTION REGULATION (GDPR), A Commentary, Edited by Kuner, Bygrave and Docksey, O

2020, p. 77.

39 CJEU, 24 September 2019, C-507/17, Google LLC v Commission nationale de l'informatique et des libertés (CNIL), point

48.

40 Supra, Nos. 44-47.

infringement of the responsibilities of the controller or processor under the

this regulation. This representative should carry out his duties in accordance with the terms of reference

received from the controller or processor, including cooperating with authorities

control authorities with regard to any action taken to ensure compliance

of this regulation. The designated representative should be subject to coercive procedures

in the event of non-compliance with these regulations by the controller or the sub-

treating”.

68. Article 27, 4., of the GDPR provides that the “The representative is authorized by the person responsible for the

treatment or the processor to be the person to whom, in particular, the supervisory authorities and the

data subjects must contact, in addition to or instead of the controller or the

processor, for all matters relating to the processing, for the purposes of ensuring compliance with this

regulation”.

69. If the European legislator did not consider it useful, by adopting Article 3, 1., of the GDPR, to oblige a

controller in a situation such as that of Google LLC at issue in the judgment

Google Spain to appoint a representative41 is that it considered that the presence of an establishment

of the controller on the territory of the Union within the meaning of Article 3, 1., of the GDPR had to
present a sufficient territorial link with the territory of the European Union in order to ensure good
application of the GDPR: it is implicit but certain that an establishment within the meaning of this provision
could be less responsible for the applicability of the GDPR than a representative within the meaning of Article 27
of the GDPR.

70. On the contrary, it is in this logic that the Wirtschaftsakademie case-law can be inscribed: in
for an effective application of the GDPR with regard to the data subject, it is appropriate to apply
this case law also to the establishment of a controller located in the territory of
the Union such as Google Belgium SA, when the controller, subject to the GDPR pursuant to Article
3, 1., of the GDPR, did not have to appoint a representative within the meaning of Article 27 of the GDPR. Not allow
supervisory authorities to disregard the legal, social and functional division operated by a
controller established outside the European Economic Area, when its
establishment on this territory nevertheless exercises an activity inseparably linked to its own,
would unduly restrict the territorial jurisdiction of these authorities by systematically obliging them
having to exercise their jurisdiction extraterritorially, despite the existence of such a link which
constitutes at the same time, a strong territorial attachment. In such a situation, the appeal
necessary for the exercise of extraterritorial jurisdiction, taking into account its limitations
legal-procedural and practical, would be likely to directly undermine the useful effect of the
41 Judgment that he could not ignore in the process of adopting the GDPR: the judgment dates from May 13, 2014 and the GDP
almost 2 years later, on April 27, 2016.

GDPR. One could, indeed, ask the question of how the supervisory authority would be in
able to exercise the powers entrusted to it on the basis of Articles 58 and 83 GDPR, in a manner
efficient and effective.

71. Third: Google as a multinational entity does not identify
clearly the controller. The two preceding arguments are reinforced by the

fact that the communications of Google LLC and Google Belgium SA, vis-à-vis the persons concerned,

lack clarity regarding the identification of the data controller. It is therefore

all the more necessary to transpose the Wirtschaftsakademie case law to the present case, in view of

to ensure the useful effect of the GDPR.

72. Google Belgium SA notes, in its summary conclusions in particular, that the complainant “sent

its initial delisting request to Google LLC (exhibit B.1 and B.2), using the form

standard made available by the latter (Exhibit A.3)”. He did not contact Google Belgium

HER. The data deletion request form in French, indeed refers,

to a certain extent, to Google LLC: reference is made to Google LLC regarding

the use of the information communicated in order to identify the person concerned, also

concerning the use of the information provided via the form, and the "copyright" also makes

reference to Google LLC.

73. However, the introduction to the form simply refers to “Google” as does the last

check phrase states "I understand that Google will not be able to process my request

[…]”. On this first reference (in the introduction of the form), Google Belgium SA explained

during the hearing that the objective was to be the least “pompous” with regard to users and that the

references to Google LLC were made explicit in the important legal passages of the form.

74. Google's French-language answers also refer to "Google" and to

“The Google team”.

75. With regard to the possibilities of challenging Google's decision on requests for

delisting, the response form is limited to specifying the following: “If you are not

agree with our decision, you are entitled to submit your problem to the authority responsible for

data protection in your country. In this case, we advise you to include the number of

reference of your request […] and a copy of the confirmation that you received after having

sent the application form. If Google is the webmaster of the site, you can try to

contact the owner or author of the page and send them your request directly

deletion”.

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76. Neither the form nor the responses from Google (LLC) explicitly identify a data controller.

processing. The Litigation Chamber considers on the basis of these elements that the process of

delisting thus maintains a certain ambiguity, for the persons concerned, as to

the identity of the controller.

77. On this subject, during the hearing, Google Belgium SA expressed its surprise regarding the fact that the

data subjects may still doubt the identification of the controller in the event of

of delisting and this with regard to the judgment Google Spain already mentioned which identifies Google Int.

as solely responsible. It therefore finds it difficult to understand that this established case-law still leaves

some doubts about the identity of the person responsible for the persons concerned and their

advice.

78. The Litigation Chamber considers on this point that this would in no way exempt the person responsible for

processing of its obligation to inform the data subject, in accordance with Article 12, 1. and 2.

of the GDPR, in a transparent, comprehensible and easily accessible manner, in clear and

simple, and by facilitating the exercise of their rights by the person concerned (on this point, see below point

nos. 168). Thus, the data controller is obliged to provide precise information, such as

provided for in Articles 13 and 14 of the GDPR.

79. In conclusion, this ambiguity regarding the roles and responsibilities of Google LLC and Google Belgium

SA which can legitimately create doubts on the part of the persons concerned as to

the interlocutor responsible for the processing (or not) to whom they are addressed, constitutes a third

reason justifying the transposition of the Wirtschaftsakademie case law in the present case, of

such that the Litigation Chamber is competent to act on the basis of a complaint filed

by a data subject against Google Belgium SA alone.

80. Conclusion. On the basis of these elements, the Litigation Chamber decides that the plaintiff could

direct his complaint, concerning the dereferencing of content from the indexes of the search engine

Google, against only Google Belgium NV. For the Litigation Chamber, it matters little

that the processing of his data is in fact carried out outside the European Union by

employees of Google LLC.

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5. Territorial application in terms of delisting

81. In the present case, the plaintiff is requesting global delisting on the grounds that he is an executive

of a large company.

82. In the event of a request for delisting addressed by a data subject to the authority of

state control of the center of its interests, which is the case of the plaintiff in this case, the Chamber

Contentious also considers that this authority is the best placed to rule.

In another area, that of the international jurisdiction of courts and tribunals in civil matters

or commercial, the Court of Justice had decided the following in its judgment of October 25, 2011 eDate

Advertising42:

“48. It is therefore necessary to adapt the connecting factors referred to in point 42 of this

judgment in the sense that the victim of an infringement of a personality right by means of the Internet

may seize, depending on the place of materialization of the damage caused in the Union

European Union by said infringement, a forum for all of this damage. Given

that the impact of online content on a person's personality rights can

be best appreciated by the jurisdiction of the place where the alleged victim has the center of his

interests, the attribution of jurisdiction to this court corresponds to the objective of good

administration of justice, referred to in paragraph 40 of this judgment.

“49. The place where a person has the center of his interests generally corresponds to his

habitual residence. However, a person may have the center of his interests also

in a Member State where he or she does not normally reside, insofar as other

indices such as the exercise of a professional activity can establish the existence of a link

particularly close with this State” (emphasis added by the Litigation Chamber).

83. Mutatis mutandis, these considerations are also relevant in the present case. Indeed, in this case,

not only does the plaintiff have his habitual residence in Belgium but in addition, it is also in

Belgium that his professional career unfolds43. It is therefore the Data Protection Authority

who is best placed to assess the impact on their rights, following the content posted online.

42 CJEU, 25 October 2011, C-509/09 and C-161/10, eDate Advertising GmbH and others against X and Société MGN LIMITED

issued under Council Regulation (EC) No. 44/2001 of December 22, 2000 on jurisdiction,

recognition and enforcement of judgments in civil and commercial matters, now replaced by Regulation (EU) n

° 1215/2012 of the European Parliament and of the Council of 12 December 2012 concerning jurisdiction, recognition

and the execution of judgments in civil and commercial matters (without this having an impact on the present reasoning).

43 Infra, n°100-108.

84. With regard to the plaintiff's request for global delisting on the grounds that he is an executive

of a large company, the Litigation Chamber considers first of all that he does not demonstrate with the help

concrete elements that he is also affected in his interests in (on the territory of) other States

Member States or third countries (which does not exclude that its interests in Belgium may be affected

from these territories).

85. Moreover, in the Google/CNIL judgment, the Court rules that Article 17 of the GDPR (on which it bases the right

to dereferencing) cannot have the scope of imposing global dereferencing on Google for

all versions of its search engine. Added to this is the fact that in national law

Belgium, nor the law of 3 December 2017 establishing the Data Protection Authority (see its

article 4 in particular), nor the law of 30 July 2018 on the protection of natural persons at

with regard to the processing of personal data, which defines the scope of competence

material of the Litigation Chamber, do not give it the power to order a

global delisting. The Litigation Division cannot therefore grant the request of the

complainant of global delisting.

86. Next, the Litigation Chamber verifies the arguments in favor of a European scope of the

dereferencing. The Court has – in the aforementioned Google/CNIL judgment – established the following elements:

“67. It is important to note, however, that the interest of the public in accessing information

may, even within the Union, vary from one Member State to another, so that the result of

the balancing to be made between it, on the one hand, and the rights to respect for private life

and the protection of personal data of the person concerned, on the other hand,

is not necessarily the same for all Member States, especially since, under

Article 9 of Directive 95/46 and Article 85 of Regulation 2016/679, it is up to the Member States

members to provide, in particular for processing for the sole purposes of journalism or

of artistic or literary expression, the exemptions and derogations necessary for

reconcile these rights with, in particular, freedom of information.

68. It follows in particular from Articles 56 and 60 of Regulation 2016/679 that, for

cross-border processing, within the meaning of Article 4, point 23 thereof, and subject to this

Article 56(2), the various national supervisory authorities concerned must

cooperate, in accordance with the procedure provided for in these provisions, in order to reach a consensus and

to a single decision which binds all of these authorities and whose data controller

must ensure compliance with regard to the processing activities carried out in the context of

all its establishments in the Union. Furthermore, Article 61(1) of the Regulation

2016/679 obliges the supervisory authorities in particular to provide each other with useful information

and to assist each other in implementing and enforcing this Regulation

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consistently throughout the Union and Article 63 of that regulation specifies that it is

for this purpose is provided for the consistency control mechanism, established in Articles 64 and

65 of the same regulation. Finally, the urgency procedure provided for in Article 66 of the Regulation

2016/679 allows, in exceptional circumstances, when a supervisory authority

concerned considers that it is urgent to intervene to protect the rights and freedoms of

persons concerned, to immediately adopt interim measures aimed at producing

legal effects on its own territory and having a determined period of validity which

not exceed three months.

69. This regulatory framework thus provides national supervisory authorities with the instruments

and the mechanisms necessary to balance the rights to respect for private life and to

protection of personal data of the person concerned with the interest of

the general public in the Member States to have access to the information in question and, thus, to

be able to adopt, if necessary, a delisting decision that covers all of the

searches carried out on the basis of the name of that person from the territory of the Union"

(emphasis added by the Litigation Chamber).

87. This extract from the case law of the Court of Justice emphasizes that consultation of the other authorities

also aims to be able to take into account the public interest in other

Member States to access the information, if it is planned to decide on a delisting

for all European domain names on the Google site (google.be; google.fr; google.de;

etc.) and European residents. Indeed, in the opposite case of a more limited dereferencing, for

example to the Belgian top-level domain name (.be) of Google and to a geoblocking of

users residing in Belgium, the public in other Member States would not be harmed

opportunities to access information.

88. To this end, two possibilities for international cooperation are opened up by the GDPR: either the

mandatory cooperation pursuant to Articles 56, 1., and 60 (competence of a lead authority

one-stop shop) of the GDPR, i.e. voluntary cooperation on the basis of Article 61 of the GDPR, which

limits itself to the communication of useful information.

89. Since the Litigation Chamber considered that the single window mechanism was not

application to the case at hand,45 it is therefore incumbent on the Litigation Chamber, if it plans to

pronounce a dereferencing for all (or more) of the domain names of the Google site

44 There are of course intermediate hypotheses in which, for example, cooperation with only two

authorities could be sufficient, for example if it was a question of ordering a delisting for two other extensions

Google's national networks, .fr and .lu, combined with geoblocking of residents of these two countries, in which case should not

than the authorities of the latter.

45 Supra, no. 19-31.

reflecting the country codes of the European Economic Area, combined with a geoblocking of the whole

European resident users (or part of them), to consult (all or part of, according to) its

counterparts on the basis of Article 61 of the GDPR. Finally, in response to the Google/CNIL judgment and in

particular to its point 69, the Litigation Chamber carried out an informal consultation of the other

European supervisory authorities pursuant to Article 61 of the GDPR, in order to ensure that the

delistings do not disproportionately infringe freedom of information

Internet users in other Member States. At the end of this consultation, it was clear what

follows: with the exception of a supervisory authority from Germany (Hamburg), the supervisory authorities which

reacted supported the intentions of the Litigation Chamber, including on delisting

for the entire European Economic Area.

90. The Litigation Chamber considers that delisting can only be effective if it applies

research carried out outside Belgium. In the European area without borders

internal, it would not be useful to order a delisting limited to searches carried out from

of Belgian territory.

91. Regarding the geographical scope of the delisting, the Litigation Chamber considers –

in accordance with the Google/CNIL judgment – which should be dereferenced with effect throughout the Union

Europe (and the countries of the European Economic Area). On the one hand, the Chamber considers that

searches from outside Belgium (on site or by using a proxy server in

access to other versions of the search engine) may have a serious impact on the

complainant's right to data protection. Indeed, it is perfectly conceivable that in the

private or professional life, the complainant has contacts with other European countries

(countries neighboring Belgium for example) and that as a result, people are seeking information

about the complainant via versions of the Google search engine other than the Belgian version (.be).

In this context, a delisting limited to Belgium would not be effective enough.

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6. On delisting requests

92. It is appropriate to assess the requests for delisting sent to Google by the complainant in

with regard to the criteria and rules identified by the Court of Justice in its Google Spain judgment already mentioned,

of the guidelines of the Article 29 Working Party relating to this judgment46, hereinafter “the guidelines

guidelines of the Group 29”, as well as in the GC et al. c/ CNIL rendered on September 24, 201947 and

the “Guidelines 5/2019 on the criteria of the Right to be Forgotten in the search engines cases”48 of

European Data Protection Board (hereinafter the “EDPS guidelines”), in order to ensure

a fair balance between the rights of the person concerned and the freedom of expression of Internet users

as well as their right to information.

93. It should be noted on a preliminary basis that if an invasion of privacy caused by a

SEO can be increased tenfold due to the essential role of search engines in

access to information via the internet, in the same way and for the same reason, a delisting

may have an impact on the freedom of information of Internet users.

94. In its GC et al. v/ CNIL, the Court of Justice specifies the following:

“66 In any event, the operator of a search engine, when seized with a

request for delisting, must verify, under the reasons of important public interest referred to

in Article 8(4) of Directive 95/46 or in Article 9(2)(g) of

Regulation 2016/679 and in compliance with the conditions provided for in these provisions, if the inclusion

the link to the web page in question in the list displayed following a search

from the name of the person concerned is necessary for the exercise of the right to freedom

information of Internet users potentially interested in having access to this web page at

means of such research, protected by section 11 of the Charter. If human rights

concerned protected by Articles 7 and 8 of the Charter prevail, as a general rule, over the

internet users' freedom of information, this balance may however depend, in cases

individuals, the nature of the information in question and its sensitivity to the privacy of

the data subject as well as the interest of the public in having this information, which

may vary, in particular, depending on the role played by this person in public life [..].

46 Guidelines on the execution of the judgment of the Court of Justice of the European Union in the case 'Google Spain and

Inc. / Agencia Espanola de proteccion de datos (aepd) and Mario Costeja Gonzalez', C-131/12 , adopted on November 26, 201

by the Article 29 Working Party.

47 CJEU, September 24, 2019, C-507/17, Google LLC v Commission nationale de l'informatique et des libertés (CNIL).

48 Version 2.0, after consultation, adopted on 7 July 2020, available at www.edpb.europa.eu.

67 Added to this is the fact that, in the event that the processing relates to the categories

specific data referred to in Article 8(1) and (5) of Directive 95/46 or

Article 9(1) and Article 10 of Regulation 2016/679, interference with the rights

fundamental to respect for privacy and the protection of personal data

of the person concerned is, as noted in paragraph 44 of this judgment, liable

to be particularly serious because of the sensitivity of these data"49.

95. In the same judgment, concerning information relating to legal proceedings in matters

criminal, the Court held the following:

"It is therefore up to the operator of a search engine to assess, within the framework of a

request for dereferencing relating to links to web pages on which are

published information relating to legal proceedings in criminal matters against

the data subject, which relate to an earlier stage of this procedure and do not

correspond more to the current situation, if, having regard to all the circumstances of

the case, such as in particular the nature and gravity of the offense in question, the

progress and outcome of the said procedure, the time elapsed, the role played by this person

in public life and his behavior in the past, the public interest at the time of the

request, the content and form of the publication as well as the repercussions of this for

said person, the latter is entitled to have the information in question no longer,

at the current stage, linked to its name by a list of results, displayed following a search

made from this name. 50

96. Group 29 also explains that:

“The general objective of these criteria is to assess whether the information contained in a result

research are relevant in terms of the interest of the general public in having access to these

information. Relevance is also closely linked to the age of the data. Depending of

facts of the case, information published a long time ago, for example 15 years ago, could

prove to be less relevant than information published a year ago. The authorities responsible for

data protection will assess its relevance in the light of the parameters specified

below.

A. Does the data relate to the professional life of the data subject? At the time

examine the request for delisting, the authorities responsible for the protection of

49 CJEU, September 24, 2019, C-507/17, Google LLC v Commission nationale de l'informatique et des libertés (CNIL).

50 CJEU, 24 September 2019, C-507/17, Google LLC v Commission Nationale de l'Informatique et des Libertés (CNIL), point

77.

data must first distinguish between private and professional life. The

data protection – and, more broadly, privacy legislation

privacy – aims above all to guarantee the fundamental right of individuals to respect for their lives

privacy (and the protection of their data)”51.

97. In his complaint, with regard to the references linked to a “Party Y labelling” of the complainant, the latter

provides information on eight referencing and URLs numbered from 1 to 8. These are included in exhibit no. 1 of

its findings. The other contents, numbered from 9 to 12, are for referencing related to

a "harassment complaint". These are also included in Exhibit 1 of its conclusions.

In essence, in support of his request, the complainant maintains that the referenced content is

inaccurate and/or obsolete and/or contain sensitive data unlawfully communicated to the

public. It does not dispute the legality of the communication to the public of the contents themselves to which

return referrals.

98. Before analyzing the disputed listings one after the other52, the Litigation Chamber assesses whether the

complainant plays a role in public life53 and if the references contain about him

ci, special categories of data referred to in Article 9 of the GDPR54.

6.1. The role played in public life by the complainant

99. Among the criteria to be taken into account in the analysis to be carried out55, the role played by the person

concerned in public life appears decisive. In the EDPS guidelines, the latter, repeating the

Court of Justice, recalls the following:

“The Court also considered that the rights of the data subjects will prevail, in

general, on the interest of Internet users in accessing information through the provider of the

search engine. However, she identified several factors that can influence this

determination. These include: the nature of the information or its sensitivity, and especially

Internet users' interest in accessing information, which may vary depending on the role

played by the person concerned in public life […]”56.

51 Guidelines on the execution of the judgment of the Court of Justice of the European Union in the case ‘Google Spain and

Inc. / Agencia Espanola de proteccion de datos (aepd) and Mario Costeja Gonzalez’, C-131/12 , adopted on November 26, 201

by the “Article 29” Working Party, p. 18.

52 Infra, n° 123 et seq.

53 Infra, no. 99-107.

54 Infra, n° 109 et seq.

55 Supra, No. 93.

56 Free translation of point 48 of the English text of the “guidelines”.

100.

According to the Group 29 guidelines (pp. 15-16):

"What is a 'role' in public life?

It is not possible to establish with certainty the type of role in public life that a natural person must act to justify public access to information on the said person through an internet search.

However, for example, politicians, senior civil servants, businessmen and women and members of the (regulated) liberal professions can generally be considered to play a role in public life. There are reasons for allowing the public to seek information regarding the role and activities of these persons in public life.

In general, it is appropriate to ask whether the fact that the public has access to particular information of a person by means of a search on the basis of his name would prevent her from engaging in inappropriate public or professional behavior.

It is equally difficult to define the sub-group of “public persons”. In good standing general, we can say that public persons are persons who, because of the functions they occupy or commitments they have made, are more or less exposed to the media.

Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe on the right to respect for privacy gives a possible definition of “public persons”. She declares that “public persons are those who exercise public functions and/or use public resources and, more generally, all those who play a role in public life, whether political, economic, artistic, social, sporting or otherwise”.

Some information concerning public persons is purely private and does not should not normally appear in search results, for example information about their health or family members. But as a general rule, if the

persons submitting an application are public persons and that the information

in question do not constitute purely private information, there will also be

solid reasons to refuse the delisting of search results concerning them. The

case law of the European Court of Human Rights (hereinafter the “ECHR”) is

particularly relevant for assessing the balance of interests” (italics added by the

Litigation Chamber). »

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101. In this context, both the complainant and Google raise elements capable of demonstrating that the

plaintiff played and plays a role in public life in Belgium.

102. First of all, it should be stressed that neither the guidelines of the Group 29 nor the guidelines of the

EDPS do not require the data subject to be a political figure in order to be able to play a

role in public life.

103. In his complaint, the complainant points out that he is a senior executive of Company Z and that “as [executive

leader] of [Company Z], [he] undeniably has a significant degree of exposure

media”. Admittedly, the complainant points out, however, directly following this assertion, that

the facts concerned are not likely to contribute to a debate in a democratic society and that

the public has no or no longer a legitimate interest in having access to this information. He also notes that he was not

not a political personality which however, as has just been mentioned, is not decisive

in the analysis of its role in public life.

104. Company Z operates in Belgium, and the complainant has been a senior executive of Company W for some time.

years, namely a company that is closely related to Company Z.

105. In its conclusions, Google also lists a series of functions performed by the complainant

in the past and which illustrate, also in the opinion of the Litigation Division, that he also, for

the past played a role in public life.

106. Thus, in addition to the current responsibilities of the complainant already mentioned, among the functions

find in particular over twenty years: a position as a member of a political cabinet of a

party Y minister; government commissioner in Entity A; Member of Entity B; representative

within the public service; government commissioner in Entity D; a very high function

responsibilities in the organization E; and a position of high responsibility in the public entity F.

107. In other words, the Complainant assumes and has assumed public functions and/or within the framework of which

he has used and uses public resources, has been and is exposed to the media, has acted and acts in

a public context as a public person and more specifically, as a senior civil servant or

officer of a public office.

108. In conclusion, on the basis of the elements just presented57, the Litigation Chamber considers that the

plaintiff played and plays a role in public life.

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6.2. On the “party Y” label

109. In his complaint and conclusions, the plaintiff criticizes Google for referencing sensitive data

concerning her. From his words:

"In this case, Google's indexes present [the complainant] as a person labeled

[party Y]. The [complainant's] political opinions constitute sensitive data within the meaning of

GDPR Article 9. These data benefit from a legal regime of reinforced protection.

Thus, the processing of these by Google is prohibited, since it cannot be based on

none of the applicable exceptions (i.e. article 9 §2 of the GDPR and art 8 §1 of the law of

30 July 2018 on the protection of natural persons with regard to the processing of

personal data)”.

110. Complainant further insists that portraying him as a person “labeled party Y”

is inaccurate information justifying its delisting, and that in particular the deductions of

Google Regarding Complainant's Ties to Party Y Are Hasty and Evidence-Based

erroneous (this point is discussed below58).

111. In its summary conclusions, Google notes that in the present context, namely that of the

complainant and his role in public life in Belgium, it “is clear to the public that the labeling

political does not refer to [the applicant's] real or supposed political opinions, but

only the political party to which he is professionally close and which has supported his candidacy

to obtain public office. In its conclusions, Google intends to demonstrate in fact

the professional ties between the plaintiff and party Y. In particular, with a view to justifying that the

treatment of political labeling is important to ensure a relevant debate of general interest in

reason for the way in which the appointment of (senior) civil servants and the allocation of

public mandates in Belgium, Google quotes Professor David Renders according to which the recruitment of

senior officials is politicized. Along the same lines, the second paragraph of the press article

of less than ten years ago of www.lecho.be portrayed the complainant and related his appointment to

a position of high responsibility in the public entity F (exhibit B.14 in the Google file).

57 Supra, no. 99-106.

58 Infra, n° 116-122.

59 Summary conclusions, p. 22, item 29.

112. The “political labeling” of a public office/high ranking official

official and Article 9 of the GDPR. In the specific context of this case, the Chamber

Litigation considers that the reference to a political "labeling" of an agent of a function

public or senior official does not by itself and automatically reveal an “opinion”

policy: in principle, it limits itself to showing that the person concerned is

supported professionally60 in his public life61 and more specifically, in the context of his

career as a public official and senior civil servant. Nothing excludes that a party

politician professionally supports a person's candidacy for high office for his or her

personal qualities, regardless of his political views. The complainant also emphasizes that

not be a member of Party Y.

113. In other words, it is on a case-by-case basis depending on the disputed referencing, that it will be necessary to assess whe

each referencing in question also implies or not, in addition to the mention of the political labeling,

revelation of a political opinion of the complainant.

114. This is also the meaning of Article 9, 1., of the GDPR, which stipulates that “The processing of

personal data that reveals […] political opinions, […]” is prohibited (italics

added by the Litigation Chamber). Thus, even supposing that the initial treatments of the sources

referenced (the newspapers cited moreover covered by journalistic freedom62) reveal an opinion

political, quod non, it is difficult to argue that the processing carried out by Google reveals an opinion

political: referencing does not pursue such a purpose, in this case it points to names

of people.

115. Finally, in the same spirit, but more explicitly, Article 6 of Convention No. 108 of the Council of

modernized Europe for the protection of individuals with regard to automated data processing

of a personal nature63 according to which:

“Article 6 – Special categories of data

1. Processing:

[…]

- personal data for the information they reveal on racial origin

or ethnicity, political opinions, trade union membership, religious beliefs or

other beliefs, health or sex life;

60 Supra, No. 106.

61 Supra, Nos. 101 - 108.

62 Infra, n° 123 et seq.

63 Amending Protocol (CETS No. 223) to the Convention for the Protection of Individuals with regard to Automatic Processing

Personal Data (ETS No. 108) adopted on 18 May 2018 by the Committee of Ministers of the Council of Europe at its

128th ministerial session.

is authorized only on the condition that appropriate guarantees, supplementing those of the

this Convention are provided for by law.

2. These safeguards must be such as to prevent the risks that the processing of
sensitive data may present for the interests, rights and fundamental freedoms of the
data subject, in particular a risk of discrimination"64.

116. On the inaccuracy of "party Y labelling". Establish in fact whether a representative of a function
is supported by one or/and the other political party in a context where appointments are
politicized65 is a complex issue likely to require investigative work
(journalistic or otherwise) and a certain appreciation, ultimately also of the expression
of an opinion with regard to the person concerned. It is not insignificant in this case that the
disputed references Nos. 2, 3, 4 and 5 relate to articles from the Belgian press, whether
referencing in dispute No. 6 is linked to a public information site (msn.com) and that finally, the
disputed referencing No. 1 concerns a Belgian website specializing in the question of the accumulation of
mandates and transparency in this area in Belgium (www.cumuleo.be).

117. It is not for the Litigation Chamber to exhaust the debate on the accuracy of such a
information that opposes the data subject to the provider of the search engine, and not
moreover to the very authors of this information, at the heart of a subject of undeniable interest
general and arousing public debate. It is essentially about the latter, transparency in
the appointment to and the exercise of mandates in a public function, in Belgium, subject at the heart
of democracy and which is intended to be studied over time. Article 17, 3., a), of the GDPR,
does not impose to exhaust such a debate.

118. In this case, to justify the existence of political labeling Google refers to the five elements
following: firstly, the complainant was a member of the political cabinet of a minister of party Y he
twenty years ago. Second, in an article whose delisting is requested,
is alleged a violation of the rules of accumulations provided for in the statutes of party Y and is reproduced
an extract from a letter in which a political representative P, sent a letter to the complainant there
has about fifteen years to explain the rules of accumulation within the party. Third, the
applicant took part as a speaker, less than 5 years ago in a congress of party Y.

Fourth, he still gave a lecture to Party Y, according to a Twitter post from a

member of party Y in the Brussels Parliament posted a few years ago. Fifthly, finally,

appears to have worked at the Party Y study center according to the words of a senior official of a service

64 Underlined by the Litigation Chamber.

65 Supra, No. 111.

public (in office at the time) reported in an article66 portraying the complainant. This last

article also informs the complainant as being “labeled party Y”.

119. The complainant refuted Google's position by considering that presenting it as a person

labeled party Y is inaccurate information justifying its delisting by arguing: that it has no

never been a member of party Y, that to consider that the proximity between the applicant and party Y is

demonstrated in reference n° 3 (the reference to the letter of a political representative P) is

a hasty deduction based on erroneous elements, that the plaintiff was not guilty

of any accumulation likely to infringe the rules applying to him, and that the mail of the agent

Policy P (also constituting private correspondence revealed in violation of Article 22 of

the Constitution, Article 8, § 2 of the ECHR and Article 314 of the Penal Code) does not prejudge the

whether the complainant is (which is not the case) or not a member of Party Y (the courier,

addressing the complainant, stating in effect: “[…] if you are a member of party Y, […]).

120. During the hearing, the complainant pointed out in particular that the position of member of a political cabinet

of a party Y minister exercised about twenty years ago is old and that in the meantime, the

relationships can also change. He notes that even if in his private life he has regular contact

with in particular members of this political family (and others), that does not make him a member

party Y. This is a dangerous shorthand that damages the way he is perceived by the

public and its administration.

121. This being specified, on the one hand, Google does not rely on these elements alone, as illustrated by the

disputed referencing and elements put forward by it cited above67. On the other hand, more fundamentally

again, the Complainant does not dispute having been professionally supported by Party Y in his life□

public service and more specifically, in the context of his career as a public official□

and senior civil servant.□

122. In view of these elements69, the Litigation Division considers that the complainant's criticisms of□

to the inaccuracy of the party Y labeling attributed to it in the disputed listings cannot□

exclude the application of Article 17, 3., a) of the GDPR.□

66 Echo article on www.lecho.be.□

67 Infra, n° 123 et seq. and supra, Nos. 105 and 118.□

68 Supra, No. 106.□

69 Supra, no. 116-122.□

6.3 Disputed listings□

123. Reference should be made, with regard to the disputed referencing, to Exhibit 1 of the conclusions of the□

complainant from which the factual elements set out below are drawn, unless otherwise specified. The□

disputed listings are also explained in more detail in the summary conclusions of□

Google and related parts.□

124. Referencing n° 1. This referencing refers to the cumuleo.be site, and refers to the mandates,□

functions and professions exercised by the plaintiff who is cited as "Labelled party Y".□

125. In view of the role played by the complainant in public life,70 the fact that political labeling constitutes□

information related to transparency in the appointment to and the exercise of mandates in a□

civil service (subject at the heart of the democratic debate and which is intended to be studied during the□

time), to the law of 2 May 1995 relating to the obligation to submit a list of offices, functions and□

professions and a declaration of assets (and its article 2, paragraph 2 in particular), since□

that in the present context, the mention of his Party Y labeling does not reveal any of his opinions□

policies71, regarding the referencing of content whose accuracy is not disputed (in addition to□

however, the complainant’s criticism of Party Y labeling72) the Litigation Chamber□

considers that referencing n° 1 is necessary for the exercise of the right to freedom of expression and

information, and that therefore, pursuant to Article 17, 3., a) of the GDPR, it is right

that Google maintained it.

126. Listing no. 2. This listing refers to an article in the newspaper Le Soir (www.lesoir.be).

127. With regard to the referencing of an article from a Belgian press organ, the accuracy of the content

linked to the complainant's professional life is not disputed (besides, however, the criticism of the labeling

party Y put forward by the complainant73), having regard to the role played by the complainant in public life74, and to the

fact that political labeling constitutes information linked to transparency in the appointment to

and the exercise of mandates in a public office (subject at the heart of the democratic debate and which has

intended to be studied over time), and since in the present context, the mention of

his labeling party Y does not reveal any of his political opinions75, the Litigation Chamber

considers that referencing n° 2 is necessary for the exercise of the right to freedom of expression and

70 Supra, no. 99-108.

71 Supra, no. 112-115.

72 Supra, no. 116-122.

73 Supra, no. 116-122.

74 Supra, no. 99-108.

75 Supra, n°109-115.

information, and that therefore, pursuant to Article 17, 3., a) of the GDPR, it is right

that Google maintained it.

128. Listing no. 3. This listing refers to an article on the information website RTL Info

(www.rtl.be).

129. With regard to the referencing of an article from a Belgian press organ, the accuracy of the content

linked to the complainant's professional life is not disputed (besides, however, the criticism of the labeling

party Y put forward by the complainant76), having regard to the role played by the complainant in public life77, and to the

fact that political labeling constitutes information linked to transparency in the appointment to

and the exercise of mandates in a public office (subject at the heart of the democratic debate and which has

intended to be studied over time), and since in the present context, the mention of

his labeling party Y does not reveal any of his political opinions78, the Litigation Chamber

considers that referencing n° 2 is necessary for the exercise of the right to freedom of expression and

information, and that therefore, pursuant to Article 17, 3., a) of the GDPR, it is right

that Google maintained it.

130. If it is true that reference No. 3 relates to information that is more than 10 years old and therefore

of a certain age, this information nevertheless remains relevant since at that time

and still today, the plaintiff played and plays a professional role in public life.

131. Referencing n° 4. This referencing refers to an article from the website of the newspaper La Libre

Belgium (www.lalibre.be).

132. With regard to the referencing of an article from a Belgian press organ, the accuracy of the content

linked to the complainant's professional life is not disputed (besides, however, the criticism of the labeling

party Y put forward by the complainant79), having regard to the role played by the complainant in public life80, and to the

fact that political labeling constitutes information linked to transparency in the appointment to

and the exercise of mandates in a public office (subject at the heart of the democratic debate and which has

intended to be studied over time), and since in the present context, the mention of

his labeling party Y does not reveal any of his political opinions81, the Litigation Chamber

considers that referencing n° 2 is necessary for the exercise of the right to freedom of expression and

76 Supra, no. 116-122.

77 Supra, no. 99-108.

78 Supra, n°109-115.

79 Supra, no. 116-122.

80 Supra, no. 99-108.

81 Supra, n°109-115.

information, and that therefore, pursuant to Article 17, 3., a) of the GDPR, it is right
that Google maintained it.

133. Referencing n° 5. This referencing refers to an article from the website of the newspaper La Libre
Belgium (www.lalibre.be).

134. With regard to the referencing of an article from a Belgian press organ, the accuracy of the content
linked to the complainant's professional life is not disputed (besides, however, the criticism of the labeling
party Y put forward by the complainant82), having regard to the role played by the complainant in public life83, and to the
fact that political labeling constitutes information linked to transparency in the appointment to
and the exercise of mandates in a public office (subject at the heart of the democratic debate and which has
intended to be studied over time), and since in the present context, the mention of
his labeling party Y does not reveal any of his political opinions84, the Litigation Chamber
considers that referencing n° 2 is necessary for the exercise of the right to freedom of expression and
information, and that therefore, pursuant to Article 17, 3., a) of the GDPR, it is right
that Google maintained it.

135. In the same way as for referencing n° 3, if it is true that referencing n° 5,
relating to information dating back ten years, namely information more than
10 years, is also old, this information nevertheless remains relevant as long as at this
Then and still today, the complainant played and plays a professional role in public life.

136. Listing no. 6. This listing refers to an article on the information website
www.msn.com.

137. Google maintains that the url of listing #6 leads to a page that no longer exists. But that's right
title that the plaintiff considers that it is the referencing as such by Google, which is in dispute.

138. Google responds in its summary conclusions that URL 6 is no longer referenced at all in the engine
of searches, neither in the first ten pages of results, nor further. She confirmed during
the hearing that URL 6 was no longer referenced and the complainant did not contest this. The request for

de-referencing of the complainant therefore no longer has any purpose with regard to referencing No. 6.

139. Listing no. 7. This listing refers to a press release from GERFA on the website

www.gerfa.be. GERFA is the Group for the study and reform of the administrative function. google

82 Supra, no. 116-122.

83 Supra, no. 99-108.

84 Supra, no. 109-115.

explains in its summary conclusions that GERFA is a group founded in reaction to the

massive politicization of public services in Belgium and to bring awareness and

reflection on improving their management, that it became an approved trade union organization in 1990

and now has about 1,500 members.

140. Google also argues here that SEO URL #7 leads to a page that no longer exists. Corn

it is right that the complainant considers that it is the referencing as such by Google, which

is contentious.

141. Google responds in its summary conclusions that URL 7 is no longer referenced at all in the engine

of searches, neither in the first ten pages of results, nor further. She confirmed at the hearing

that URL 7 was no longer referenced and the complainant did not contest this. The plaintiff's request did not

consequently more object as for the referencing n° 7.

142. Listing no. 8. This listing refers to an article on the website www.7sur7.be.

143. With regard to the referencing of an article from a Belgian press organ, the accuracy of the content

linked to the complainant's professional life is not disputed (besides, however, the criticism of the labeling

party Y put forward by the complainant in respect of which he is referred to above85), in view of the role played

by the complainant in public life86, and to the fact that political labeling constitutes information

linked to transparency in the appointment to and the exercise of mandates in a public office

(subject at the heart of the democratic debate and which is intended to be studied over time), and therefore

that in the present context, the mention of his Party Y labeling does not reveal any of his opinions

policies87, the Litigation Chamber considers that referencing No. 2 is necessary for the exercise

of the right to freedom of expression and information, and that therefore, pursuant to Article

17, 3., a) of the GDPR, Google has rightly maintained it.

144. In the same way as for listings 3 and 5, if it is true that listing 5

refers to information dating back ten years, i.e. information more than

10 years, this information nevertheless remains relevant since at that time and today

again, the plaintiff played and plays a professional role in public life.

145. In view of the above considerations, the Litigation Chamber concludes that it is right that

Google decided not to respond to the complainant's request for delisting, in the

to the extent that this request seeks the delisting of information related to political labeling. The

85 Supra, no. 116-122.

86 Supra, no. 99-108.

87 Supra, n°109-115.

Chambre Litigation dismisses the complaint concerning the requests for delisting of our

1 to 8.

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6.4 On alleged harassment

146. Listings nos. 9 to 12 all refer to articles from the Belgian press sites

(respectively www.lalibre.be, www.dhnet.be, www.7sur7.be, www.sudinfo.be) all dated a

ten years which evoke a complaint for harassment lodged against the complainant in the

within the public service.

147. The existence of this complaint is not contested.

148. However, in the delisting request form submitted by the complainant to

Google on May 31, 2019, it wrote in particular the following: “These indexes refer to information

revealing that [the complainant] was the subject of a harassment complaint. This complaint was

declared unfounded in 2010. The non-updated nature of this information justifies the request

delisting, formulated on the basis of article 17 of the GDPR”.

149. In Exhibit 7 of his file, the complainant attached what appears to be the first page (out of 22) of a

“Notice in the context of a substantiated complaint, Law of June 11, 2002, amended by the law of January 10, 2007,

Confidential”, rendered by “ARISTA, External Service for Prevention and Protection”, and the 20th page

elements of which are omitted, and the following textual extracts remain:

“[…] Based on this definition, the elements we have and the points raised

previously, we cannot recognize this situation as falling within the

moral harassment. 9. CONCLUSIONS […] We have no evidence to conclude that

abusive behavior or harassment on the part of the person in question”.

150. In this context, the complainant first points out that the document (which Google does not dispute or

authenticity, nor integrity) is dated December 2, 2010 and that the complaint against the complainant was

declared unfounded. It does not appear from the documents in the file that the complaint in question was the subject

other possible procedures, or even that other complaints of the same nature have been lodged

subsequently against the plaintiff. In other words, the referenced information is no longer up to date and

is no longer relevant.

151. Secondly, it should be emphasized that the articles referred to date from about ten

years and evoke facts more or less ten years old. Thus, in addition to the fact that the basis

of these facts has not been established, these are old.

152. Third, in this context, the reference to the fact that a complaint has been brought for

harassment against the complainant is likely to have detrimental repercussions, both in

both in his professional life and in his private life.

153. While the contentious listings were able at one time to participate in a public debate about a

matter of general interest, the Litigation Chamber considers that as of today, for the

aforementioned reasons, these references are no longer up to date and obsolete, and therefore cannot be

considered necessary for the exercise of the right to freedom of information in accordance with Article

17, 3., a) GDPR.

154. In this case, Google cannot maintain such referencing on the basis of Article 6, 1., f), of the

GDPR, the rights and interests of the complainant prevailing for the reasons just mentioned. It is incumbent upon

consequently to Google to proceed with their delisting.

155. In view of these considerations, the Litigation Division finds a breach of Articles 17, 1.,

a), and 6, 1., f), of the GDPR and orders Google Belgium NV to bring the processing into conformity and to

To this end, to implement all effective technical measures to stop the

references nos. 9 to 12.

156. Consequently, it is not necessary to assess the additional elements put forward by the Complainant

concerning the other disputed content found in referencing n°10, relating to a budget

annual that would have been allocated by a public service administration.

7. GDPR Breaches

157. As soon as its delisting request form was submitted to Google on May 31

2019, under the “Reason for deletion”, the complainant, through his lawyer, reported

that the harassment complaint had been declared unfounded in 2010 and that the information referenced

was no longer up to date. This fact, regardless of its demonstration on the basis of exhibits (such as

88 Supra, No. 148.

notice referred to above89), at this stage of the process, has therefore been brought to the attention of Google

from the introduction of the delisting form and this, moreover, by a lawyer.

158. Also at this time, Google must have become aware of the fact that the content referenced

dated back about ten years and concerned facts that were more than ten years old.

159. The Litigation Division therefore considers that upon receipt of the application form for

dereferencing introduced by the complainant, Google had effective knowledge of the character

former of the harassment complaint, the fact that this information was not updated and finally,

in the case of a harassment complaint, that it was likely to harm the complainant.

In other words, Google had from that moment actual knowledge of serious grounds such as to

require a delisting on the basis of article 17, 1., a) of the GDPR, reasons which moreover led the

Litigation Chamber to consider that references Nos. 9 to 12 should be dereferenced90.

160. However, on June 18, 2019, “The Google team” limited itself to responding to the complainant as follows:

“[…] After examining the balance between the interests and the rights associated with the content in

question, including factors such as your role in public life, Google has decided to

don't block it.

For the time being, we have decided not to intervene regarding these URLs.

We encourage you to send your deletion request directly to the webmaster

who controls the site in question. This person is able to delete the content

concerned on the Web or to prevent it from appearing in search engines. To know

how to contact the webmaster […] .

If outdated content from a site keeps showing up in Google results, you can

ask us to update or remove the page in question. To do this, use the tool

[…].

If you disagree with our decision, you have the right to submit your

problem to the data protection authority in your country […]”.

161. Breach of Articles 17, 1., a), and 6, 1., f), of the GDPR. By deciding to refuse

delisting references nos. 9 to 12 on June 19, 2019, when Google LLC should have

89 Supra, No. 149.

90 Supra, n°150-153.

promptly proceed with their delisting because it had effective knowledge of the reasons

serious enough to justify that it could not be maintained pursuant to Article 17, 3.,

a), of the GDPR91, it being understood that Google LLC could also have delisted

temporarily in order to verify in fact and in more detail with the complainant and his counsel

the serious grounds alleged, Google LLC has breached the obligations set out in Article 17, 1., a),

of the GDPR.

162. These same facts also constitute a breach of Article 6, 1., f), of the GDPR when

in the circumstances of the case and for the reasons already invoked92, the interests of the plaintiff which

require protection of personal data prevailed over the legitimate interest of Google

referencing the content available via the Internet.

163. The Litigation Division considers that these breaches are of a serious nature on the part of

from Google. Although the provisions violated include standards open to interpretation and the

right to data protection is not an absolute right, delisting is an obligation

clear of a search engine following the Google Spain judgment. As mentioned by the Court of Justice,

the potential seriousness of the interference is serious and the rights of a data subject prevail, in

principle, on the interest of this public in finding the said information during a search on the name

of that person.93

164. In the present case, Google being perfectly aware of all the factual elements, following the

plaintiff's request, did not act diligently by refusing to de-reference the content

in question, when the complainant had provided him with proof of their outdated character. Bedroom

Contentieux considers in this context that these elements are comparable to the underlined elements

in the case of Google Spain, in particular those relating to the inadequacy and the time elapsed. From

therefore, following up on the complainant's request does not require a complicated legal assessment.

The Litigation Chamber adds that in these circumstances, there is no disproportionate interference

freedom of expression and information, contrary to what Google Belgium NV supports.

165. Breach of Article 12, 1. and 4. of the GDPR. Finally, with regard to the analysis of the balance of rights and

interests to be realized pursuant to Article 17, 3., a), of the GDPR and the case law of

the relevant Court of Justice94, limiting itself to replying to the plaintiff that “[a]fter examination of

the balance of interests and rights associated with the content in question, including factors such as

91 Supra, no. 157-159.

92 Supra, no. 150-153.

93 CJEU, 13 May 2014, C-131/12, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and

Mario Costeja González, points 81 and 97.

94 Supra, no. 92-96.

that your role in public life, Google decided not to block it", Google failed to

obligations enshrined in Article 12, 1. and 4. of the GDPR. Indeed, the plaintiff found himself confronted

to a reason for refusing his incomplete request that does not allow him to know or understand

Google's motivation completely. Google has also closed the door of discussion to the complainant,

by inviting him in conclusion, if he did not agree with the decision taken by Google, to submit

their problem directly to the data protection authority in their country. In

conclusion, Google's response to the reason for refusing to delist lacked transparency

and was not sufficiently comprehensible, in violation of Articles 12, 1. and 4. of the GDPR.

8. Corrective and deterrent measures.

166. First, the Litigation Chamber orders Google Belgium, under Article 100, paragraph

1st, 8° and 9° of the LCA, to bring the processing into compliance and to this end, to implement

all effective technical measures to stop referencing Nos. 9 to 12 on the one hand, to

all other search engine websites in all their language versions

but only for users consulting them from the European Economic Area, and this at the

no later than seven days after notification of this decision and to inform the Chamber by e-mail

Litigation at litigationchamber@apd-gba.be that the aforementioned order has been executed, in

the same deadline.

167. In addition to the injunction to delist listings nos. 9 to 12, the Litigation Chamber

considers that the two shortcomings mentioned above require in addition, for the purposes

dissuasive, the imposition of administrative fines.

168. The Litigation Chamber emphasizes that the purpose of imposing an administrative fine is not

only to put an end to an offense committed but above all to ensure the effective application
GDPR rules. As can be seen from recital 148, the GDPR wants sanctions, including
including administrative fines, be imposed in the event of serious violations, in addition
or instead of the appropriate measures that are imposed. The Litigation Chamber thus acts in
application of Article 58.2.i) of the GDPR. The instrument of the administrative fine therefore does not
primary objective of ending violations. This goal can be achieved by several measures
remedies, including injunctions, cited in Article 100, § 1, 8° and 9° of the LCA and which are provided for
by the GDPR. As regards a sanction in the form of an administrative fine, the nature
and the seriousness of the violation are taken into consideration by the Litigation Chamber in order to examine
the imposition of this sanction and the extent of it.
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169. It should be emphasized that this decision is not the first sanction by means of a fine
administrative action vis-à-vis Google for a breach in the context of a delisting.
The Swedish supervisory authority, for example, imposed on Google on March 11, 2020 a fine of 75
million Swedish crowns (approximately 7 million euros) for several shortcomings by it
to its delisting obligations.95
170. A form for the imposition of an administrative fine was sent to Google Belgium NV
on June 4, 2020 to present these arguments regarding the imposition of administrative fines. 96
171. In response to this form Google Belgium NV puts forward several arguments. Mainly Google
Belgium argues that no sanction should be imposed on it, since that would be "totally
inappropriate, dangerously counterproductive and even illegal”97. Alternatively, Google Belgium
SA specifies that "the sanctions envisaged would violate the principle of proportionality of the standards
repressive. In addition, the nominative publication of a sanction against Google Belgium SA
would be counterproductive. On an even more subsidiary basis, Google Belgium SA/NV considers that the
determination of the amount is not correctly justified because "the Litigation Chamber has retained
certain erroneous criteria […] and, on the other hand, did not take into account the mitigating circumstances”99.

The amount of the fine is also considered problematic by Google Belgium NV because

it is not able to control the scale, the formula and the method of calculation used for its

determination.

172. In response to these arguments, the Litigation Division specifies that it bases itself on Article 83 of the

GDPR to come to the conclusion that an administrative fine is justified and to calculate the

amount. The Litigation Chamber justifies its decision on the basis of the findings set out below.

173. In accordance with what had been indicated in the fine form, concerning the determination

the turnover of Google Belgium SA, which is a criterion used in the calculation of the fine,

the Litigation Chamber bases itself on the opinion of the European Data Protection Committee which

is the following :

“In order to impose effective, proportionate and dissuasive fines, the supervisory authorities

will rely on the definition of the concept of undertaking provided by the CJEU for the purposes of

the application of Articles 101 and 102 of the TFEU, namely that the concept of undertaking must

be understood as an economic unit that can be formed by the parent company and all

95 EDPB “The Swedish Data Protection Authority imposes administrative fine on Google”, 11 March 2020, available at

www.edpb.europa.eu.

96 Supra, No. 10.

97 Response from Google Belgium SA to the fine form, 24 June 2020, p. 2.

98 Ibid.

99 Same

the subsidiaries concerned. In accordance with Union law and case-law, it is necessary

to understand by enterprise the economic unit engaged in commercial activities or

economic, regardless of the legal person involved (recital 150). »100

174. The Litigation Chamber therefore bases itself on the turnover of the Alphabet conglomerate,

presumed parent company of Google Belgium SA, the amount of which for the last three years is

find below:

- Alphabet turnover 2019: $161.857 billion.

- Alphabet turnover 2018: $136,819 billion.

- Alphabet turnover 2017: $110.855 mds.101

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175. Regarding the breach of Articles 17, 1., a), and 6, 1., f) of the GDPR, the Litigation Chamber,

having regard to Article 83, 2., of the GDPR, decides to impose an administrative fine in the amount of

EUR 500,000, taking into account the following elements:

(i) at least from June 19, 2019 to May 6, 2020, being the date of the hearing scheduled in the

context of this case, namely for a period of 10 months, and this, moreover, despite

communication during the proceedings by the complainant in the context of the exchange of

conclusions of a notice of dismissal issued by ARISTA concerning the harassment complaint102,

Google maintained listings Nos. 9 to 12, despite having serious elements

such as to justify the delisting since June 19, 2019. Maintaining the

listings 9 through 12 has caused (and could still cause) significant damage to the

reputation of the complainant, since the latter saw particularly negative information

its subject maintained in the search engine referencing for more than ten months,

when he had requested its withdrawal and provided proof of the inaccuracy of the information.

The Litigation Chamber considers that the decision directly concerns the plaintiff

and indirectly, all Internet users who have been able to seek information about it

on the search engine. During this period, the contentious listings were

maintained by Google without legal basis under Article 6, 1., of the GDPR, which

constitutes a serious violation of the GDPR. Violation of Article 17, 1., a) constitutes

also a violation of an essential principle of the GDPR and constitutes at the very least a

gross negligence (Art. 83, 2., a) GDPR);

100 “Guidelines on the application and setting of administrative fines for the purposes of Regulation (EU) 2016/679”, WP

253, adopted October 3, 2017, p. 6, available at www.edpb.europa.eu.

101 Available at: https://www.macrotrends.net/stocks/charts/GOOG/alphabet/revenue.

102 Supra, No. 149.

(ii) the elements set out above constitute a serious breach of the GDPR and a

negligence on the part of Google Belgium NV (article 83, 2., b) of the GDPR). Google Belgium

cannot in this regard rely on the fact that it has put a dedicated online form and this at

available to the people concerned, that it has trained teams and set up a committee

legislation, or that it responds favorably to a large number of requests for

dereferencing. This is part of Google's responsibilities in relation to the GDPR, which

are proportional to the importance and risks of the processing (Article 24, 1. of the

GDPR). Google Belgium SA cannot claim the absence of mediation either.

organized by the ODA Frontline Service to mitigate its shortcomings. Indeed,

under article 62.§ 2 of the LCA, only requests can be the subject of mediation

front line service. Complaints considered admissible must be

directly transmitted to the Litigation Chamber (62.§ 1 of the LCA). In the case which we

concerned, the complainant had lodged a complaint and not a request103. Furthermore, the

Litigation Chamber recalls that the administrative fine is not a corrective measure,

but a dissuasive measure104, the effect of which cannot be replicated by mediation;

(iii) to date, the Respondent has taken no steps, even temporary, to mitigate the

damage suffered by the plaintiff, and this while she knows since the sending of the fine form

on June 4, 2020 that the Litigation Chamber questioned a violation of the GDPR and that

the Litigation Chamber considered the imposition of a sanction (Article 83. 2, c). On this subject,

the Litigation Chamber specifies that nothing obliges it to suggest or impose on the party

defendant to take measures that would enable it to reduce the amount of the fine

considered or even to suffer no fine.

(iv) as has been pointed out on several occasions105, Google LLC is the subject of litigation

important with regard to the implementation of the right to be forgotten and the provisions therein

linked, whether in France, Spain or Sweden. It is clear that

despite these precedents, the group's modus operandi still does not allow it to

fully and adequately fulfill its obligations arising from the right to be forgotten. Even if she

requires a case-by-case analysis, the right to be forgotten constitutes a clear obligation

106. The Litigation Chamber notes, however, that there is strictly speaking no recidivism

when the legal entities concerned are different (Article 83.2, e);

103 Text taken from the complainant's original complaint: "[The complainant] instructed me to lodge a complaint with

of your Authority following GOOGLE's refusal to grant its requests for delisting, sent via the forms of

to request the deletion of personal information".

104 Supra, no. 168.

105 Supra, notes 6-9.

106 Supra, no. 163.

(v) the data concerned is data of a sensitive nature, since it concerns facts of

criminal in nature, even if in this case the complaint of harassment against the complainant

and included in the disputed listings has not been brought before a criminal court

(section 83.2, g).

(vi) with respect to Rule 83.2(i), the Chamber refers to point (iv) above,

(vii) these elements are finally aggravated by the fact that on the one hand, the Google search engine

is widely used by Internet users, and that Google is a company with

significant means (its worldwide annual turnover in 2019 was $161.857 billion).

Its obligations in terms of delisting are proportional to its importance and the

group turnover. In view of the significant litigation that it had to manage before the Court

Justice of the European Union107, the Litigation Chamber considers that Google should have

develop since then a great expertise in the matter which was to avoid shortcomings

such as those found by the Chamber. This also justifies that greater diligence

is expected from him (article 83, 2., k) of the GDPR).

176. The Litigation Chamber also recalls that under Article 83, 5, b. of the GDPR, it has

the power to impose fines of up to 20,000,000 EUR or up to 4% of the turnover of

the company. The amount of the fine provided for by this decision is very well below

these ceilings and represents a reasonable sum in relation to the turnover ($161.857 billion in

2019) from the Google group. It cannot therefore be considered disproportionate.

177. Regarding the breach of Article 12, 1. and 4. of the GDPR, the Litigation Chamber, having regard to

Article 83, 2., of the GDPR, decides to impose an administrative fine in the amount of EUR 100,000,

taking into account the following elements:

(i) in view of the key role played by Google's search engine in the dissemination of

information via the Internet, and its wide use by Internet users, the lack of motivation

comprehensible and transparent refusal to delist content likely to

cause harm to a data subject, constitutes a serious breach of the GDPR,

breach which is also likely to harm the person concerned, irritated by

to receive a typical and neglected-looking answer, to feel the injustice of not being able to be

understood as it could be from an entity such as Google (see the following indent, on this

point), and to be forced in this context, in case of dissatisfaction, to turn to a

other entity (the publisher of the referenced content or the data protection authority of its

country) (Article 83, 2., a) and b) of the GDPR);

107 See in particular, notes 6, 7 and 8 above.

(ii) Points 177, (iv), (vi), (vii), and 178 above.

Regarding the request and response forms for delisting

178. Previously, in points 71 to 79 of this decision, the Litigation Division noted

as part of the management process for delisting requests set up by Google

LLC, a certain ambiguity was maintained as to the identification of the data controller who

is not clearly and unequivocally identified. The facts pinned to this place of this

decision constitute a breach of Articles 12, 1. and 2., and 14, 1., a), of the GDPR. Google LLC

indeed fails to clearly identify the precise legal entity responsible for the

data processing carried out as part of referencing (and dereferencing) activities

of the Google search engine, which complicates the exercise of their rights by the person

concerned not knowing precisely in fine, who is his interlocutor.

179. The Litigation Chamber decides to order Google Belgium SA to have the forms adapted

information that it makes available and communicates to users who use its services

internet search engine from Belgian territory, for delisting purposes, in

clearly and precisely identifying which legal entity(ies) is (are) responsible for the

treatment and what treatments.

9. Administrative transparency

180. Considering the importance of transparency with regard to the decision-making process and the

decisions of the Litigation Chamber, also taking into account the scope of this decision

which concerns a very large number of data subjects, namely all Belgian residents – and by

analogy all residents of the EEA- who are likely to be referenced via the search engine

of Google on the basis of a search including as keywords their first and last names, this

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

181. In the present case, the Litigation Chamber decides not to delete the data

Google ID. On the other hand, it decides to delete the personal data of the complainant

and the other persons mentioned. The Chamber considers that such deletion is necessary in view of

of the objective pursued by the plaintiff, namely the delisting by Google.

182. In the reaction to the fines form, Google Belgium NV stipulates in particular that a

publication would be counterproductive and would stigmatize Google. This argument is not convincing.

First of all, Google Belgium SA indeed considers that such a publication would be counterproductive since it would encourage people seeking delisting to turn unnecessarily to Google Belgium SA rather than Google LLC. This argument cannot be accepted. Indeed, the demand for delisting is not done by post, but by an online form available provision by Google LLC. It is not possible to turn to the wrong entity during a request for dereferencing since it is Google LLC which makes the web page available and which directs the complaint handling process. Apart from extremely marginal cases, the Litigation Chamber don't see how someone could direct their delisting request to Google Belgium NV.

183. Next, with regard to the argument of stigmatization, the Litigation Chamber specifies that the publication with identification of the defendant pursues two objectives. First of all, it aims an objective of general interest, because it explains the responsibilities (of the subsidiaries in the Union) of Google under the GDPR. Indeed, given the importance of the search engine “Google” for very many Internet users and the fact that a large proportion of people residing in Belgium find themselves referenced in one way or another on the “Google” search engine, the Chamber Litigation considers it appropriate to give this decision publicity that can raise awareness among internet users to their rights under the GDPR. As such, even if the decision does not concern directly than the complainant, it is of interest to a large part of the general public. The publication of the decision is entirely relevant in this respect.

The publication of the decision is also intended to have a deterrent effect. The Litigation Chamber contests the that the decision is discriminatory as argued by the defendant. Article 100, §1, 16 of the law of 3 December 2017 establishing the Data Protection Authority gives the power to the Dispute Chamber to decide on the publication of the decision “on a case-by-case basis”. The Chamber has in the past already decided to publish decisions with identification of the party defendant, when it considered that this publication would contribute to the rapid compliance of

the disputed situation and to the reduction of the risk of repetition108 and that in addition, any

pseudonymization of the defendant's name would be illusory.

108 See in particular, Litigation Chamber, 9 July 2019, Decision on the merits 05/2019; Litigation Chamber, June 23

2020, Decision on the merits 34/2020.

10. Device

FOR THESE REASONS,

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

(1) pursuant to Article 100, paragraph 1, 2°, of the LCA, dismisses the complaint

concerning requests for delisting of listings Nos. 1 to 8.

(2) pursuant to Article 100, paragraph 1, 8° and 9° of the LCA, orders Google Belgium

SA to bring the processing into compliance and to this end, to implement all

effective technical measures to stop referencing Nos. 9 to 12 on the one hand,

for all other search engine websites in all their versions

languages but only for users consulting them from the Economic Area

European Union, no later than seven days after notification of this decision and

to inform the Data Protection Authority (Litigation Chamber) by e-mail that

the aforementioned order was executed, in

the same delay (via

email-address

litigationchamber@apd-gba.be);

(3) pursuant to Articles 100, 13° and 101 of the LCA as well as 83 of the GDPR, imposes on Google

Belgium SA a fine of EUR 500,000 for breach of Articles 17, 1., a), and 6,

1., f), GDPR.

(4) pursuant to Articles 100, 13° and 101 of the LCA as well as 83 of the GDPR, imposes on Google

Belgium SA a fine of EUR 100,000 for breach of Article 12, 1. and 4. of the

GDPR. ;

(5) pursuant to Article 100, paragraph 1, 9° of the LCA, orders Google Belgium NV to

adapt the electronic forms that it makes available and communicates to

users who use its internet search engine services from the territory

Belgian, for delisting purposes, clearly and precisely identifying which

legal entity(ies) is (are) responsible for the processing and for which processing, and this at the

no later than two months after notification of this decision and to inform by e-mail

the Data Protection Authority (Litigation Chamber) that the aforementioned order has

was executed, within the same period (via the e-mail address litigationchamber@apd-gba.be).

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

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