Litigation Chamber

Decision on the merits 38/2022 of 17 March 2022

File number: DOS-2020-01723

Subject: Complaint against Google for refusal of delisting

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

Chairman, and Messrs. Jelle Stassijns and Christophe Boeraeve, members, taking over the business in this

composition ;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 relating to the prote

of natural persons with regard to the processing of personal data and to the free movement

of this data, and repealing Directive 95/46/EC (General Data Protection Regulation),

hereinafter “GDPR”;

Having regard to the Law of 3 December 2017 establishing 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 complainant :

Mr. X, having as counsel Maître Jean-François HENROTTE, lawyer, whose

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firm is established at 4000 Liège, Boulevard d’Avroy, 280., “hereinafter “the complainant”;

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The defendants:

Google Ireland Limited, a company incorporated under Irish law, registered under number 368047,

whose registered office is at Gordon House, Barrow Street, DublinD04E5W5

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(Ireland); advised by Maître Patrick VAN EECKE and Maître Anne-Gabrielle

HAIE, lawyers, whose firm is established at 1000 Brussels, boulevard Bischoffsheim, 15

Hereinafter: "the first defendant" or "Google Ireland Limited";

Google LLC, a company incorporated under the laws of the US state of Delaware, whose registered office is

established at 1600 Amphitheater Parkway Mountain View, CA94043, California (USA

of America); advised by Maître Patrick VAN EECKE and Maître Anne-Gabrielle

HAIE, lawyers, whose firm is established at 1000 Brussels, boulevard Bischoffsheim, 15

Hereinafter: “the second defendant” or “Google LLC”;

Google Belgium SA, a company governed by Belgian law, whose registered office is located at 1040

Brussels, chaussée d'Etterbeek 180 and registered with the Banque Carrefour des Entreprises

(ECB) under

the number

0878.065.378; advised by Master Gerrit

VANDENDRIESSCHE and Maître Louis-Dorsan JOLLY, lawyers, whose firm is established

at 1000 Brussels, avenue du Port 86C, box 414

Hereinafter: “the third defendant” or “Google Belgium”;

I. Feedback from the procedure

1. On April 5, 2020, the complainant lodged a first complaint with the Data Protection Authority

data (APD) in particular against the first defendant Google Ireland Limited (hereinafter

Complaint No. 1).

2. Under the terms of this complaint No. 1, the exact wording of which is reproduced here, the complainant "addresses

a complaint against […….] and Google Ireland Limited (first defendant)

on the grounds that they oppose the exercise of the rights from which he benefits under the Regulations

general on data protection".

3. The Litigation Chamber specifies here from the outset that the part of the complaint implicating [……] has

is the subject of its decision on the merits 139/2021.

4. With regard to the part of the complaint involving the first defendant, the complainant submits

that the latter opposes its right to erasure in contradiction with the terms of the article

17 of the GDPR and the Guidelines of 11 December 2019 (5/2019) of the European Committee for

data protection (EDPS). He therefore requests the deletion of the following 3 hypertext links:

1.

[…]

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2.

3.

[…]

[…]

5. These links refer to articles published by the newspapers "……." and "……", now archived by

these editors. These press articles relate to criminal convictions and disbarment

of (…) of which the complainant was the subject in (..) and (..).

6. The plaintiff indicates indeed to have been tried criminally […..]. For these facts, the complainant specifies that he

was sentenced to (..) suspended prison sentence for a period of (..) and to a sentence of confiscation by a

jurisdiction of the judiciary. He was also disbarred.

7. In 2014, the correctional court of (…), by decision of (..), condemned the plaintiff for

new facts (……..) granting the plaintiff the suspension of the pronouncement.

8. The Complainant points out that none of these court decisions imposes a ban on

commerciality and that the terms of the sentence pronounced (suspended sentence and suspension of the pronouncement) aim

to promote their social reintegration.

9. The complainant is currently pursuing his career as a lawyer with the consulting firm Z. This

society reports on the experience of its members as a lawyer when among the services it

offers, it describes the assistance it is able to provide in the event of a dispute.

10. On September 16, 2019, the plaintiff addressed the second defendant, the company Google

LLC, asking him to kindly dereference the 3 URLs mentioned above in point 4. To do this,

the complainant used the “Google” form at the time dedicated to this type of request.

11. On September 19, 2019, the “Google team” replied to the complainant that they could not give a

favorable response to his request. It indicates in response the following: “after examination of the balance

between the interests and rights associated with the content in question, including factors such as

relevance of the latter in the context of your professional life, Google decides not to

to block ". Otherwise, the complainant is encouraged to contact the source publisher. the

complainant is also informed of his right to lodge a complaint with the authority of

control of his country if he were to disagree with the refusal by "the Google team" to

his request.

12. On September 25, 2019, the plaintiff, through his counsel, approached the third defendant and this

under a long, detailed 8-page letter in which counsel for the plaintiff sets out

the grounds on which his request is based.

13. On October 15, 2019, the third defendant replied to the plaintiff as follows:

“Please note that the company Google Belgium SA [read the third defendant] is not

does not own and does not manage the "Google Search" service. In fact, in space

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European economy and Switzerland, this service is provided by the company incorporated under Irish law

Google Ireland Limited [read first defendant]. (…)

The companies Google Ireland Limited [read the first defendant]. and Google Belgium SA

[read third defendant] are separate legal entities. The Google company

Belgium SA [read the third defendant] is therefore not able to

answer your question about the Google Search service.

We invite you to use the following online form to directly address your

request to delete personal information from Google Ireland Limited [read the

first defendant]. : [link to form]

(…). If you have received a response from Google Ireland Limited [read the first

defendant] which does not satisfy you, we invite you to reintroduce a request via

this same form, indicating any useful information".

14. On November 6, 2019, the plaintiff then contacted the first defendant, sending it the same

detailed letter that it had sent on September 25, 2019 to the third defendant (point 12).

15. The complainant indicates that he did not receive a reply to this letter.

16. As mentioned in point 1, on April 5, 2020, the complainant filed a complaint (complaint no. 1) with

ODA. On April 8, 2020 complaint no. 1 was declared admissible by the Front Line Service (SPL)

ODA on the basis of Articles 58 and 60 of the LCA in its entirety, i.e. both in its component

against […..] only in its aspect against the first defendant. The complaint is

forwarded to the Litigation Division pursuant to Article 62, § 1 of the LCA.

17. On October 20, 2020, the Litigation Chamber decides, pursuant to Article 95, § 1, 1° and Article

98 of the ACL, that the case can be dealt with on the merits. On the same date, the complainant as well as the

first defendant, second defendant and third defendant - these two

being called to the cause by the Litigation Chamber -, are informed of the decision of

the Litigation Division to deal with the substance of the case pursuant to Article 95, § 1, 1° and

section 98 of the LCA. The Litigation Chamber explains in this regard that it has created two files

separate relating to the processing carried out by the Google search engine on the one hand and relating

to the processing carried out by press publishers on the other hand.

18. Still by this same letter of October 20, 2020, the plaintiff and the defendants (3) are

informed, under article 99 of the LCA, of the deadlines for submitting their conclusions, i.e. on 14

December 2020 (pleadings in response) and February 4, 2021 (pleadings in reply) for the

first, second and third defendants on the one hand and on January 14, 2021 (claims

in response) for the complainant.

19. The Litigation Division received all of the submissions in response and in reply in the

deadlines required. It already notes here that in its submissions in response, the complainant adds

8 links to the subject of his initial complaint, which brings to 11 the URLs for which he requests the deletion under the terms

of his complaint n°1.

has.

[…]

b.

[…]

vs.

[…]

d.

[…]

e.

[…]

f.

[…]

g.

[…]

h.

[…]

i.

d.

[…]

[…]

k.

[…]

20. The Litigation Division also notes that the second defendant, whom it placed at the cause (point 17) also accepts from the outset by means of its conclusions to intervene voluntarily to the procedure (Title A.2. below).

21. As for URLs 1 to 3, the 8 additional links refer to published press articles by various French-language media that report the criminal acts of (…) associated with the complainant as well as the criminal convictions already mentioned of which he was the subject and his removal from the bar of (…) where he was registered as a lawyer (points 6-7).

22. On January 13, 2021, the complainant lodged a second complaint (hereinafter complaint no. 2) with the DPA this time against the third defendant, i.e. against S.A. Google Belgium, He requests under the terms of this second complaint the deletion of 11 urls: the 3 urls numbered 1 to 3 are identical to those mentioned in the complaint form n°1 directed against the first defendant – but in respect of which the Litigation Chamber brought to the cause both the second than the third defendant (point 17) - and the URLs numbered 4 to 11 are identical to those added by the complainant under the terms of its submissions in response referred to in point 19 above in the context of Complaint No. 1.

23. On January 19, 2021, this complaint no. 2 was declared admissible by the SPL of the APD on the basis of the Articles 58 and 60 of the LCA.

24. On February 24, 2021, the plaintiff contacted the second defendant to request the delisting of URLs 4 to 11, i.e. on a date after the filing of its complaint with the DPA.

25. On March 17, 2021, the Litigation Division sent a letter to the 3 defendants under the terms which it decides to join complaints n° 1 and n° 2 on the ground that they are linked by a link if narrow that they must be instructed together to allow a coherent positioning of the

Litigation Chamber. The latter also invites the 3 defendants and the plaintiff to

conclude. All parties concluded on time.

26. On April 27, 2021, the second defendant responds to the plaintiff and refuses to delist the links

solicited. This refusal is confirmed by letter sent to counsel for the complainant on April 28, 2019. There

is explained to the complainant, with regard to urls n°4, 5 and 7 to 10 that:

“The url refers to a press article from serious, reliable and recognized sources Belga

and RTBF.be), the content is a journalistic and factual report and is linked to

questions that present a

special interest in

the public concerning

life

Mr X (read the complainant). Content chronicles criminal convictions

of Me X (read plaintiff) for several serious offences. Me X (read complainant) does not

disputes neither the veracity nor the legality of the content. Information on occupations or

professional activities with which Me X (read complainant) was associated may

interest current and potential users of its services. Me X (read complainant) has

played and continues to play a role in public life.

Conclusion: after examining the balance between the interests and the rights associated with the content

in question, including the relevance of the latter in the context of the professional life of

Mr. X (read plaintiff), Google LLC (read second defendant) decides not to

not block it”.

With regard to URL No. 6, the second defendant notes that the content is locked

behind a paywall. She asks the complainant to send her a screenshot of the

full content of the article or a photo of the screen to enable him to respond to his request.

The plaintiff did not respond to this request.

Finally, with regard to URL no. 11, the second defendant indicates that it did not find the complainant's name

on this page and states that it has taken manual measures to prevent it from appearing in

search results for the name "X".

27. According to their conclusions, in particular their summary conclusions, the first and the

second defendants set out, in summary, the following.

has. The request made by the complainant for the first time by way of conclusions on foot

of sections 12.1, 12.2. and 12.3. of the GDPR - not covered by complaints n°1 and 2 -, must be classified

without follow-up (first ground);

b. Complaint No. 1 must, primarily, be closed without action insofar as it is directed to

against the first defendant as soon as no further claim is made

against him by the complainant in his last (summary) submissions (second

medium) . In the alternative, this complaint n°1 should be declared unfounded in that the

first defendant is not responsible for processing and this, in accordance with the

constant jurisprudence - national and foreign courts and tribunals - and notwithstanding the

fact that the SPL of the APD declared the complaint admissible insofar as it was directed against the

first defendant (third plea);

vs. Complaint no. 2 must, primarily, be dismissed or at the very least declared not

founded in that it is directed against the third defendant since this

latter is, according to established case law, not responsible for processing. All

request for delisting made against it must be declared unfounded

(fourth plea);

d. Complaint no. 2 must, in the alternative, be dismissed with regard to the second

defendant that it does not refer to even though the plaintiff could not ignore

the voluntary intervention of the second defendant with regard to complaint n°1. the

complainant therefore deliberately chose not to file a complaint against the

second defendant (fifth plea);

e. Infinitely in the alternative, it is appropriate to order the dismissal of the requests for

dereferencing in that the referencing of these press articles is strictly

necessary for the freedom of expression and information within the meaning of Article 17.3 of the GDPR and from

when none of the grounds of Article 17.1. of the GDPR does not apply to the present case

(seventh middle)1;

f. Finally, in the alternative, it is appropriate to order the dismissal of the alleged non -

compliance with article 12.3. of the GDPR (eighth ground).

28. According to its pleadings, the third defendant for its part defends in summary what

follows:

g. The request made on the basis of Articles 12.1. 12.2 and 12.3. of the GDPR- not referred to in the

initial complaints n°1 and n°2 - must be declared unfounded (first plea);

h. Complaint No. 1 must, primarily, be closed without further action with regard to the third

defendant in that it refers only to the second defendant and does not refer to it

(second ground);

1 The Litigation Division is aware that, by way of the sixth plea, the first and second defendants requested that it

stay the proceedings pending the decision of the Market Court in the context of the appeal against its decision 37/2020. The sto

the Court of June 30, 2021 (see point 29) having intervened before the present decision, this request has become devoid of pur

i.

It is appropriate, primarily, to classify without further action or at the very least to order the dismissal of

with regard to the third defendant since the latter is not, according to case law

constant, both national and foreign, not controller (third plea)2;

d. In the alternative, the third defendant states that it appropriates the pleas

developed by the first and second defendants recalled above (1) as to the

dismissal with regard to the first defendant as soon as no more

no claim is made against the latter, (2) as to the classification without follow-up

or at the very least the dismissal of the case against the first defendant since it is not

responsible for processing, (3) as to the classification without follow-up with regard to the second

defendant,

(4) as to the non-suit to pronounce concerning

requests for

dereferencing in that referencing is necessary for freedom of expression and

of information and finally, (5) as to the dismissal of the grievance based on non-compliance with

section 12.3. of the GDPR (point 27 above) (fifth plea).

29. As for the plaintiff, he argues in support of the “Google Spain” case law3 and the judgment of 24

September 2019 of the Court of Justice of the European Union (CJEU),4 of Decision 37/2020 of the

Litigation Chamber and the requirement for effective and complete protection of persons

concerned, that the DPA - and therefore the Litigation Division - is competent to exercise its

powers against the third defendant, In the alternative, the plaintiff argues that

the DPA has jurisdiction to exercise its powers against the second defendant. As to

in its request for delisting, the complainant develops, in support of the relevant criteria

applied to the concrete circumstances of the case in hand that the maintenance of disputed links is not

strictly necessary with regard to freedom of information. He adds that in no way "Google"

does not demonstrate this strictly necessary character. Finally, the plaintiff alleges an infringement of the

articles 12.1 and 12.2 of the GDPR in that Google would not have adequately informed it in such a way

transparent, understandable, easily accessible and in clear and simple terms (Article 12.1.

of the GDPR) and would not have facilitated the exercise of his rights (article 12.2. of the GDPR). He denounces this

regard to the imbroglio of contradictory information received from the third defendant which

referred him to the first defendant, who in turn rejected any jurisdiction and referred him

referred to the second defendant (points 12-15). Finally, the complainant also invokes a

breach of Article 12.3 of the GDPR on the part of "Google", the latter not responding to its

request of February 24, 2021 than April 27, 2021 (points 24 and 26), i.e. beyond the one-month deadline

2 The Litigation Division is aware that, as a fourth plea, the third defendant requested that it stay the proceedings

rule pending the decision of the Market Court in the context of the appeal against its decision 37/2020. The judgment of the Cou

of June 30, 2021 (see point 29) having taken place before this decision, this request has become devoid of purpose.

3 CJEU, judgment of 13 May 2014, C-131/12, ECLI:EU:C:2014:317.

4 CJEU, judgment of 24 September 2019, C-507/17, Google, ECLI:EU:C:2019:772.

required by Article 12.3. of the GDPR without the conditions for an extension of this period being

respected.

Consequently, the complainant requests that his complaint be declared founded:

k. Principally against the third defendant,

I. As a subsidiary to

against

the third defendant and

the second

defendant,

Mr. Infinitely in the alternative, against the second defendant

He requests that the defendants comply with the plaintiff's request for delisting

within one week of the pronouncement of the decision to be taken and take the

measures necessary for the de-indexing of the delisting of the disputed articles in the Space

European Economic (EEA), i.e. the deletion of any search results based on the

surnames and first names of the complainant and referring to one of the pages listed in point 19 above.

30. On July 15, 2021, all parties are informed that the hearing will take place on September 27

2021. In view of this hearing, and taking into account the decision of the Markets Court of June 30, 2021

intervened during these proceedings, the second and third defendants, on 8

September 2021, were invited to enlighten the Litigation Chamber on the inseparable link that exists

between them.

31. On September 23, 2021, the second and third defendants send the Chamber
Litigation and all the parties their answers to these questions. In summary, they
challenge, as a preliminary point, to the Litigation Chamber the power to order the parties
defendants to answer such questions, the binding acts of investigation belonging to
the prerogatives of the Inspection Service, which the Litigation Chamber cannot replace.
As for the questions themselves, they state that the third defendant, a subsidiary of the
second defendant, is not responsible for the operation, management and provision of the
Google search engine service. The third defendant provides support services
to the second defendant in the context of the marketing of the services of the Google group
in Belgium and Luxembourg, particularly in the context of the marketing of spaces
advertisements within the Google search engine. They further add that the third
defendant does not sell or charge for any advertising or advertising space. Advertisers
located in Belgium do not contract with the third defendant and do not receive
invoice thereof. These advertisers enter into advertising contracts with Google
Commerce Limited or with Google Ireland (the second defendant), two entities established in
Ireland.
32. On September 27, 2021, the parties are heard by the Litigation Chamber. An oral deposition
of this hearing was established which was submitted to the parties on October 19, 2021.
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33. On October 26, 2021, the Litigation Chamber receives some comments on these minutes
respectively of the first and second defendants on the one hand and of the third
defendant on the other hand. These remarks were
attached to the hearing report.
in accordance with article 54 par. 2 of the DPA's internal rules.
II. Motivation
34. The reasoning that follows will comprise two distinct parts.

- The first will be devoted to the question of the (possible) responsibilities of the various entities
of Google implicated (point A).
- The second will be devoted to the substance of the issue raised by the complaint, namely the
question of whether “Google” was right to refuse to delist the disputed links
and thus to grant the complainant's request for erasure (point B).
A. As to the liability of the various Google entities implicated
A.1.
Preliminary remarks
35. As was the case in the case that led to Chamber decision 37/2020
Litigation which showed strong similarities with the present case, the identification of the entity
or entities of Google to which liability for delisting may
being imputed is one of the elements of the debate (point A). The first, second and third
defendants being parties to the case as just described, the Litigation Chamber
will first endeavor to examine the merits of the complaint insofar as it relates to each
of these entities (titles A.2., A.3. and A.4.).
36. This debate includes the question of the jurisdiction of the Litigation Chamber to rule on
the role of the third defendant, which is established in Belgium and more particularly the
competence of the Litigation Chamber to impose on it, if necessary, one or the other measure
remedy and/or sanction provided for in article 100 of the LCA, junto article 58.2. of the GDPR. This aspect
will be the subject of a detailed statement of reasons by the Litigation Chamber in Part A.4.
37. In general, the Litigation Chamber wishes to recall from the outset the fundamentals
that underpin his motivation:
- A company such as Google cannot evade the obligations arising from the protection
complete and effective that the implementation of the right to data protection requires
enshrined both in the GDPR and in Article 8 of the Charter of Fundamental Rights of the Union.

- Article 3 of the GDPR, which defines its material scope, is intended to provide
a broad application of the GDPR, including the processing activities of entities established in
outside the borders of the EU5. In this regard, it is not disputed that in this case, the
second defendant, established in the United States, is required to comply with the requirements of the GDPR
(see Titles A.3 and A.4.).
- Effective and comprehensive protection certainly requires the applicability of the GDPR, but this alone
applicability is not enough. Control and sanction measures for which the authorities are responsible
control to impose where necessary are an essential component of this protection. These
measures must not only be able to be decided by the supervisory authorities such as the DPA
but also to be able to be effectively implemented. In accordance with the rules of law
international, the authority of a state has no power outside the territory of that same state.
not that of ensuring compliance with a corrective measure or a sanction that it would have imposed.
Therefore, in the present case, the Litigation Chamber, a body of a Belgian authority, does not
could impose compliance with its corrective measures or sanctions on a Google entity to
outside Belgian territory.
- To this end, the GDPR has provided for the obligation for entities that are not established in the Union
but who are nonetheless required to comply with the GDPR, to appoint a representative. He is
it should be noted that in application of the rules of international law, in the absence of such an obligation
specifically imposed by the GDPR, an entity established in the United States could not be
impose any corrective action or sanction by an EU supervisory authority.
This designation is provided for by article 3.2., combined with article 27 of the GDPR. Section 3.2. is not
however not applicable in this case, the defendants claiming the application of
section 3.1. of the GDPR.
- As soon as Google claims the applicability of Article 3.1. of the GDPR, it is not required to
appoint a representative. In order to be able to implement effective and comprehensive protection, the
Litigation Chamber must therefore analyze whether the European establishment – in this case the

third defendant established in Belgium - can himself be described as responsible for

processing within the meaning of Article 4.7. of the GDPR. If so, the corrective measures and

5 Article 3 of the GDPR states the following: 1. This Regulation applies to the processing of personal data carried out

in the context of the activities of an establishment of a controller or a processor on the territory of the Union, that the

processing takes place or not in the Union.

2. This Regulation applies to the processing of personal data relating to data subjects who

located on the territory of the Union by a controller or a processor who is not established in the Union, when the

processing activities are related:

has)

the offering of goods or services to such data subjects in the Union, whether or not payment is required from such data subjects

people; Where

(b) the monitoring of the behavior of these persons, insofar as it concerns behavior that takes place within the Union.

3.[…].

sanctions that the Litigation Chamber deems appropriate could be directly

imposed. If this should not be the case, the Litigation Chamber is required to examine whether the

case law of the CJEU developed on the occasion of the Google Spain judgment in particular, is

application and if so, the obligation of delisting - and any measures

corrective measures and possible sanctions in the event of failure to exercise this right - perhaps

imputed to the European establishment, in this case to the third defendant.

38. As to the merits of the complaint (point B), the Litigation Chamber notes that the assessment of the

question of whether or not it was right that Google refused to delist the disputed links

involves finding the right balance between the right of access to information on the one hand and

hand, the fundamental rights of the person concerned by the publications, including his right to

protection of personal data. The balancing involved in the search for this

balance necessarily requires the examination of purely national elements as will be explained

in more detail below (Title B.2.), an examination which should involve Google Belgium, the third□

defendant, in the interest of the person concerned. Even if a "business model" which□

provides that the weightings are exercised without any involvement of the national subsidiary is in□

theory not excluded, this can only have the effect of exercising the right of the data subjects□

be weakened.□

A.2.□

In that complaint no. 1 is directed against the first defendant□

39. During the hearing on September 27, 2021, the Litigation Chamber pointed out to the parties that□

the summary conclusions filed by the plaintiff no longer held any claim to□

with regard to the first defendant, which the defendants had themselves noted in□

their summary conclusions. The Litigation Chamber then asked the question whether□

all parties to the proceedings (i.e. the 3 defendants and the plaintiff) agreed□

to consider that no further grievance was brought against the first defendant.□

All parties answered in the affirmative.□

40. In support of the foregoing, the Litigation Chamber dismisses complaint no. 1 insofar as it□

is directed against the first defendant (Google Ireland Limited) for reasons□

techniques. The Litigation Chamber relies on criterion A.6 which it developed in its note□

classification policy without follow-up6 and of which the present case is an illustration.□

41. The Litigation Division specifies therein with regard to criterion A.6. that a complaint will no longer have any object if□

it is withdrawn after being submitted to the APD. In this case, the Chamber□

the□

note□

6See.□

Litigation□

https://www.autoriteprotectiondonnees.be/publications/politique-de-classement-sans-suite-de-la-chambre-contentieuse.pdf□

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Contentious will classify it without follow-up, except in special circumstances as set out in its

Decision 61/2020 of September 8, 2020.

42. In this case, since the plaintiff waives allegation of any breach against

of the first defendant, the Litigation Chamber considers that he withdraws his complaint to his

against. In the instant case, there are no particular circumstances that lead the Chamber

Litigation to continue examining complaint no. 1 insofar as it is directed against the first

defendant notwithstanding this withdrawal.

43. Indeed, the Litigation Chamber notes, as it had done under the terms of its decision

37/2020 that the disputed data processing in the present case “is not carried out within

the framework of the activities of the first defendant”7.

A.3.

As for the second defendant's involvement and the voluntary intervention of this

last

44. The Litigation Chamber notes that the second defendant, to which the GDPR

applies pursuant to Article 3.1. (which is not disputed by any party elsewhere – point

59) agrees to voluntarily intervene in the cause. As far as necessary, the Chamber

Admittedly, neither the LCA nor the DPA's internal rules provide for

explicitly the mechanism of the (voluntary) intervention of a party that would not have been

caused by the complainant or the Inspection service.

45. Nevertheless, in the exercise of its competences, it is incumbent on the DPA, and therefore on the

the Litigation Chamber in the exercise of those which are specifically devolved to it, to facilitate

the exercise of the rights granted to data subjects by the GDPR, including that of

lodge a complaint (article 77 of the GDPR – also enshrined in article 8.3. of the Charter of Rights

as part of the essence of the right to data protection) like the Court

of Cassation recently confirmed this in a judgment of October 7, 20218. In this perspective,

filing a complaint must remain an easy process for the persons concerned whose

personal data is processed or likely to be processed and with regard to the processing of which

they believe that there has been or would be a breach of data protection rules. The

In this sense, the Litigation Chamber has identified among its operating principles that of a

legal protection accessible to all: the right to lodge a complaint with the DPA constitutes a

7 Points 26-28 of decision 37/2020 of the Litigation Chamber under which the Litigation Chamber clarified that

Google Ireland Ltd (the first defendant acts as an interface with users residing in the European Union (EU) but

does not intervene in the development and management of the search engine, exclusive competence of Google LLC (second

defendant).

8 cass. October 7, 2021, C.20.0323.N

alternative to a recourse to the civil or administrative judge and must remain easy for the citizen. The legislator

for example, did not want the parties to always be assisted by a lawyer 9.

46. As it has already had the opportunity to develop in its Decision 17/202010, the authorities of

data protection must to this end play an active role through the missions and powers

vested in them under Articles 57 and 58 of the GDPR.

47. In the same way that the plaintiff cannot be expected to identify immediately, from the terms

of his complaint, all of the relevant legal grievances with regard to the facts denounced11, of the same□

way he cannot be expected to identify with certainty the data controller□

concerned. To assert the contrary would be tantamount to seriously jeopardizing the right of complaint of the□

complainant. Indeed, the identification of the data controller, even in support of the definition□

provided for in Article 4.7. of the GDPR, is a process that can be particularly complex for□

people who are unskilled in this area of law. Certainly detailed guidelines have,□

several times already, published by the EDPS and its predecessor the Article 29 Working Party, at□

its subject.12 Nevertheless, it must be noted that this identification often remains thorny. She□

sometimes even requires recourse to the Inspection Service in the most difficult cases.□

48. In this case, the Litigation Chamber, from the first contact established after complaint no.□

was transmitted by the SPL (see the letter of October 20, 2020 – point 17) invited the second□

defendant (as well as the third defendant moreover) to defend itself with regard to the□

plaintiff's claims. The second defendant has, as already mentioned, accepted□

to voluntarily intervene in the cause. She also had the opportunity to defend herself against the□

11 urls already mentioned.□

49. The second defendant argues that while the plaintiff could not have been unaware that she was the□

relevant controller given its voluntary intervention in the cause (complaint□

n°1), the complainant chose not to direct his complaint n°2 against him. This abstention must, according to□

the second defendant, be interpreted as a deliberate intention not to put it in□

cause under this Complaint No. 2.□

9 Data Protection Authority – 2021 Management Plan, p 18: https://www.autoriteprotectiondonnees.be/publications/le-plan-□

of-management-2021-translates-the-strategic-and-operational-objectives-of-the-strategic-plan-2020-2025-into-concrete-objectiv

the-year-to-come.pdf□

10 Decision 17/2020: https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-17-2020.pdf□

also Decision 80/2020: https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-80-2020.pdf□

11 Decision 38/2021 of the Litigation Chamber: https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-□

n-38-2021.pdf□

12 See in particular the “Guidelines 07/2020 on the concepts of controller and processor in the GDPR” adopted by the Committe

European Data Protection Authority (EDPS – EDPB), published on www.edpb.europa.eu.□

See.□

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50. The Litigation Division cannot subscribe to this argument. The distinction made by□

second defendant between Complaint No. 1 and No. 2 - under which the Chamber□

Litigation does not disagree that the second defendant is not cited - is artificial□

given the connection between the two complaints and the developments in the procedure.□

Precisely because the second defendant agreed to intervene in the case with regard to the□

Complaint No. 1 (point 44 above), because its subject matter was extended, albeit by way of□

conclusions, to new links relating to the same facts and complaints and because these new links□

are precisely those targeted by Complaint No. 2, the second defendant cannot validly□

consider that complaint no. 2 should be closed without further action on the basis of the (sole) reason that□

the complainant did not refer to it in his complaint form. The Litigation Chamber has by□

elsewhere expressly invited the second defendant to conclude on the full object of the complaints□

attached. His rights of defense were therefore respected (point 25).□

51. In conclusion on this point, without prejudice to the overall conclusion mentioned in point A.5. this-□

below, the Litigation Chamber will assess under the terms of this decision whether it is right□

title or not that the second defendant refused to respond favorably to the request for□

delisting of the plaintiff relating to all of the disputed links as listed in□

terms of its complaints n°1 and 2.□

A.4.□

As to the third defendant and the jurisdiction of the DPA over it□

A.4.1 Discussion□

52. It follows from the facts and procedural background recalled above that the third defendant□

was immediately put to the cause, via the letter sent to him on October 20, 2020 by the Chamber
Litigation, the latter inviting him to conclude with regard to complaint n°1. (Item 17). The third
defendant was then directly brought to the cause via complaint no. 2 under the terms of the form
of complaint lodged by the complainant (Item 22).
53. The third defendant defends the argument that it is not responsible for processing
with regard to the processing of data called into question by the complaint(s) directed against it. She
determines neither the purposes nor the means within the meaning of Article 4. 7) of the GDPR. The third
defendant indicates that it is limited to providing consultancy services for the marketing
of advertising space within the framework of the Google search engine without determining or
purposes or means of the data processing referred to in the complaints. The third defendant
finally adds that only Google LLC, the second defendant, is responsible for processing. The
second defendant does not contest this quality in its own right (heading A.3.)
54. Consequently, the third defendant considers that no corrective measure or sanction can
be addressed by
the Litigation Chamber for lack of being able to note any
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breach on its part when it is not a data controller held, the case
where appropriate to inform the persons concerned of the processing it carries out or to give
following the exercise of their rights, including the right to erasure as in the present case.
55. This same argument had been put forward by the third defendant in the context
of a complaint similar to those examined in this case. The question had been discussed and settled
by the Litigation Chamber under the terms of its decision 37/2020 already cited.
56. In support of substantiated reasoning, the Litigation Chamber concluded that it had jurisdiction to
rule on the third defendant and address both corrective measures
as possible sanctions on the basis of Article 100 of the LCA juncto Article 58.2 of the GDPR. The
Litigation Chamber had thus ordered the third defendant to pay a fine

administrative and had also ordered him to bring the litigious processing operations into conformity

with the GDPR by implementing all technical measures to stop referencing

found to violate the GDPR.

57. The Litigation Division recalls below the key elements of this motivation - some of which

have already been set out in the introductory remarks. It reiterates this motivation in the terms

of this decision.

58. The GDPR requires comprehensive and effective protection of individuals whose personal data

staff are processed. This requirement has been repeatedly confirmed by the CJEU13.

59. The third defendant is an establishment14 of the second defendant in the EU in the

framework of the activities of which the litigious data processing operations are carried out. Therefore, article 3.1 of the

GDPR applies and triggers the application of the GDPR to data processing

carried out by the second defendant within the framework of the activities of this establishment. The

Litigation Chamber notes here at the outset that both the second and the third defendants do not

not dispute the applicability of Article 3.1. of the GDPR in this case15.

60. The Litigation Chamber recalls here that Article 3.1. of the GDPR indeed states that the GDPR

"applies to the processing of personal data carried out in the context of the activities

an establishment of a controller or a processor on the territory of the Union,

whether or not the processing takes place in the Union". Two criteria emerge from this article:

13 See for example judgment C-131/12 - Google Spain and Google already cited, ECLI:EU:C:2014:317, para 34.

14 Recital 22 of the GDPR specifies that an "establishment implies the effective and real exercise of an activity by means of a

steady. legal form adopted for such a system, whether it is a branch or a subsidiary with legal personality, is not

not decisive in this regard.

15 See. point 92 of the summary conclusions of the second defendant: "it is true that in accordance with the Costeja judgment,

Belgium SA can be considered as an "establishment" of Google LLC, the data controller in dispute within the meaning of Article

3.1; GDPR. This is what makes it possible to conclude in this case that the GDPR applies to Google LLC (in accordance with Ar

recital 22) (…)".

data processing must be carried out within the framework of the activities of an establishment of the controller on the one hand and this establishment must be established in the EU. Hence, from when the disputed data processing is carried out in the context of the activities of the Belgian establishment of Google (the third defendant), the GDPR would apply to the second defendant.

61. As indicated above, it is undisputed that the second defendant is the data controller and that its subsidiary, the third defendant is one of its establishments established in the Union. The first condition is thus satisfied.

62. When can processing be considered to be carried out “in the context of the activities of a establishment of the data controller”? As it follows from the Google Spain judgment of the CJEU and as the EDPS explicitly points out in its Guidelines 03/2018 on the territorial application of the GDPR16, article 3.1. of the GDPR confirms that it is not necessary for the processing concerned is carried out “by” the establishment concerned on the territory of the EU: the controller or processor will be subject to the obligations under the GDPR when the processing is carried out "in the context of the activities" of its establishment on the territory of the Union”.

63. Still on the basis of the "Google Spain" case law of the CJEU and as the EDPS points out, “the data processing activities of a controller or processor established outside the Union can be inextricably linked to the activities of a local establishment located on the territory of a Member State and, therefore, trigger the applicability of Union law, even if this local establishment does not actually play any role in the treatment itself. If a analysis of the facts on a case-by-case basis reveals the existence of an inextricable link between the treatment of personal data carried out by a controller or a processor of a Third State and the activities of an establishment on the territory of the Union, Union law will apply to such processing by the entity of a third State, whether the establishment located in the territory of

whether or not the Union plays a role in this data processing".17

64. It is therefore necessary that "the activities of the controller and those of his establishment located

in the Member State concerned are inseparably linked"18, this link not being conditioned by

an active role of the local establishment in the treatment concerned.

65. It is therefore necessary to determine on a case-by-case basis and on the basis of an in concreto analysis whether these act

are inseparably linked to reach the conclusion that the processing is or is not carried out

in the context of the activities of an establishment of the controller or processor on

16 https://www.cnil.fr/sites/default/files/atoms/files/lignes_directrices_du_cepd_sur_le_champ_dapplication_territorial_du_rgpd.p

17 GDPR Territorial Scope Guidelines 3/2018 (Article 3), version 2.0. of November 12, 2019.

18 See. the Google Spain judgment already cited, paragraphs 56-60.

the territory of the Union for the purposes of Article 3.1. Each scenario should be evaluated on its own merits.

own merits, taking into account the particular facts of the case.

66. This analysis must be carried out taking into account the relevant case-law. On the one hand, in view

achieve the objective of providing effective and comprehensive protection,19 the phrase "in

within the framework of the activities of an establishment" cannot be interpreted restrictively. Else

On the other hand, the existence of an establishment within the meaning of the GDPR cannot be interpreted too

wide to conclude that the mere presence on the territory of the Union, even remote from the activities

of data processing of an entity of a third State, will be sufficient to bring this processing into the

scope of EU data protection law.

67. Also in its Google Spain judgment, the CJEU took into account the fact that the Spanish establishment

of Google mainly dealt with the marketing of advertising space at the level

national institution to conclude that there is an inseparable link between this national institution and the

second defendant. The Litigation Chamber recalls here paragraph 60 of the said judgment: "[…]

processing of personal data is carried out in the context of the activities of a

establishment of the data controller on the territory of a Member State, within 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".

68. In the present case, the third defendant described its activity in terms comparable to that

carried out by the Spanish establishment (point 31) which, as has just been recalled, led the

CJEU to find the existence of this inseparable link between these entities (and in the context of

the case to the applicability of European law). Therefore, the Litigation Chamber concludes that therefore

that the activities of the second and third defendants are inseparably linked in this case

also, section 3.1. is applicable.

69. The conditions of application of article 3.1. being satisfied, this finding entails the applicability of the

GDPR to the second defendant with regard to the disputed data processing which, as

already mentioned, the second and third defendants do not contest otherwise. In

claiming the applicability of Article 3.1. of the GDPR, of which the Litigation Chamber has just

demonstrate that it was actually applicable – not Article 3.2. which would carry the designation

mandatory of a representative (see below), quod non, in this case -, the second and third

defendants also acknowledge that the disputed data processing carried out by the

second defendant are involved in the activities of the third defendant

19 See. in this regard recital 53 of the judgment "in view of the objective of Directive 95/46 to ensure effective and complete prot

the fundamental rights and freedoms of natural persons, in particular the right to privacy, with regard to the processing of person

personal data, this last expression [read "in the context of processing activities"] cannot receive a

restrictive interpretation.

to which they are inseparably linked. To deny this would be to call into question the applicability of

section 3.1. However, the defendants claim quite the opposite.

70. Importantly, it should be noted that if Article 3.1. of the GDPR should not be considered as

being applicable, quod non, it is article 3.2 of the GDPR that should apply and

would impose on the second defendant the obligation to appoint a representative

in the EU pursuant to Article 27 of the GDPR. Article 3 of the GDPR has indeed, as it has been

recalled as a preliminary remark, intended to offer complete protection. The second

defendant did not appoint a representative. Given the role played by the third

defendant, which leads to the application of Article 3.1. of the GDPR as indicated above, this

designation is not required.20

71. The fact that the activities of the third defendant are inseparably linked to those of the

second defendant and triggers the application of Article 3.1. of the GDPR also has

consequence that in view of the role played by the third defendant, the latter may find itself

impute the breaches of which the second defendant is guilty and this, in application

of the principle of the useful effect of European law. The third defendant may therefore also

be imposed one or the other corrective measure and/or sanction because of these breaches.

It is in this sense that under the terms of its Decision 37/2020, the Litigation Chamber concluded - and

reiterates under this decision - the following:

“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 [read the second

respondent] at issue in the Google Spain judgment to appoint a representative 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 have a sufficient territorial link with the territory of the Union

European Union in order to ensure proper application of the GDPR: it is implicit but certain that a

institution within the meaning of this provision could not 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 can be

registered

the

jurisprudence

Wirtschaftsakademie: for an effective application of the GDPR with regard to the person

concerned, this case-law should also be applied to the establishment of a person responsible for the

processing located in the territory of the Union such as Google Belgium SA [read the third

defendant], when the controller, subject to the GDPR pursuant to Article 3, 1., of the GDPR, has not

20 See. point 46 of decision 37/2020 of the Litigation Chamber which states that “In essence, during the hearing, Google

Belgium (read the third defendant) explained that it was a subsidiary of Google established in Belgium such as to cause

the application of European and Belgian law. Google Belgium (read the third defendant) considers that Google LLC is therefore

to the GDPR pursuant to article 3.1. and accordingly, shall not appoint a representative in accordance with Articles 3.2. and 27

of the GDPR”.

not have had to appoint a representative within the meaning of Article 27 of the GDPR. Do not allow the authorities

of control to ignore the legal, social and functional division operated by a manager of the

processing established outside the European Economic Area, when its establishment in this

territory nevertheless carries out an activity inseparably linked to its own, would unduly restrict the

territorial jurisdiction of these authorities by systematically obliging them to exercise their

jurisdiction extraterritorially, despite the existence of such a link which constitutes by the same

opportunity, a strong territorial connection. In such a situation, the necessary recourse to the exercise

extraterritorial jurisdiction, taking into account its legal and procedural limits

and practices, would be likely to directly undermine the useful effect of the GDPR. We could, in

Indeed, the question arises as to how the supervisory authority would be able to exercise the

powers entrusted to it on the basis of Articles 58 and 83 GDPR, in an effective and

effectively”.

72. The Litigation Division adds in this regard that the argument of the second defendant according to

which it has always endeavored to respect the decisions of the supervisory authorities which were

addressed and to carry out the measures enjoining it to follow up on the exercise of the rights of

data subjects - which the Litigation Chamber does not disagree with - is not of a nature

to challenge the above. Indeed, as expressed in point 70 of Decision 37/2020

recalled above, the GDPR has ensured that the data subject can easily exercise his

rights – and that its local control authority can guarantee it – even in the event

where the data controller is not established on the territory of the EU and this, through

the obligation placed on such data controllers to appoint a representative in

The union. A fortiori, when the controller is established in the Union as in the present case, it

It is not conceivable that the data subject should be forced to address himself exclusively to the

data controller outside the borders of the Union nor, therefore, that the supervisory authority on

the territory of which this European local establishment is established cannot guarantee the exercise of its

rights.

73. The third defendant brought an appeal against this decision 37/2020, in particular

on the question of the jurisdiction of the Litigation Chamber to impose measures

remedies and/or sanctions.

74. In a judgment of June 30, 2021, the Market Court stated in particular the following:

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The concept of “controller” is key and a data protection authority cannot

can impose penalties on legal entities that are not "controllers";

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The referencing is not carried out by the third defendant;

Difficulties in enforcing decisions (for example with regard to entities established in the United States

United such as the second defendant) cannot establish the jurisdiction of the DPA;

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-

The arguments of the Litigation Division do not demonstrate the inseparable link that

would exist between the second and third defendants with regard to the processing of the data□

specific. It is this lack of evidence that led the Market Court to consider that the□

Litigation Chamber was not empowered to impose on the third defendant both the order□

of compliance than the fine imposed. The Markets Court concludes in this regard by□

these terms:□

"Insofar as the Litigation Chamber of the APD determines that the person in charge of the□

disputed processing is indeed GOOGLE LLC [read the second defendant] but that it□

prosecutes and sanctions nevertheless (only and to the exclusion of this person in charge of the□

treatment GOOGLE LLC [read the second defendant]) any other person□

legal (namely GOOGLE BELGIUM (read the third defendant)), the Decision□

Attacked is not properly motivated since it does not give a motivation□

adequate (or satisfactory) - within the meaning of the law of July 29, 1991 - which can justify to the□

Litigation Division the appropriate jurisdiction, based on the interpretation of the judgments of the□

Court of Justice, to conduct proceedings and impose penalties (points 2 to 5 of the□

Contested Decision) only to GOOGLE BELGIUM SA [read the third defendant]□

who is not the controller who is the subject of the complaint and of which he is not□

established without ambiguity and without contradiction of the reasons (see above) that it would be - in□

the species - inseparably linked21 with the controller (GOOGLE LLC [read□

the second defendant). To the extent that the complaint is to be directed against the□

responsible for the processing and that it is only subject to proof that the establishment□

local is inseparably linked to this controller, which the national DPA can□

sue the local establishment22, the proof of this alleged link cannot be presumed,□

nor demonstrated by reference to decisions - were judicial decisions in force of fact□

judged - other national courts or courts of other Member States or of the Union.□

The Impugned Decision must be annulled for lack of reasoning".□

A.4.2 Conclusion:□

the reasons for

which

the activities of Google LLC

(second

defendant) and Google Belgium (third defendant) are inextricably linked

75. The Litigation Division does not have sufficient information in this case to enable it

to conclude with certainty of the quality of data controller within the meaning of article 4.7)

of the GDPR of the third defendant. Furthermore, the Litigation Division does not dispute that

21 It is the Litigation Chamber which underlines.

22 It is the Litigation Chamber which underlines.

the notion of data controller is at the heart of the GDPR, nor does it result in the allocation

obligations and responsibilities to him. However, in certain circumstances, the CJEU has

clarified that a data protection authority can impose sanctions on an institution

a data controller (which establishment is not the data controller) for

as long as there is an inseparable link between them. The Litigation Chamber demonstrated above

that this inseparable link certainly existed, which the second and third defendants

admit by acknowledging the applicability of Article 3.1. of the GDPR.

76. Without prejudice to what has just been explained, the Litigation Division does not rule out that the

second defendant proceeds with the examination of the request without the third defendant not

be - deliberately - involved. As stated above, this involvement is not

strictly necessary to trigger the applicability of article 3.1. of the GDPR. Nonetheless, the

assistance from the third defendant seems essential (or at the very least desirable) to

be able to adequately justify the response to be given to the delisting request, in

particular its refusal, except to voluntarily exclude any involvement of the third defendant

to avoid the applicability of EU law, which cannot be accepted. As well as the Chamber

Litigation has already mentioned it under preliminary remarks, (point 38), the question of

whether the disputed publications relating to the complainant must remain accessible from a

search on the basis of the complainant's first and last name on the Google search engine

necessarily the examination of national factors. Indeed, given the criteria to be applied

(Title B), it was appropriate in the present case to examine in concreto whether the plaintiff is and has been a

public person, what was the notoriety of the press publishers behind the publications as well

that the possible legal effects of the plaintiff's disbarment as conditions and

of the effects of the rehabilitation that he mentions in his motivation.

77. In this respect, a business model which without - deliberately - involving the third defendant

(the establishment established in Belgium) would on the other hand entrust to Belgian employees exclusively

active within the second defendant in the United States the work of assessing the relevance

maintaining the accessibility of the impugned publications could not have the effect of weakening

the effective exercise of their rights by the persons concerned.

78. As for the reasoning of the Court of Markets according to which the possible difficulties of execution

decisions (for example with regard to entities established in the United States such as the second

defendant) cannot establish the jurisdiction of the DPA, the Litigation Chamber wishes to

specify the following.

-

The organization of Google and its subsidiaries with their own legal personality is a

organizational choice of Google which cannot affect the complete and effective protection of the

GDPR, underlined by the constant case law of the CJEU.

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- As detailed in Decision 37/200 and recalled above, the Chamber

Litigation opposes a reading of articles 3.1. and 3.2. of the GDPR which would allow a

company such as Google on the one hand to argue that it should not appoint a representative because

that it has an establishment (in this case its subsidiary in Belgium – i.e. the third

defendant) in the EU and on the other hand, that this establishment would not represent it.

- In the Google Spain case, as just explained (points 65 et seq.) the CJEU ruled

expressly recognized the responsibility of a European subsidiary of a company

multinational in the same context.

-

The effectiveness of EU law is an important factor in CJEU case law

regularly invoked in support of the interpretation of legislative instruments. The paragraph

58 of the Google Spain judgment is an illustration of this: “[..] it cannot be accepted that

the processing of personal data carried out for operational purposes

said search engine is exempt from the obligations and guarantees provided for by the

Directive 95/46, which would undermine its effectiveness and the effective and

of the fundamental rights and freedoms of natural persons that it aims to

to assure [...] ". This reasoning also applies to the GDPR.

79. In conclusion, the Litigation Chamber declares itself competent to impose measures

remedies and/or sanctions to the third defendant since, admittedly without being able to be

qualified as data controller within the meaning of Article 4.7) of the GDPR, the breaches of the

second defendant are attributable to it pursuant to Article 3.1. of the GDPR applied to the

light of the case law of the CJEU; in particular because an inseparable link between the

activities of the second and third defendants is sufficiently established and demonstrated.

AT 5

Conclusion with respect to the three defendants

80. The three defendants are part of the same company or, at the very least, they belong

to the same group of companies within the meaning of Article 4.19) of the GDPR. As provided for in recital

37 of the GDPR23, “the company group should cover a company which exercises control and its

controlled companies”.

23 Recital 37 GDPR: A group of companies should cover a controlling company and its companies

controlled, the first having to be the one which can exert a dominant influence on the other companies because, for example, of

the ownership of the capital, of a financial participation or of the rules which govern it, or of the power to enforce the rules relatin

to the protection of personal data

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81. In the present case, such a connection is not in itself sufficient to determine the

responsibilities of the various group entities. The decisive criterion is the inseparable link which must

exist between the activities of the entities of the group within the meaning of the cited case law of the CJEU.

82. Complaints as filed by the complainant require the Litigation Chamber to decide

the question of the responsibility of the various entities of the Google group of companies. The

The Litigation Chamber concludes in this respect that:

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The first defendant (Google Ireland Limited) is no longer part of the proceedings (point A.1.).

The second defendant (Google LLC) is considered to be the "responsible for

processing" for the processing in question, within the meaning of Article 4.7) of the GDPR.

The processing in question can be attributed to the third defendant (Google Belgium),

when it is found that his activities are inseparably linked to those of the person responsible for

treatment.

83. As explained above, the Litigation Chamber underlines that, in view of the requirement of

full and effective protection of the rights of data subjects, it is necessary – where appropriate

appropriate – not only to impose corrective measures and/or sanctions on an entity, but

also to ensure that the supervisory authority has sufficient guarantees to

guarantee compliance with such corrective measures and/or sanctions by the entity concerned.

84. When these warranties exist only with respect to the third defendant,

bedroom

Litigation will decide to find a breach of the GDPR in respect of both the second

than the third defendant and to impose any corrective measures and sanctions

to the latter exclusively.

B. On requests for delisting

B.1.

Regarding the refusal of erasure (Article 17 of the GDPR)

85. The requests for delisting sent by the complainant should be assessed in the light of

Article 17 of the GDPR, criteria and rules identified by the CJEU in its Google Spain judgment already

quoted, of the guidelines of the Article 29 Working Party relating to this judgment (hereinafter the guidelines

guidelines of Group 2924), lessons from the judgment of the CJEU in GC et al. c./ CNIL

of September 24, 2019, also cited, and Guidelines 5/2019 on the criteria of the right

oblivion under the GDPR in the context of the EDPS's search engines25 (hereinafter the lines

24 Article 29 Group, 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 Consteja Gonzalez (C-131/12, adopted on 2

2014, available here: https://ec.europa.eu/newsroom/article29/items/667236/en

25 European Data Protection Board (EDPB), Guidelines 05/2019 on the criteria for the right to be forgotten under the GDPR

in

July 2020. https://edpb.europa.eu/our-work-tools/our-

documents/guidelines/guidelines-52019-criteria-right-be-forgotten-search-engines_en

the case of search engines, version 2.0. from 7

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EDPS Guidelines), in order to ensure a fair balance between the rights of the data subject and

the freedom of expression of Internet users as well as their right to information. As part of the

search for this fair balance, various criteria will be taken into account, including, in particular, a

objective of reintegration after a certain elapse of time, reintegration for example of the

person concerned who, like the plaintiff in this case, has committed criminal acts. For

however, we cannot equate the "right to be forgotten" (or more precisely the right to erasure as

enshrined in Article 17 of the GDPR) to a right to a pure and simple second chance. This right to

erasure aims to protect the data subject against processing that would not be -

more - legit.

86. It should be noted at the outset that if an invasion of privacy caused by a referencing

can be amplified 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 can

have an impact on the freedom of information of Internet users. A balance between the two

interests must therefore necessarily be realized.

87. In a GC et al. v./CNIL, the CJEU specifies in this regard the following:

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

request for delisting, must verify, on the grounds of important public interest referred to in

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

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

web page in question in the list displayed following a search carried out using the name of

the data subject is necessary for the exercise of the right to freedom of information of Internet users

potentially interested in having access to this web page by means of such a search,

protected by section 11 of the Charter. If the data subject's rights protected by Articles

7 and 8 of the Charter prevail, as a general rule, over the freedom of information of Internet users, this

balance may, however, depend, in particular cases, on the nature of the information in question.

question and its sensitivity for the privacy of the person concerned as well as the interest of the

public to have this information, which may vary, in particular depending on the role played by

this person in public life […].

67.

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

data referred to in Article 8, paragraphs 1 and 5 of Directive 95/46 or in Article 9, paragraph

1, and in Article 10 of Regulation 2016/679, interference with the fundamental rights to respect for

privacy and the protection of personal data of the data subject is,

as noted in paragraph 44 of this judgment, likely to be particularly serious in

due to the sensitivity of these data.

88. Group 29 also explains that:

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

research are relevant in terms of the interest of the general public in having access to this information. The

relevance is also closely linked to the age of the data. Depending on the facts of the case, a

information published a long time ago, for example 15 years ago, may be less relevant

than information published a year ago. The data protection authorities in

will assess the relevance in the light of the parameters specified below.

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

to examine the request for delisting, the authorities responsible for data protection

must first make a distinction between private and professional life. The protection of

data – and more broadly, privacy legislation – aims first and foremost to

guarantee the fundamental right of individuals to respect for their private life (and to the protection of

data) ".

89. With regard to the elements to be taken into account in the analysis to be carried out, the Litigation Chamber, in

application of the criteria identified both by the CJEU and by the Group 29 and the EDPS, is based in

case on the following elements:

The disputed content has been processed for journalistic purposes and comes from sources

reliable journalists

90. The complainant's request for erasure is in fact directed towards the referencing of articles of

press from recognized publishers, whose professionalism is not in question.

The plaintiff disputes neither the veracity nor the legality of the disputed content

91. News articles

disputed do not reflect any staging, do not denote any

sensationalism and it was not indicated to the Litigation Chamber that they would have, in a way

or another, been contested at the time of their publication. The veracity of the information they

relay is not called into question either;

The disputed content relates to facts relating to the complainant's professional activity;

92. The press articles at issue relate to criminal convictions for acts whose

plaintiff was guilty in his capacity as a lawyer.

The disputed content relates to the plaintiff's criminal convictions for several

serious offenses

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93. The plaintiff was in fact the subject of two successive convictions for criminal offenses

sanctioned, abusing his titles of lawyer and curator and the trust of third parties in these

qualities. With regard to sensitive data, more particularly data relating to

criminal convictions within the meaning of Article 10 of the GDPR, it is certainly important to take this

sensitivity since potentially, the processing of such data is more likely

to be detrimental to the person concerned than the processing of data which would not be,

in particular because of the risk of discrimination or stigmatization. In its guidelines26,

Group 29 qualified this, however, indicating that “generally speaking, the authorities

responsible for

data protection are more likely to consider

the

de-listing of search results relating to relatively minor offenses that have

been perpetrated a long time ago, than considering this one for more serious offenses that have been

committed more recently. However, these issues require careful consideration and

will be dealt with on a case-by-case basis.

94. As to the measures of reprieve and suspension of the pronouncement granted by the courts and tribunals
of the judiciary or the absence of firm imprisonment invoked by the plaintiff, as well as
prohibition of commerciality which he cites, they do not in themselves carry the opinion of the Chambre
Litigation, a decrease in the seriousness of the facts.
95. The Complainant also invokes that he is approaching the conditions for making a request for
rehabilitation at the end of which the criminal convictions of which he was the subject would be erased
of his criminal record. In this regard, he considers it fundamentally unacceptable that a private company
such that Google is authorized to maintain information relating to the convictions of which it has been the subject
accessible to the public for longer than competent public authorities could
matters of justice.
96. The Litigation Division notes at the outset that the complainant does not indicate that he was actually
rehabilitated, nor have made a request to that effect,
97. The Litigation Chamber also notes that the right to freedom of expression and information of
on the one hand and criminal records on the other pursue distinct objectives
98. As specified in article 589 of the Code of Criminal Procedure (C.I.Cr), the criminal record
constitutes the national automated record of criminal convictions and certain other
decisions (social defence) relating to a given person. It is kept under the authority of the Minister
of Justice. Its purpose is in particular to allow the judge to pronounce the most appropriate sentence.
The magistrate can, in fact, note that a person is in a state of recidivism, deduce in
certain cases that the granting of the stay is now prohibited or that the stay must be this time
26 Article 29 Group, 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 Consteja Gonzalez (C-131/12, adopted on 26
2014, page 23 available here: https://ec.europa.eu/newsroom/article29/items/667236/en

here revoked. Knowledge of an individual's criminal record also allows the
magistrate to assess whether it is necessary to place the defendant in preventive detention when an offense comes

to be found at his expense. For these purposes, the judicial authorities are the first recipients of the criminal record.

99. In order to respect the right to protection of privacy and to promote the social reclassification of convicted persons, while allowing for the administration of criminal justice, the law limited the authorities authorized to take cognizance of the information recorded in the criminal record according to methods that vary according to the quality of the recipients and the use to which the data is intended. In addition to the judicial authorities who have the widest access in the framework of the missions assigned to them by law (point 98), the administrative authorities responsible for the execution of judicial decisions, individuals (access to extracts from by employers in certain sectors of activity) and foreign authorities are, under strict conditions, authorized to access certain data contained in the locker judicial (article 589 of the C. I. Cr). The general public does not have access to it. However, it is not not deprived of the benefit of information provided by the press on the criminal acts and their author as well as on the convictions incurred.

100. Rehabilitation is the possibility, for a natural or legal person sentenced by the courts, to have all convictions pronounced in Belgium erased from his criminal record. The rehabilitation is organized by articles 621 to 634 of the C.I.Cr. It is, if necessary, granted by the indictment division which assesses whether the applicant meets the conditions laid down by the law. Rehabilitation puts an end, for the future, on the part of the convicted person, of all the effects of the sentence, without prejudice to the rights acquired by third parties. Thus, it does in particular cease the incapacities that resulted from the conviction or still prevent this conviction serves as a basis for establishing a recidivism, for example (article 634 of the C. I. Cr).

101. The pardon granted, nor was the information recorded in the criminal record judiciary, is not made known to the public. It does not therefore follow either that fact of the rehabilitation, the public would have, as an immediate consequence (that the legislator did not otherwise not provided for), no interest in receiving this information. No automaticity is to be deducted

as soon as the data processing carried out by the criminal record (and erased if necessary)

pursue an objective distinct from that of the right to freedom of expression and information fulfilled

by press activity. Talk about maintaining a virtual criminal record to qualify accessibility

preserved from press articles after a rehabilitation is a semantic shortcut that does not resist

not on analysis.

102. The foregoing does not mean, however, that the pardon granted to a convict is without

no consequence on the right to delisting of this same convict with regard to articles

of the press relating to these convictions. Simply, rehabilitation is one element among all those

which must be taken into account in assessing the public interest in maintaining a

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accessibility to information. It will certainly be able, as Google specified during the hearing on 27

September 2021, depending on the circumstances of the case and added if necessary to other

criteria, tip the scales further in favor of erasure.

The complainant played and continues to play a role in public life

103. The Litigation Chamber notes in this respect that the plaintiff claims that he is not a person

public or play a role in public life within the meaning of the Article Group Guidelines

29 already quoted27.

104. Under these, Group 29 states:

“It is not possible to establish with certainty the type of role in public life that a person

physical must play to justify public access to information about said person by means of

from 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

allow the public to seek information concerning the role and activities of these

people 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”. As a general rule, 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 states that
“public persons are those who exercise public functions and/or use
public resources and, more generally, all those who play a role in the life
public, whether political, economic, artistic, social, sporting or otherwise”.
105. In support of these considerations, the Litigation Chamber is of the opinion that at the material time, the
complainant undeniably played a role in (local) public life by virtue of his status as a lawyer,
27 Article 29 Group, 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 Consteja Gonzalez (C-131/12, adopted on 26
2014, available here: https://ec.europa.eu/newsroom/article29/items/667236/en

given his notoriety in his professional environment (particularly through his publications
legal) and its role as curator of other companies that have received media attention
independently of the criminal acts which will be reproached to him later. The circumstance that the
complainant would not have received any more media attention since his convictions will be taken into account.
account by the Litigation Chamber. The fact remains that, given the nature of its
activity of legal counsel, the plaintiff retains a certain role in public life in the sense that,
as Group 29 points out in its aforementioned guidelines, “there are reasons to allow
the public to seek information regarding the role and activities of such persons in
public life”. The question of whether there are sufficient reasons is not assessed in the light of

of this criterion alone but with regard to all of these what is used to determine the

Litigation Chamber.

The facts described in the disputed content remain relatively recent and present

in any case still an interest in the current professional activities of the

plaintiff

106. The Litigation Chamber notes in this respect that the plaintiff claims that the publications date

for some of ten years or at least 7 or 8 years already. Considering this

passage of time and his change of professional activity (the plaintiff invokes his

current position as a lawyer in an SME), the complainant argues that the information that these

publications continue to circulate are no longer relevant today. Bedroom

Litigation does not disagree that the anteriority of the facts is a criterion to be taken into account and

that depending on the concrete circumstances of each request, a period of 10 years may or may not be considered

excessively long. In this case, even after 10 years, the relevance of the accessibility of the information

relayed by the disputed articles subsists since it is true that the plaintiff no longer exercises the function

as a lawyer, but he is pursuing a career in legal advice, also based on a

trust. His current career is undeniably a continuation of the

profession of lawyer that he is no longer authorized to practice following his striking off.

Conclusion

107. In conclusion, the Litigation Division is of the opinion that it follows from the balancing carried out

the support of all the above elements, which the public still has an interest today

strictly necessary to have access to the disputed press articles. The seriousness of the facts (offences

criminal and deontological), their relatively recent nature, their relevance with regard to

the current professional activity of the complainant and the quality of the latter - both today and more

even at the material time - are decisive in the decision of the Litigation Chamber.

The passage of time, the change in the complainant's professional activity (but which retains

a link with his previous capacity as a lawyer) or even the suspended sentences are not of such a nature

to dilute this interest

to the point of justifying the delisting of the articles concerned. the

referencing of the disputed content is thus deemed strictly necessary for freedom of expression

and information in accordance with Article 17.3. of the GDPR.

108. Accordingly, and in support of the foregoing reasoning, the Litigation Chamber decides to classify the

complaint without follow-up against the second defendant and the third defendant (as to

the latter, reference is made to the reasoning developed by the Litigation Chamber in title A.4.)

on a technical ground in that the plaintiff wrongly invokes a breach of Article 17 of the

GDPR on the part of the latter in that "Google" would have refused to dereference the articles

litigious.

109. Without prejudice to the foregoing, the Litigation Division would like to add that it is nonetheless

of the opinion that the reasoning in support of which the second defendant made known its position

to the complainant, especially in his response of September 19, 2019, was particularly

weak (item 11). This motivation should have highlighted the criteria taken into account and their

application to the concrete factual elements of the plaintiff's claim. It is indeed important that the

data subject has a decision that is sufficiently reasoned to understand all

elements on which the data controller relied to reach his decision.

This reasoning must also allow the complainant to challenge the decision thus taken before

ODA. The Litigation Chamber adds that in any case, standardized decisions do not

would not be eligible.

110. In support of the foregoing, the Litigation Division finds a breach of Article 12.1 of the

GDPR28 combined with article 17.3. of the GDPR on the part of the second defendant, breach

which it also attributes to the third defendant in support of the reasoning it developed

in Part A.4. In doing so, as it will detail below (points 114 et seq.), the Chamber

Litigation does not exceed its powers when the complaint lodged by the complainant

denounces a breach of Article 17 of the GDPR which must be applied according to the terms

provided for in Article 12 of the GDPR, including therefore by providing a response to the exercise of this

understandable law, easily accessible, formulated in clear and simple terms as required

article 12.1 of the GDPR29.

28 Section 12.1. states that “1. The controller shall take appropriate steps to provide any information referred to

in Articles 13 and 14 as well as to make any communication under Articles 15 to 22 and Article 34 with regard to the

processing to the data subject in a concise, transparent, comprehensible and easily accessible manner, in clear terms

and simple, in particular for any information intended specifically for a child. The information is provided in writing or by

other means including, where appropriate, electronically. When the data subject so requests, the

information may be provided orally, provided that the identity of the data subject is demonstrated by other

means ".

29 See. also in this sense decision 127/2021, of the Litigation Chamber points 38 and following.

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B.2.

As regards the alleged breach by the complainant of Article 12. 1-2 of the GDPR as well as Article

12.3. of the GDPR, combined with Article 17 of the GDPR

111. The complainant asks the Litigation Chamber to also find that “Google” has not

complied with article 12.1 and 12.2. of the GDPR by not providing clear information,

understandable and accessible as to how to submit a request for delisting

and therefore not facilitating the exercise of his right, by sending him from one entity to another (points 12-

15 and 29).

112. The complainant also indicates that the Litigation Chamber should find that “Google”

did not provide adequate follow-up to his request submitted on February 24, 2021 by responding only

on April 27, 2021 in contravention of section 12.3. of the GDPR30 (points 24, 26 and 29.).

113. The Litigation Chamber notes that the grievances based on the violation of these provisions have certainly

were explicitly expressed for the first time by the complainant in its summary conclusions

(item 29). These provisions nevertheless contribute to the effective application of Article 17 of the
GDPR since they define the terms according to which the rights of data subjects
(the right to erasure in this case), are intended to apply as well as the obligations which
ensue for the data controller.
114. The Litigation Division underlines in this respect that within the framework of the control mission of the
compliance with the GDPR entrusted to the DPA (of which it is the administrative litigation body) both by the
European legislator (article 58 of the GDPR) and by the Belgian legislator (article 4 LCA), it examines
the facts reported by the complainant in the light of the articles of the GDPR referred to in the complaint form
that he files as well as in the light of the articles of the GDPR that he subsequently covered by means of
its conclusions insofar as these are related to those invoked in the complaint. The
Litigation Chamber decides here, as it did in its Decisions 19/2020 and 38/2021
already, that the complainant cannot be required to identify in a clear, precise and exhaustive manner the
legal provisions in support of which he lodges his complaint. This work of qualifying the facts –
constituting breaches of the regulations in force in terms of data protection
where applicable – falls to the Inspection Service and the Litigation Chamber.
30 The Litigation Chamber recalls here that under the terms of Article 12.3. of the GDPR, "the controller provides the data subje
concerned information on the measures taken following a request made pursuant to Articles 15 to 22 (in
therefore included in Article 17 mobilized in this case), as soon as possible and in any case within one month from
of receipt of the request. If necessary, this period may be extended by two months, taking into account the complexity and the n
requests. The controller shall inform the data subject of this extension and the reasons for the postponement within a period
one month from receipt of the request.

115. If the Litigation Division were to refuse to consider grievances brought by the plaintiff in
course of proceedings relating to the facts denounced in its complaint, it would considerably reduce,
or even seriously jeopardize the effectiveness of the exercise of the right to lodge a complaint recognized at
GDPR Article 77. To say otherwise would amount to requiring the complainant to identify, under the terms

of his complaint, all grievances relating to the facts he denounces. This would erode, the Litigation Chamber
would like to point out that, in an unacceptable way, the right to file a complaint and, more generally, the right
fundamental to the protection of data which, to be effective, must be able to be controlled by the
supervisory authorities, in particular via the complaints it receives. The control of law
fundamental to the protection of data by an independent authority indeed contributes to
the essence of this right and is enshrined in Article 8.3. of the Charter of Fundamental Rights.
116. In the present case, since the facts are not disputed and do not require additional findings, the
Dispute Chamber did not, as permitted by Article 94.3° LCA, have recourse to the Inspection.
The absence of recourse to the Inspectorate when the facts are clearly established cannot have the
consequence of depriving the Litigation Division of examining the facts denounced by the complaint
regard to all of the relevant grievances insofar as they are legal arguments related
to the facts reported in the complaint and in respect of the adversarial debate as she pointed out
in its Decision 17/202031. In the present case, the complaints based on non-compliance with the various paragraphs
of Article 12 of the GDPR brought by the complainant by way of pleadings are intrinsically linked
the breach of Article 17 of the GDPR raised from the outset by the complainant under the terms of
his complaints. The defendants also had the opportunity to defend themselves against this grievance.
according to their (summary) conclusions (points 26 and 27).
B.2.1. Regarding the breaches of Article 12.1 and 12.2 of the GDPR combined with Article 17 of the GDPR
117. With regard to the breaches invoked in Article 12.1. and 12.2. of the GDPR by the complainant, it is not
disputed that the latter initially received information from the third defendant
that he should address his request for delisting to the first defendant. He is not
challenged either that when he approached the latter, the latter referred him to the second
defendant. (items 13-15).
118. The fact that during each response, a link to the appropriate form would have been referenced
is, in the opinion of the Litigation Chamber, not likely to dissipate the confusion created in the
of the complainant because of these successive referrals to one and the other Google entity. Indeed, he cannot

reasonably be expected of

the person concerned whom he knows

the roles and

responsibilities of each Google entity.

31 Points 20 to 28.

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119. In support of the foregoing, the Litigation Division finds a breach of Articles 12.1 and

12.2 combined with Article 17 of the GDPR on the part of the second defendant, breach

that it also imputes to the third defendant in support of the reasoning that it has

developed in Section A.4.

B.2.2. As to the breach of Article 12.3. of the GDPR combined with Article 17 of the GDPR

120. As it mentioned above, it is undisputed that the second defendant did not

replied to the complainant's request of February 24, 2021 only on April 27, 2021 (points 24 and 26). This

response was therefore communicated more than two months after the complainant's request without the

complainant was informed of an extension of the deadline within which Google undertook to respond to him

and, a fortiori, of the reasons which would have justified the extension of this period. The Litigation Chamber

is however of the opinion that account should be taken of the fact that on February 24, 2021, the complainant

had already lodged Complaint No. 2 with the DPA, of which the second defendant was aware as soon as

on 26 February, the date on which counsel for the complainant informed the counsel of the second

defendant. If, strictly speaking, there has been a breach of Article 12.3. GDPR combined with

Article 17 of the GDPR on the part of the second defendant, which is also attributable to the

third defendant in support of the reasoning developed by the Litigation Chamber under

A.4. above, the Litigation Chamber specifies here from the outset that in view of the circumstances

concrete facts of the case, it will not pronounce any sanction for this fact.

121. Overly, the Litigation Chamber wishes to specify that it is aware that in the judgments

2019/AR/1006 of October 9, 201932 and 2019/AR/1234 of October 23, 201933, the Markets Court has

concluded, as the defendants point out, that exceeding the time limit of Article 12.3. from

GDPR “is niet op zich bij wijze van een wettelijke regel gesanctioneerd”.

122. The Litigation Chamber nevertheless emphasizes that the exercise of the rights of persons

concerned can only be truly effective if the data controller is forced to

respond to the exercise of such rights within a reasonable period, which has been set by the legislator

European to one month, with some exceptions. To say otherwise would be tantamount to allowing the controller

of treatment not to react or to react too late in such a way that the exercise of the right

by the person concerned would be totally futile. In its Guidelines for the

32 The judgment of the Market Court is published on the APD website: https://www.autoriteprotectiondonnees.be/publications/a

october-2019-de-la-cour-des-marches-available-in-dutch.pdf

33 The judgment of the Market Court is published on the APD website: https://www.gegevensbeschermingsautoriteit.be/publicat

van-23-oktober-2019-van-het-marktenhof.pdf

transparency34, Group 29 indicates that although the elements of the right to information enshrined

in Articles 13 and 14 of the GDPR must be communicated to the data subject at the time of the

collection or at the latest within one month of obtaining them, there are de facto circumstances

which require that this information be given before the expiry of this one-month period

to maintain utility. The same applies to the time limit for responding to a request to exercise

right provided for in Article 12.3. of the GDPR, especially since the initial period of one month can be extended by

case of a complex request provided that the data controller informs the applicant.

Article 12 of the GDPR is, in the same way as the rights of the data subject enshrined in the

Chapter III of the GDPR, moreover explicitly sanctioned by Article 83.5 b) of the GDPR35 without

section 12.3. not in itself

123. The Litigation Chamber is of the opinion that by following, however, quod non, the case law of the Court of

markets (point 121), it would nonetheless remain empowered to establish and sanction a

failure to exercise a right of the data subject, for example Articles 15 or 17 of the

GDPR to name but two, as soon as no response or a late response – even

favorable – (n') would have been provided. Article 12 of the GDPR enshrines, as has already been

underlined, the methods according to which the rights must be exercised and therefore influences the observation

whether or not these rights are respected.

Regarding corrective measures and sanctions

124. Under Article 100 LCA, the Litigation Chamber has the power to:

1° dismiss the complaint without follow-up;

2° order the dismissal;

3° order a suspension of the pronouncement;

4° propose a transaction;

(5) issue warnings or reprimands;

6° order to comply with requests from the data subject to exercise these rights;

(7) order that the person concerned be informed of the security problem;

8° order the freezing, limitation or temporary or permanent prohibition of processing;

9° order the processing to be brought into conformity;

34 Article 83.5.b): "Violations of the following provisions shall be subject, in accordance with paragraph 2, to administrative fines

amounting to up to EUR 20,000,000 or, in the case of a company, up to 4% of the total worldwide annual turnover of

the previous financial year, whichever is higher: (…) (b) the rights enjoyed by data subjects under the

articles 12 to 22".

35 Group 29, Guidelines on transparency within the meaning of Regulation (EU) 2016/679, WP 260, points 30-32 and 48.

10° order the rectification, restriction or erasure of the data and the notification thereof

data recipients;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

13° to impose administrative fines;

14° order the suspension of cross-border data flows to another State or an organization

international;

15° forward the file to the public prosecutor's office in Brussels, who informs it of the follow-up

data on file;

16° decide on a case-by-case basis to publish its decisions on the website of the Authority for the protection of

data.

125. In the present case, with regard to the complaints lodged by the complainant, the Chamber was asked

Litigation to decide the question of whether it was rightly that Google had refused to do

right to the request for erasure made by the plaintiff with regard to the disputed articles. It results

of the above analysis that it is indeed right that the second defendant did not give

immediately in favor of the plaintiff's request for delisting. No breach was

noted in this respect in its head by the Litigation Chamber. (items 107-108). About the

third defendant, given the reasoning developed by the Litigation Chamber in

Title A.4., no breach can be imputed to it regarding this alleged breach Finally, the

first defendant was exonerated as he was motivated on points 39-43

previous ones.

126. In the light of the foregoing and on the basis of the powers attributed to it by the

legislator under section 100.1. of the LCA, the Litigation Chamber therefore decides to proceed

the dismissal of the complaint – at least partially with regard to the second and the

third defendant (see below) -, in accordance with Article 100.1., 1° of the LCA.

127. In matters of dismissal, the Litigation Chamber must justify its decision in stages

and:

- to pronounce a classification without technical follow-up if the file does not contain or not enough

element likely to lead to a sanction or if it contains a technical obstacle

preventing him from rendering a decision;

- or pronounce a classification without continuation of opportunity, if in spite of the presence of elements

likely to lead to a sanction, the continuation of the examination of the file does not seem to him

timely given its priorities.

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128. If the dismissal takes place on the basis of several reasons (respectively technical or

opportunity), the reasons for dismissal should be addressed in order of importance.

129. In the present case, the Litigation Chamber therefore orders a classification without technical follow-up

pursuant to Article 100.1., 1° of the LCA, provided that, following the examination of the complaint and the

facts it reports, the Litigation Chamber concludes:

- with regard to the first defendant: that no breach can therefore be attributed to it

that it is totally unrelated to the disputed processing (heading A.2.);

- with regard to the second and third defendants: that it does not have any information

likely to lead to a finding of violation of the GDPR on their part with regard to the refusal to

delisting opposed by the second defendant to the plaintiff's requests (points 100-

101) .

130. As for the breaches noted in Article 12.1. of the GDPR (lack of quality of the response

addressed to the request for erasure – point 110) combined with Article 17.3 of the GDPR in respect of

second and third defendants, as well as Articles 12.1 and 12.2. GDPR (failure to

transparency and facilitation of the rights of the complainant – point 119) combined with Article 17 of the GDPR

also in respect of the second and third defendants, the Litigation Chamber decides

to issue a reprimand to

the third defendant in view of

all of the

circumstances of the case. For the reasons it has developed above (points A.4. and A.5.), the

Litigation Chamber limits itself to addressing this sanction to the third defendant, excluding

of the second defendant and this, notwithstanding the finding of breach on the part of this

last.

III. Publication of the decision

131. Considering the importance of transparency with regard to the decision-making process and the decisions of the Litigation Chamber, this decision will be published on the DPA website subject to the deletion of the direct identification data of the complainant and of the persons cited, whether physical or legal, to the exclusion of the defendants.

132. The Litigation Division specifies that the publication of this decision with identification of the defendants pursues several objectives.

133. First of all, it pursues an objective of general interest, because the present decision addresses the question the responsibilities (of subsidiaries in the Union) of Google under the GDPR. In view of the importance of the "Google" search engine for many Internet users and the fact that a very large number of people residing in Belgium are referenced in one way or on the other by the “Google” search engine, the Litigation Chamber considers it relevant to

give this decision publicity that makes it possible to make Internet users aware of the rights that are theirs under the GDPR. As such, even if the decision directly concerns only the plaintiff, it is also of interest to a large part of the general public36.

134. The identification of the defendants is also necessary for a proper understanding of the decision and therefore, the materialization of the objective of transparency pursued by the policy of publication of its decisions of the Litigation Chamber.

FOR THESE REASONS,

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

- to dismiss complaints No. 1 and No. 2 against the first defendant pursuant to of article 100, 1° of the Law of 3 December 2017 establishing the Authority for the protection of data (hereinafter, the ACL) for technical reasons;
- to close complaints n°1 and n°2 with regard to the second and third defendants pursuant to Article 100, 1° of the Law of December 3, 2017 creating

the Data Protection Authority (hereinafter, the LCA) for technical reasons when it is at

wrong that the complainant invokes a breach of Article 17 of the GDPR on the part of the latter

only, however, in that “Google” refused to delist the disputed articles;

- to issue a reprimand to the third defendant pursuant to Article 100, 5° of the Law

of 3 December 2017 establishing the Data Protection Authority (hereinafter, the LCA)

taking into account the shortcomings noted in articles 12.1. and 12.2. combined with Article 17 GDPR

under this decision.

Pursuant to Article 108, § 1 of the LCA, this decision may be appealed to the Court of

contracts within thirty days of its notification, with the Authority for the protection of

given as a defendant.

(Sé). Hielke Hijmans

President of the Litigation Chamber

36 See. decision 37/2020 of the Litigation Chamber, points 183 et seq. Voy. also House Decision 67/2020

Litigation, point 30: https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-63-2020.pdf