

Litigation Chamber

Decision on the merits of the transaction

156/2022 of November 4, 2022

File number: DOS-2020-03889

Subject: transaction in the file "Use of cookies on the De Tijd website"

(Mediafin SA)

The Litigation Chamber of

the Data Protection Authority, composed of

Mr. Hielke Hijmans, President;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and

to the free movement of such data, and repealing Directive 95/46/EC (General Regulation on the data protection), hereinafter "GDPR";

Considering the law of December 3, 2017 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;

Having regard to the settlement proposal submitted to the party on September 14, 2022, as annexed to the this Decision and forming an integral part thereof;

Made the following decision regarding:

The part :

Mediafin SA;

Represented by Me Tim VAN CANNEYT and Me Louis VANDERDONCK.

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I. Pre-transaction procedure

Click or tap to enter a date.

1.

In the context of this file concerning Mediafin SA, a transaction proposal has been submitted to this party on September 14, 2022. The full content of this proposal of settlement is annexed to this decision.

2.

On September 30, 2022, the party submitted a number of requests for clarification regarding the aforementioned proposed transaction.

3.

On October 7, 2022, a response was given to these requests for clarification from the party. At the request of the party in its communication of September 30, 2022 and given the response late to the requests made, a postponement of the deadline for responding to the proposal 14 day transaction was granted. Also on October 7, 2022, counsel for the party acknowledge receipt of this reply.

4.

On October 27, 2022, a communication is sent to the party with the question of knowing whether the transaction could be finalized, given the expiry of the deadline for responding to the transaction on October 28, 2022.

5.

On October 28, 2022, the party sends a number of requests for clarification regarding the proposed transaction.

6.

Also on October 28, 2022, an answer is given to the part concerning its clarification requests. In this context, several formulations are proposed that can serve to clarify the settlement proposal in the (this) final decision of

transaction. In the same response to the party, an extension of the 6-day deadline is granted, with the request to transmit any requests on the fifth of these six days in order to be able to respond in time, if necessary.

7.

On November 3, 2022, the Litigation Chamber receives a response from the party that it accepts the transaction proposal as well as the clarifications submitted to it.

8.

Following the express acceptance of the party, a transaction was therefore established on November 3, 2022. This decision formalizes this transaction.

II. Terms of the transaction

9.

The conditions of the transaction are in principle identical to those contained in the transaction proposal of September 14, 2022. For this reason, this transaction proposal transaction forms an integral part of this decision.

10. Following the requests in this regard made by the party, the following explanations are made, in addition to the conditions set out in the transaction proposal of the

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September 14, 2022. In case of possible ambiguity arising from the following formulations in the formal settlement decision, the wording of the text of the decision takes precedence over that of the settlement proposal attached to the decision.

11. The Litigation Chamber first of all specifies that the transaction was not preceded a deliberation on the merits concerning the facts of the file: the arguments put forward by the party in its defense were therefore not considered when establishing the transaction ; there was also no hearing.

12. This settlement decision concerns the potential violation of the law of June 13, 2005 (the legal standard in force at the time of the findings in this file by the Service

ODA Inspection Board), as well as potential violations of the General Rules for the data protection (GDPR), and with regard to cookies, or more generally storage and consent for placement and further processing of information on the user's device as a data subject within the meaning of the right to protection Datas. The transaction decision relates to the websites involved and mentioned in the file and concerns the party to whom the settlement proposal is addressed.

13. The underlying transaction decision relates only to a specific time period: the period from May 25, 2018 to November 30, 2020 inclusive, date of submission of the report complementary to the Inspection Service.

14. This transaction exhausts the powers of the Litigation Chamber to take corrective actions with respect to potential violations within the boundaries of the elements and the legal provisions described above as well as in the transaction proposal and within the period specified above. The Litigation Chamber emphasizes that the transaction does not affect the powers of courts and other authorities to find violations, if any. The settlement in this case only binds the Chamber Litigation of the Belgian Data Protection Authority.

III. Publication of the decision

15. Given the importance of transparency regarding the decision-making process of the Chamber Litigation, this decision is published on the website of the Protection Authority Datas.

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FOR THESE REASONS,

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

- under article 100, § 1, 4° of the LCA, to validate the transaction as accepted

by the party on November 3, 2022, on the terms set out in this decision and its appendix.

Pursuant to Article 108, § 1 of the LCA, this decision may be appealed to the Court of Markets (Brussels Court of Appeal) within thirty days of its notification, with the Data Protection Authority as defendant.

Such an appeal may be lodged by means of a contradictory request which must include the particulars listed in article 1034ter of the Judicial Code¹. The contradictory request must be filed with the registry of the Markets Court in accordance with article 1034quinquies of the Judicial Code², or via the e-Deposit computer system of Justice (article 32ter of the Judicial Code).

(Sr.) Hielke HIJMANS

President of the Litigation Chamber

1 The request contains, under penalty of nullity:

the indication of the day, month and year;

1°

2° the surname, first name, domicile of the applicant, as well as, where applicable, his qualities and his national register number or

Business Number ;

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

4° the object and the summary statement of the means of the request;

5° the indication of the judge who is seized of the application;

6° the signature of the applicant or his lawyer.

2 The request, accompanied by its appendix, is sent, in as many copies as there are parties involved, by letter recommended to the court clerk or filed with the court office.

Litigation Chamber

RECOMMENDED

Secretariat

T: +32 (0)2 274 48 56

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For the attention of Mediafin SA,

Represented by Me Tim VAN CANNEYT and Me Louis

VANDERDONCK,

Respondent

Your references

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Our references

DOS-2020-03889

Appendix(es)

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Date

09/12/2022

Subject: examination of the propensity for a transaction in the file "Use of cookies on the website of De Tijd" (Mediafin NV)

Dear,

In the context of the large number of files awaiting examination by the Chamber

Litigation, which leads to long processing times for all cases, the Chamber

Litigation has decided, pursuant to Article 100, § 1, 4° of the law creating the Authority of

Data Protection ("LCA")³, to submit by this letter a proposal for

transaction in the file referred to under the heading ("transaction proposal").

The transaction proposal falls within a context where two of the ten files related to this

folder (the ten folders called "cookies on press sites") have already led to a

decision on the merits in which the Litigation Division found violations giving rise to

twice led to the imposition of an administrative fine of EUR 50,000⁴.

This transaction proposal is made without any detrimental acknowledgment and does not bind

in any way the Litigation Chamber as to a possible position in the event of refusal

of the transaction proposal. The Litigation Chamber refers in particular in this case

Decision 85/2022 of 25 May 2022 of

3 MB, January 10, 2018.

⁴ See

<https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-85-2022.pdf>

103/2022

<https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-103-2022.pdf>.

uniquely

available

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the Litigation Chamber, available

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its powers to ascertain whether or not violations have been committed and, if necessary, to use of the powers of sanction conferred on it by European law⁵ and Belgian law⁶.

If the party to whom the settlement proposal is addressed expressly refuses this proposal, the Litigation Chamber will continue the procedure on the merits and will deal with the case other than by transaction.

a) Procedural status of the settlement proposal and the settlement

The transaction proposal submitted here precedes the deliberation phase relating to the finding of potential violations in this case. In this sense, the Chamber

Litigation only takes into account, in its settlement proposal, the findings that

were mentioned in the report of the Inspection Service of the Authority for the protection of data, without verifying the accuracy of these findings.

Given that the procedure before the Litigation Chamber of the Data Protection Authority does not

cannot be assimilated to the procedure of criminal law, "the transaction" as provided for by the

Belgian legislator under Article 100, § 1, 4° of the LCA cannot be assimilated to the

"transaction" provided for in criminal law⁷. The transaction within the meaning of the LCA has indeed a following character. generis.

First of all, the Litigation Chamber does not pronounce *hic et nunc* on the existence

possible violations, even if the procedure is already in the examination phase "as to the

merits" in accordance with Articles 98 and 99 of the LCA. In this context, the Litigation Division makes

use of the possibility at its disposal and of its explicit competence to formulate a proposal

of transaction, similar to what is also possible in the case of a "transaction" in criminal matters.

In addition, the Litigation Division mentions the precise facts, situating them in time and in

space, following which the transaction proposal intervenes (*infra*). Although, as stated

above, the Litigation Chamber does not pronounce *hic et nunc* on the existence of violations, it

must nevertheless be based on the facts presented in the file to formulate the proposal for

transaction. The amount that the Litigation Chamber proposes to the party to pay must indeed be proportionate to the nature of the possible violations. The settlement proposal therefore bears on certain facts in a given period and (technical) context, as described in the

5 See Article 58 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter "GDPR".

6 See Article 100 of the LCA.

7 See in particular articles 216bis and 216ter of the Code of Criminal Procedure ("CIC") concerning the termination of the action

public for certain offenses subject to the fulfillment of certain conditions (respectively the payment of a sum of money and the execution of measures and compliance with conditions).

report of the Inspection Service, the facts which do not fall within this period and this context not covered by the transaction⁸.

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b) Findings by the Inspection Department in connection with the transaction proposal

In this case, the findings made by the Inspection Service of the Authority for the Protection of data that the Litigation Chamber takes into account - without however ruling on the merits

- when proposing the conditions for the transaction are the following⁹:

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"Finding 1: placement of cookies not strictly necessary before the collection of the consent"¹⁰

"Finding 2: social network cookies and statistics without consent"¹¹

"Finding 3: faulty cookie policy"¹²

"Finding 4: unjustified cookie retention periods"¹³

"Finding 5: withdrawal of consent not respected"¹⁴

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c) Substantive conditions

As part of the settlement proposal, the conditions accepted by the party to the procedure

are the following :

- Mediafin SA undertakes to pay the sum of EUR 10,000 to the Belgian Treasury, in accordance
in accordance with the terms defined by the Federal Public Service Finance¹⁵. Mediafin SA waives all
civil and other action related to the transaction, for example, but not limited to, the case of a
any unfavorable communication relating to this transaction;

- The Litigation Chamber does not make any finding of possible violations and
formally closes the procedure with the transaction resulting from this proposal, if
Mediafin SA accepts the transaction and respects it;

- The Litigation Chamber does not consider the acceptance of a transaction proposal
as a confession which could in particular be used as an aggravating circumstance when

⁸ In this sense, the ne bis in idem principle does not apply to facts that do not fall within this scope.

⁹ When taking into account the findings of the Inspection Service which form part of this transaction, the Chamber
Litigation also fully takes into consideration the additional investigation report of the Inspection Service
dated November 30, 2020 in DOS-2020-03889.

¹⁰ Report of the Inspection Service of the Data Protection Authority of October 7, 2020 in the file
DOS-2020-03889 ("Inspection Report"), p. 12-3.

¹¹ Inspection report, p. 13-4.

¹² Inspection report, p. 14-5.

¹³ Inspection report, p. 15-6.

¹⁴ Inspection report, p. 16.

¹⁵ In accordance with Article 107 of the LCA, "the penalty payments, fines and settlements imposed pursuant to this

law shall be paid or collected for the benefit of the Treasury by the general administration of Collection and Collection."

(proper underlining)

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the establishment of the sanction in future proceedings before the Chamber

Litigation¹⁶;

- In the event of explicit acceptance or in the absence of reaction from the party to which the

transaction proposal is sent within the period specified below, this proposal

of transaction will take the form of a formal decision which will be published on the website

Internet of the Data Protection Authority, without omitting the identification data

direct.

If the conditions of the transaction are not respected, the Litigation Chamber reserves the right to

right to cancel the settlement decision and to continue the procedure in this file for another

way, or to end it.

d) Deadline

Mediafin SA must indicate within 30 days of receipt of this proposal for

transaction whether it accepts it or not. In the absence of a reaction, the transaction proposal will be

considered accepted under the conditions set out above.

e) Existence of other controllers and/or processors

This transaction proposal is addressed solely to Mediafin SA. She doesn't take

position on whether and to what extent other actors are responsible for

potential breaches that gave rise to this Proposed Settlement.

f) Validation of the transaction

If the settlement proposal gives rise to a formal decision to settle due to

the explicit acceptance or lack of reaction, within the aforementioned period, of the party to

which the settlement proposal is addressed, an appeal may be lodged by the "party

causing grievance"¹⁷.

16 See in particular Article 83, paragraph 2, point e) of the GDPR in the context of the imposition of administrative fines when the finding of violations following "any relevant violation previously committed by the person in charge of the processor or processor".

17 Under Article 108, § 1 of the LCA, this decision may be appealed to the Court of Markets (Brussels Court of Appeal) within thirty days of its notification, with the Data Protection Authority given as a defendant.

This appeal may be lodged by means of a contradictory request which must include the particulars listed in article 1034ter of the Judicial Code. The contradictory request must be filed with the registry of the Market Court in accordance with article 1034quinquies of the Judicial Code, or via the e-Deposit computer system of Justice (article 32ter of the Judicial Code).

The final transaction does not affect the rights of any individuals (in this case, it is not of a complaint file) having suffered damage to claim damages before a civil court on the basis in particular of Article 82 of the GDPR.

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Please accept, Madam, Sir, the assurance of my highest consideration.

(Sr.) Hielke Hijmans

President of the Litigation Chamber