

Litigation Chamber

Decision on the settlement fund 151/2022

from October 21, 2022

File number: DOS-2020-03297

Subject: Use of cookies on L'Avenir websites

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

Hijmans, chairman;

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";

Having regard to the Law of 3 December 2017 establishing the Data Protection Authority (hereinafter

ACL);

Having regard to the internal regulations as approved by the House of Representatives on 20

December 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 and

forming an integral part of this decision;

Made the following decision regarding:

The part :

S.A. Groupe IPM, [...], represented by Maître Frédéric DECHAMPS.

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I. Procedure prior to the decision:

1.

In the context of this case involving S.A. Groupe IPM, a proposed transaction

was submitted to this party on September 14, 2022. The full contents of the letter containing this transaction proposal is appended to this decision.

2.

On September 26, 2022, the party submitted a letter to the registry of the Litigation Chamber requesting a modification of the conditions proposed in the transaction proposal.

3.

On October 5, 2022, a response was given to this request for modification of the terms. The request was rejected.

4.

On October 10, 2022, the party submitted a letter to the registry of the Litigation Chamber, in which the party declares that it formally and expressly accepts the proposal of transaction.

5.

Given the express acceptance of the party, a transaction is then established on the 10 October 2022. This decision formalizes this transaction.

## II. Terms of the transaction

6.

The conditions of the transaction are identical to those contained in the letter of settlement proposal of September 14, 2022. For this reason, the appendix containing this proposal forms an integral part of this Decision. The conditions of this proposal are briefly summarized below.

7.

Findings made by the Inspection Service of the Data Protection Authority in the context of this case, and the potential offenses that may be associated with it, will no longer be processed by the Litigation Chamber. The scope of this transaction is therefore inherently limited to the elements of the file, as indicated in

the transaction proposal, which contains the following sentence: "The transaction proposal therefore relates to the facts, the period and the (technical) context, as described in the Inspection report; the facts that are not covered by this period and this context not covered by the transaction. . . » The party pays, in turn, a sum of 10,000 euros to the Belgian treasury and respects the terms of the transaction.

### III. Publication of the decision

8.

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:

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Pursuant to Article 100, §1, 4 of the LCA, to validate the transaction as accepted by the party on October 10, 2022, under the conditions contained in this decision and its Annex.

In accordance with Article 108, § 1 of the LCA, an appeal against this decision may be lodged, within thirty days of its notification, to the Court of Markets (court d'appel de Bruxelles), with the Data Protection Authority as defendant.

Such an appeal may be introduced by means of an interlocutory request which must contain the information listed in article 1034ter of the Judicial Code<sup>1</sup>. The interlocutory motion must be filed with the registry of the Market Court in accordance with article 1034quinquies of C. jud.<sup>2</sup>, or via the e-Deposit information system of the Ministry of Justice (article 32ter of the C. jud.).

(Sr.) Hielke HIJMANS

President of the Litigation Chamber

1 The request contains on pain 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 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

1

For the attention of SA IPM Groupe, [...]

Having for advice Mtr. Frédéric DECHAMPS and Mtr.

Nathan VANHELLEPUTTE, whose office is located [...]

By email: [...]

Defendant

Secretariat

T: +32 (0)2 274 48 56

Email: [litigationchamber@apd-gba.be](mailto:litigationchamber@apd-gba.be)

Your references

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Our references

Appendix(es)

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Date

09/14/2022

Subject: transaction proposal in the file "Use of cookies on the website of  
The future"

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

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

the Data Protection Authority ("LCA")<sup>1</sup>, to explore through this letter a

transaction proposal 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 been the subject of a

1 MB, January 10, 2018.

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

twice resulted in the imposition of an administrative fine of EUR 50,000.<sup>2</sup>

This proposed transaction is made without any prejudicial acknowledgment and does not

does not bind the Litigation Chamber as to a position it could adopt in the event

where this proposal would be refused.

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. If it finds that violations have been committed, it

may make use of the powers of sanction conferred on it by European law<sup>3</sup> and Belgian law<sup>4</sup>.

a) The future under Nethys responsibility, and after IPM Groupe

On December 21, 2020, the Litigation Chamber sent an invitation to conclude in this file with SA Nethys, of which the SRL Les Editions Vers l'Avenir Presse was a subsidiary when the Inspection report has been added to the administrative file of the Litigation Chamber (attached for your information).

In response to this letter, SA IPM informed us, by way of conclusions, of the fact that SRL Les Editions Vers l'Avenir has been taken over since October 14, 2020 by the IPM Group. NV IPM has filed submissions for its subsidiary SRL Les Editions de l'Avenir presse SRL. For this reason, the Litigation Chamber immediately sends this proposal to SA IPM.

b) Procedural status of the settlement proposal

The transaction proposal presented here precedes the deliberation phase relating to violations that may have been committed 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 having yet examined 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

2

of

See

85/2022

May 25

decision

via

<https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-85-2022.pdf>; see Decision 103/2022 of June 16, 2022, available only in French via: <https://www.autoriteprotectiondonnees.be/publications/decision-quant->

at-the-bottom-n-103-2022.pdf.

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

Litigation,

available

Bedroom

2022

of

there

4 See also Article 100 LCA.

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

transaction" provided for in criminal law.<sup>5</sup> The transaction within the meaning of the LCA is in fact of the 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. The Litigation Chamber makes use of the

competence which is explicitly attributed to it to formulate a transaction proposal,

the image of 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, on the basis of which the transaction proposal is made (*infra* ). Although, as

specified above, the Litigation Division does not pronounce *hic et nunc* on the existence of

violations, it must however formulate the settlement proposal on the facts set out in the

case. The amount that the Litigation Chamber proposes to the party to pay must indeed be

proportional to the nature of the possible violations. The settlement proposal therefore relates to

the facts, the period and the (technical) context, as described in the report of the Inspectorate; the facts that are not covered by this period and this context not being covered by the transaction.<sup>6</sup>

c) 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 concrete conditions for the transaction are as follows:<sup>7</sup>

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"Observation 1: deposit of cookies not strictly necessary before the collection of the consent"<sup>8</sup>

"Finding 2: lack of choice"<sup>9</sup>

"Observation 3: use of further browsing"<sup>10</sup>

"Finding 4: disclaimer for third-party cookies"<sup>11</sup>

<sup>5</sup> See in particular articles 216bis and 216ter of the Code of Criminal Procedure ("CIC") concerning the termination of public proceedings

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

<sup>6</sup> In this sense, the ne bis in idem principle does not apply to facts that do not fall within this scope.

<sup>7</sup> The Litigation Chamber takes full account of the additional investigation report of the Inspection Department of 30 November 2020 in DOS-2020-03297.

<sup>8</sup> Report of the Inspection Service of the Data Protection Authority of October 7, 2020 in file DOS-2020-03297 ("Inspection report"), p. 13-4.

<sup>9</sup> Inspection report, p. 14-5.



10 Inspection report, p. 15-6.

11 Inspection report, p. 16-7.

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“Finding 5: faulty information”<sup>12</sup>

“Finding 6: impossibility to withdraw consent”<sup>13</sup>

d) Substantive conditions

As part of the transaction proposal, the conditions accepted by the party to the

procedure are as follows:

- IMP Group undertakes to pay the sum of EUR 10,000 to the Belgian Treasury, in accordance

the terms defined by the Federal Public Service Finance.<sup>14</sup> IPM Group waives

any civil or other action in connection with the transaction, such as, but not limited to,

unfavorable communication relating to this transaction;

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The Litigation Chamber finds no violation on the part of Groupe IPM and

formally closes the procedure with its settlement decision, provided that the Group

IPM accepts the transaction and respects the conditions;

For the Litigation Chamber, the fact of accepting a settlement proposal does not

does not constitute an admission on the part of the defendant. This acceptance of

in particular, the transaction proposal cannot be used as a circumstance

aggravating when establishing sanctions in possible future proceedings

before the Litigation Chamber;<sup>15</sup>

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In the event of explicit acceptance or in the absence of a response from the party to which the

transaction proposal is sent within the period specified below, this

transaction proposal takes the form of a formal decision which is published on the

website of the Data Protection Authority, indicating the name of the party.

In the event of non-compliance with the terms of the accepted transaction, the Litigation Chamber

reserves the right to withdraw the settlement decision and deal with this matter in another way.

e) Deadline

Groupe IPM must indicate within 30 days of receipt of this proposal for

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

considered accepted under the conditions set out above.

f) Existence of other controllers and/or processors

This proposal for an amicable resolution is addressed solely to Groupe IPM. She does not

does not take a position on whether and to what extent other actors are

12 Inspection report, p. 17-8.

13 Inspection report, p. 18.

14 Cfr. Art. 107 ACL.

15 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 breaches following "any relevant breach previously committed by the controller or the

subcontracting".

responsible for the potential violations that gave rise to this proposal for

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transaction.

g) Validation of the amicable resolution

In the event that the transaction proposal gives rise to a formal decision of

transaction due to explicit acceptance or lack of response, within the time

aforementioned, of the party to whom the settlement proposal is addressed, an appeal may

be introduced by the "injured party".<sup>16</sup>

The final transaction does not affect the right of any individuals (in this case, the case is not based on a complaint) who suffered damages to claim damages and interests before a civil court on the basis in particular of Article 82 of the GDPR.

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

(Sr.) Hielke Hijmans

President of the Litigation Chamber

16 In accordance with Article 108, § 1 of the LCA, an appeal against this decision may be lodged within thirty days from the explicit acceptance or lack of response, within the aforementioned period, to the Court of Markets (Brussels Court of Appeal), with the Data Protection Authority as defendant.

Such an appeal may be introduced by means of an interlocutory request which must contain the information listed in Article 1034ter of the Judicial Code. The interlocutory request must be filed with the registry of the Market Court in accordance with article 1034quinquies of the C. jud., or via the e-Deposit information system of the Ministry of Justice (article 32ter of the C. jud.).