

Litigation room

Decision on the merits regarding settlement 153/2022

of November 4, 2022

File number : DOS-2020-03345

Subject: settlement in the file "Use of cookies on the media websites of HLN,

De Morgen, VTM and 7 sur 7 (DPG Media Group)"

The Disputes Chamber of the Data Protection Authority, composed 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 on the free movement of such data and revocation of

Directive 95/46/EC (General Data Protection Regulation), hereinafter GDPR;

Having regard to the law of 3 December 2017 establishing the Data Protection Authority,

hereafter WOG;

Considering the regulations of

internal order, as approved by the Chamber of

Representatives on 20 December 2018 and published in the Belgian Official Gazette on

January 15, 2019;

Having regard to the documents in the file;

In view of the settlement proposal submitted to the party on September 14, 2022, as appended

to the present decision and forming an integral part of the decision;

Made the following decision regarding:

The party:

DPG Media N.V.,

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## I. Pre-Settlement Process

Click or tap to enter a date.

1.

In the context of the present file relating to DPG Media NV, on 14  
submitted a settlement proposal to the party in September 2022. The full contents of  
that settlement proposal is appended to the underlying decision.

2. On October 14, 2022, the Party will send a number of requests for clarification to  
relating to the aforementioned settlement proposal. Considering the deadline to reply to  
the settlement proposal normally expires on October 14, 2022, and seen through the response of  
the party with requests cannot automatically become the settlement proposal  
settlement, an extension of the deadline for replying to the settlement proposal will be met  
14 days granted.

3. Clarifications will be provided to the Party on October 21, 2022 in response to the  
requests from that party on October 14, 2022. It is also proposed to the party  
make an addition to the formal settlement decision with respect to the  
temporal scope of the settlement.

4. On October 28, 2022, the Disputes Chamber received a reply from the party that it  
settlement proposal, together with the clarifications submitted to it.

5. Following the express acceptance of the party came on October 28, 2022  
reach a settlement. The present decision formalizes this settlement.

## II. Terms of Settlement

6. The terms of the settlement are

in principle

identical to that one

in the

settlement proposal dd. September 14, 2022. For that reason, this settlement proposal

integral part of the present decision.

7. Upon request by the Party, the following clarifications are provided,

in addition to the conditions laid down in the settlement proposal dd. September 14

2022. Where any ambiguity would arise due to the following

wording in the formal settlement decision, the wording in the text will prevail

of the decision on the formulations in the settlement proposal appended to the decision.

8. The Disputes Chamber clarifies that the settlement relates to the use of

cookies on the websites at issue, in the period from May 25, 2018 to November 20

2020. With regard to the further scope of the settlement, the Disputes Chamber emphasizes

what is stated in this regard in the settlement proposal: "The settlement proposal thus

relates to certain facts within a certain time frame and within a certain period of time

(technical) context, as described in the report of the inspection service, including facts

beyond this time frame and context are not within the scope of the Settlement

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traps."

### III. Publication of the decision

9. Given the importance of transparency with regard to decision-making by the

Litigation Chamber, this decision will be published on the website of the

Data Protection Authority.

FOR THESE REASONS,

the Disputes Chamber of the Data Protection Authority decides, after deliberation, to:

- Pursuant to article 100, §1, 4° WOG, the settlement as accepted by the

party on October 28, 2022, to be validated under the conditions laid down in the present

decision and its annex.

Pursuant to Article 108, § 1 of the WOG, within a period of thirty days from the

notification against this decision may be appealed to the Marktenhof (court of

Brussels appeal), with the Data Protection Authority as defendant.

Such an appeal may be made by means of an inter partes petition

must contain the information listed in Article 1034ter of the Judicial Code<sup>1</sup>. It

a contradictory petition must be submitted to the Registry of the Market Court

in accordance with Article 1034quinquies of the Ger.W.2, or via the e-Deposit

IT system of Justice (Article 32ter of the Ger.W.).

(get).Hielke HIJMANS

Chairman of the Litigation Chamber

1 The petition states under penalty of nullity:

1° the day, month and year;

2° the surname, first name, place of residence of the applicant and, where applicable, his capacity and his national register or

3° the surname, first name, place of residence and, if applicable, the capacity of the person to be

enterprise number;

summoned;

4° the object and brief summary of the means of the claim;

5° the court before which the action is brought;

6° the signature of the applicant or his lawyer.

2 The petition with its annex is sent, in as many copies as there are parties involved, by registered letter

sent to the clerk of the court or deposited at the clerk's office.

Litigation room

Secretariat

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REGISTERED

For the attention of DPG Media NV,

Defendant

Your feature

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Our reference

DOS-2020-3345

Attachments)

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Date

14/09/2022

Subject: Exploring willingness to settle proposal in the file “Use of cookies on the media websites of HLN, De Morgen, VTM and 7 sur 7 (DPG Media Group)”

Dear,

In the context of a large number of files pending before the Litigation Chamber, resulting in long processing times for all files, the Disputes Chamber has, pursuant to Article 100, §1, 4° of the Law establishing the Data Protection Authority (“WOG”)<sup>3</sup> to propose to settle the aforementioned file by means of this letter ( “settlement proposal”).

The settlement proposal takes place in a context where two of the ten files linked to the present dossier (the ten so-called “cookies on press sites” dossiers) have already led to a decision on the merits, in which infringements were established by the Litigation Chamber that twice led to the imposition of an administrative fine of EUR 50,000.<sup>4</sup>

This settlement proposal is made without any adverse acknowledgment and commits the Litigation Chamber in no way as to any position taken in refusing it settlement proposal. The Disputes Chamber refers in particular to its powers in this regard

See

<sup>3</sup> B.S. January 10, 2018.

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<https://www.dataprotectionauthority.be/publications/bsluit-ten-gronde-nr.-85-2022.pdf>;

103/2022

<https://www.dataprotectionauthority.be/publications/bsluit-ten-gronde-nr.-103-2022.pdf>.

dispute room,

available

May 25

85/2022

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whether or not to establish infringements and, if necessary, to use the power under it sanctioning powers granted by European<sup>5</sup> and Belgian<sup>6</sup> law.

If the party to whom the settlement proposal is addressed expressly refuses the proposal, the Litigation Chamber continues the proceedings on the merits, and the present file on a other way than through a settlement.

a) Procedural setting of the settlement proposal and the settlement

The settlement proposal that is before us precedes the deliberation phase regarding the determination of potential infringements in the present file. The Disputes Chamber holds in that sense in its settlement proposal only takes into account the findings stated in the report of the Inspection Service of the Data Protection Authority, without the correctness of this to verify findings.

Now that the procedure before the Disputes Chamber of the Data Protection Authority cannot be done right away be made with the procedure of criminal law, "the settlement" can be as provided by the Belgian legislator under Article 100, §1, 4° WOG not equated with the "amicable settlement" from criminal law. After all, the settlement within the meaning of the WOG has a sui generis character.

First of all, the Litigation Chamber *hic et nunc* does not rule on the existence of possible infringements, even if the procedure is already at the "substance" stage in accordance with Articles 98 and 99 WOG. The Disputes Chamber makes use of her for this possibility and explicit authority to proceed with a settlement proposal, just like this is also possible in the case of a criminal "amicable settlement".

In addition, the Disputes Chamber states the precise facts framed in time and space reason for the settlement proposal (*infra*). Although the Litigation Chamber, such as cited above, *hic et nunc* does not rule on the existence of infringements, it submits to graft on the facts present in the file in order to proceed to the settlement proposal.

After all, the nature of the potential infringements must be in proportion to the amount that the Litigation Chamber proposes to pay the party. The settlement proposal thus relates on certain facts within a certain time frame and within a certain (technical) context,

5 See Article 58 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 freedom movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter “GDPR”;

6 See article 100 WOG.

as described in the report of the inspection service, with facts covering this time frame and this outside the scope of the Settlement.<sup>7</sup>

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b) Determination by the Inspection Service related to the settlement proposal

In this case, the

Inspection Service of the Data Protection Authority the following

findings, which the Disputes Chamber takes into account - but does not assess on the content

– when proposing the terms of the settlement:<sup>8</sup>

“Statement 1: statistical cookies without permission”<sup>9</sup>

“Observation 2: Inadequate information”<sup>10</sup>

“Finding 3: unjustified storage periods of cookies”<sup>11</sup>

“Finding 4: non-compliance with withdrawal of consent”<sup>12</sup>

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c)

Content conditions



In the context of the settlement proposal, the following terms are accepted by the party in the procedure accepted:

- DPG Media NV undertakes to pay an amount of EUR 10,000 to the Belgian Treasury, and in accordance with the terms determined by the Federal Government Finance Department.<sup>13</sup> DPG Media NV waives any civil law claims and other claims related to the settlement, for example but not limited to the event of adverse notice regarding that settlement;
- The Disputes Chamber will not determine any infringements and will terminate with the settlement resulting from this proposal formal proceedings, when DPG Media NV accept and comply with the settlement;
- The Disputes Chamber does not consider it to agree with a settlement proposal a confession, which could be used in particular in the context as aggravating circumstance in determining the sanction for future proceedings at the Litigation Chamber<sup>14</sup>;

7 In that sense, the ne bis in idem principle does not apply to facts that fall outside its scope.

8 When taking into account the findings of the Inspectorate, the Disputes Chamber takes into account those covered by this settlement

also include the supplementary report of the inspection of the Inspectorate of November 30, 2020 in DOS-2020-03345 fully eligible.

9 Report of the Inspection Service of the Data Protection Authority of 7 October 2020 in DOS-2020-03345 ("Inspection Report"), pp. 19-20.

10 Inspection Report, page 20-1.

11 Inspection Report, p. 21-2.

12 Inspection report, page 22.

13 In accordance with Article 107 WOG, "the periodic penalty payments, fines and transactions shall be imposed applying this Act [...] transferred or collected for the benefit of the Treasury by the general administration of the Collection and the

Collection.” (own underlining)

14 See in particular Article 83(2)(e) GDPR in the context of imposing administrative fines when establishing of breaches following “previous relevant breaches by the controller or processor”.

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- With the express acceptance or in the absence of a response from the party to whom

the settlement proposal is addressed within the period specified below, obtains it

settlement proposal has the character of a formal decision without omission of

direct

identification data will be published on the website of the

Data Protection Authority.

In the event that the terms of the settlement are not complied with, the Litigation Chamber will hold

reserves the right to withdraw the Settlement Decision and proceed with the proceedings in this case

continue or terminate in any other way.

d) Term

DPG Media NV will submit this settlement proposal within 30 days of receipt

whether or not to accept this proposal. In the absence of response, the settlement proposal

be considered accepted under the conditions set out above.

e) The existence of other controllers and/or processors

This settlement proposal is only addressed to DPG Media NV. It does not take a position on whether and in which

extent there are other actors responsible for the potential breaches that give rise

to the present settlement proposal.

f) Settlement Validation

When the settlement proposal becomes a formal settlement decision by express

acceptance or failure to respond by the party to whom the settlement proposal is addressed within

the aforementioned period, an appeal can be lodged against this by the “grievant

party”.<sup>15</sup>

The final settlement does not affect the right of any individuals (in this case concerns

this is not a complaint file) who have suffered damage before a civil court

to claim compensation on the basis of, among other things, Article 82 GDPR.

15 Pursuant to Article 108, § 1 of the WOG, within a period of thirty days from the notification against this

decision to be appealed

of appeal Brussels), with the

Data Protection Authority as defendant.

registered with

the Market Court

(court

Such an appeal may be lodged by means of an inter partes petition, which is the subject of Article 1034ter of the

Judicial Code must contain listed entries. The petition must be contradictory

submitted to the Registry of the Market Court in accordance with Article 1034quinquies of the Ger.W., or via the e-Deposit

IT system of Justice (Article 32ter of the Ger.W.).

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Yours faithfully

(get). Hilke Hijmans

Chairman of the Litigation Chamber