

Litigation Chamber

Interlocutory decision 01/2021 of January 08, 2021

File number: DOS-2019-01377

Subject: Language of the proceedings - complaint against IAB Europe

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

Hijmans, chairman, and Messrs. Yves Poulet 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 27 April 2016 on the

protection of natural persons with regard to the processing of personal data and the

free movement of such data, and repealing Directive 95/46/EC (general regulation on the

data protection), hereinafter GDPR;

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;

Having regard to the letter from the DPA of October 09, 2020 inviting the parties to send their conclusions in French,

but allowing them to send them in English if this would prejudice a party;

Having regard to the letters from Me Debusseré and Me Roex, lawyers for six plaintiffs, dated respectively 27

November 2020, as well as December 03 and 07, 2020, in which they ask, in essence:

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that the complainants can express themselves both in writing and orally in Dutch, and that the

defendant can do the same in French;

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to receive the defendant's written exhibits as well as all the other exhibits present at the

dossier (including the report of the inspection service) in Dutch;

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that communication between the DPA and the complainants takes place in Dutch;□

that the final decision is rendered in both Dutch and French.□

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Having regard to the letter from the APD to Me Debusseré, Me Roex, as well as to Mr. Bidon and the defendant of 09□

December 2020, in which the Litigation Chamber:□

indicates that French is maintained as the language of the proceedings;□

declines the request for a Dutch-language version of the report of the Inspection Service;□

offers the parties the opportunity to express themselves in their own language (written and oral), and to receive the□

documents from the opposing party without translation;□

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Having regard to the letter from Me Debusseré and Me Roex of December 14, 2020 in which they add the requests□

following:□

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a version of the inspection report in Dutch and French, in which quotations from□

case law in English would be translated;□

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a new version of the pleadings (in English) already sent by the defendant, in the language□

French, on the basis of an inspection report from which the passages in English would be translated,□

as well as a corresponding new timetable for conclusion;□

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that the defendant receive French translations of the conclusions of the□

complainants;□

Having regard to the letter from IAB Europe, defendant dated January 3, 2021, in which it indicates that it wishes□

continue to speak English;□

Considering the documents in the file;□

made the following decision regarding:□

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the complainants:□

- Mr Johnny Ryan□

- Mr Pierre Dewitte□

- Mr. Jeff Ausloos□

- Mr. Bruno Bidon□

- NGO Panoptikon□

- NGO Bits of Freedom□

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The League of Human Rights□

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the defendant: IAB Europe□

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#### 1. Facts and procedural history□

1. Several complaints have been filed against Interactive Advertising Bureau Europe (IAB hereafter),□

for violation of several provisions of the GDPR (in particular the principle of lawfulness, transparency,□

loyalty, minimization, security, obligation to inform, etc.), for large-scale processing□

of personal data.□

2. Nine identical or very similar complaints were filed, four of which were with the Protection Authority□

Data ("APD" below) directly, and five to supervisory authorities in other□

countries of the European Union via the IMI system.□

3. The four complaints were filed directly with the APD respectively on May 20, 2019 (DOS-□

2019-02837), June 4, 2019 (DOS-2019-03124), July 2, 2019 (DOS-2019-03668), and July 26, 2019□

November 2020 (this complaint was directly attached to file DOS-2019-01377).□

4. The five IMI complaints were filed on March 1, 2019 (DOS-2019-01377), March 26, 2019, respectively.□

July 2019 (DOS-2019-04052), August 08, 2019 (DOS-2019-04210), August 19, 2019 (DOS-2019-□

04269), December 16, 2019 (DOS-2019-02653).□

5. The APD Inspection Service was also seized on its own initiative in the 2020-□

02653, file which was attached to file DOS-2019-01377.□

6. The aforementioned files were all joined in a single case under file DOS-2019-□

01377, insofar as the complaints are identical or very similar.□

7. The Complainants consented to this joinder, as well as to the Chamber's request□

Litigation to unite their conclusions and send joint games, for the purpose of economy and□

efficiency of the procedure.□

8. In this international case, three plaintiffs are domiciled in Belgium, one in Ireland,□

four in different EU states but are represented by the NGO Panoptykon, which has its headquarters in□

Poland, and a complainant is represented by the NGO Bits of Freedom based in the Netherlands.□

The plaintiffs therefore reside in the various linguistic areas.□

9. In view of the international nature of this case, the Litigation Chamber is looking into the□

this interlocutory decision on the language of the proceedings.□

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2. Motivation□

10. When analyzing the language of the proceedings, a distinction should be made□

between the language in which the parties address the DPA of the language in which the DPA□

addresses them.□

11. With regard to the language in which the parties address the DPA, Article 30 of the□

Constitution guarantees linguistic freedom.□

12. As regards the language of the proceedings before the DPA, i.e. the language in which□

the DPA is addressed to the parties, article 57 of the DPA law provides within the framework of the procedure□

complaints handling court that the “DPA uses the language in which the procedure is conducted according to the specific needs of the case”. Although counsel for six plaintiffs argues that Article 57 LCA is unconstitutional, it is not up to the Litigation Chamber to express itself on this subject, insofar as it is, as a body of the APD, linked to the organic law who invests his powers in him. It is not within its competence to comment on compliance with the Constitution of organic law.

13. The Litigation Chamber therefore applies Article 57 of the organic law. Read in combination with article 60 of this law, the proceedings are conducted in one of the languages national. There is no other language legislation directly applicable to the procedure before the House. The law of June 15, 1935 concerning the use of languages in judicial matters does not apply to the Litigation Chamber, insofar as it is not a judicial body.

The law of 18 July 1966 on the use of languages in administrative matters does not apply either more because of the existence of the specific provision of article 57 of the APD law and the principle of *lex specialis*.

14. For the implementation of this provision, the Litigation Chamber applies in principle the rule that the language of the proceedings is the language of the plaintiff's place of residence.<sup>2</sup> As stipulated in article 57 of the GBA law, this main rule may be waived according to the needs of the case.

15. In the present case, insofar as IAB Europe does not speak Dutch and has expressly requested the use of French in its exchanges with the Inspection Service, and taking into account account of the fact that its statutes are written in French, the contacts between the Inspection Service and IAB Europe were largely held in this language. As indicated in the note on the language policy of the Litigation Chamber, now available on the APD website,

<sup>1</sup> Article 30 of the Constitution: “The use of the languages used in Belgium is optional; it can only be regulated by law, and only for acts of public authority and for judicial matters. » indicated in a note

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the Chamber may derogate from the general rule of using the language of the place of residence of the

plaintiff in the event that the defendant does not master this language, and requests

the use of another (national) language.

16. The Litigation Division therefore maintains French as the language of proceedings, taking

take into account the international nature of this case as well as the many parties

involved and multiple complaints in several EU Member States joined at the same time

case. The implementation of the cooperation between the lead authority (the DPA in this case

case) and the supervisory authorities concerned (Art 60 GDPR) is also taken into account. If a

second language was to be used, English would be appropriate, as long as cooperation

between supervisory authorities takes place in this language. This is not a national language.

17. Nevertheless, with regard to the language in which the parties address the DPA the Chamber

Litigation decides on the basis of article 57 of the organic law to leave the possibility to the parties

to express themselves in the language of their choice (limited to French, Dutch or English) both in

their findings only at the upcoming hearing.

18. No translation will be provided of the written documents (conclusions, documents in the file, etc.), in the  
to the extent that, in the present case, the Litigation Division considers that the plaintiffs' lawyers  
and they are fluent in French, Dutch and English. In addition, translations  
systematic procedures would cause months of delay in the procedure. However, the Chamber is of the opinion  
that in this case in particular, given the interests represented and the scope of the case,  
a decision as soon as possible is desirable. In the present case, the Chamber finds  
therefore it is in the interest of the smooth running of the procedure to avoid unnecessary translations.

19. The official DPA decision will be issued in French, and a translation into Dutch and English  
will be made available to the parties simultaneously with the French version. These translations will be  
also published on the APD website.

20. The DPA also accepts underlying supporting documents in French and Dutch, as well as  
only in English<sup>3</sup>. The fact that certain central reports in this procedure and in the complaints  
filed are in English was also taken into consideration.

21. Considering the importance of transparency with regard to the decision-making process and  
the decisions of the Litigation Chamber, as well as because of the specificity and the public interest  
presented by this decision, it will be published on the website of the Autorité de la

Data protection. In view of the previous publicity on this case, the House  
Litigation has decided not to delete the direct identification data of the parties and the  
persons cited, whether natural or legal.

<sup>3</sup> See in particular Decision 61/2020, point 29

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FOR THESE REASONS,

THE LITIGATION CHAMBER

Decides, after deliberation:

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to conduct the proceedings in French, while allowing the parties to express themselves, both in their

conclusions only during the hearing, in French, Dutch or English.□

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not to provide translations of written documents submitted in one of these three languages□

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render the final decision in French, and simultaneously communicate to the parties a□

Dutch and English version, versions which will also be made available on the site□

of ODA□

In view of the impact of this case, and insofar as this issue is raised for the first□

times before the Litigation Chamber, following an exchange of the contradictory points of view of the parties□

on this specific issue, the Litigation Chamber adopted an interlocutory decision instead□

of a position on the procedure.□

This interlocutory decision may be appealed to the Court of Markets within a period□

30 days from its notification (art. 108 § 1 of the law of December 3, 2017 establishing□

of the Data Protection Authority) with the Data Protection Authority as□

defendant.□

(Sr.) Hielke Hijmans□

President of the Litigation Chamber□