



## Litigation chamber

### Interlocutory Decision 01/2021 of 8 January 2021

**File Nr.: DOS-2019-01377**

**Re: Language of the proceedings - complaint against IAB Europe**

The Litigation chamber of the Data Protection Authority, composed of H. Hijmans, President, Yves Poullet and Christophe Boerave, members, taking over the case;

Considering the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 *on the protection of individuals 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, hereafter GDPR);

Considering the Act of 3 December 2017 *establishing the Data Protection Authority (hereafter DPA)*;

Considering the rules of procedure as approved by the Chamber of Representatives on 20 December 2018 and published in the *Belgian Official Journal* on 15 January 2019;

Having regard to the letter of the DPA of 9 October 2020 inviting the parties to transmit their submissions in French but allowing them to send them in English if this would prejudice a party ;

Having regard to the letters of Mr Debusseré and Mr Roex, lawyers of six complainants, dated 27 November 2020 as well as 03 and 07 December 2020 respectively, in which they ask, in essence:

- that the complainants be allowed to express themselves both in writing and orally in Dutch, and that the defendant be allowed to do the same in French;
- to receive the defendant's written documents as well as all other documents in the file (including the report of the inspection service) in Dutch;
- that the communication between the DPA and the complainants be in Dutch;
- that the final decision be issued in both Dutch and French.

Having regard to the letter from the DPA to Mr Debusseré, Mr Roex as well as to Mr Bidon and to the defendant on 09 December 2020, in which the Litigation chamber:

- indicates that French is maintained as the language of proceedings;
- declines the request for a Dutch version of the Inspection service's report;
- proposes to the parties to express themselves in their own language (written and oral), and to receive the other party's documents without translation;

Having regard to the letter of Mr Debusseré and Mr Roex of 14 December 2020 in which they add the following requests:

- a version of the inspection report in Dutch and French, in which the English case law citations would be translated;
- a new version of the submissions (in English) already sent by the defendant, in French, on the basis of an inspection report from which the English passages would be translated, as well as a corresponding new schedule of submissions;
- that the defendant be provided with French translations of the complainants' submissions;

Having regard to the letter from IAB Europe, defendant, dated 3 January 2021, in which it states that it wishes to continue to express itself in English;

Considering the documents from the file;

**decided as follows concerning:**

- the complainants:
  - Mr Johnny Ryan
  - Mr Pierre Dewitte
  - Mr Jeff Ausloos
  - Mr Bruno Bidon
  - NGO Panoptykon
  - NGO Bits of Freedom
  - La Ligue des Droits de l'Homme
  
- the defendant: IAB Europe

## **1. Facts and procedure history**

1. Several complaints have been filed against Interactive Advertising Bureau Europe (hereafter IAB) for violation of several provisions of the GDPR (in particular the principle of lawfulness, transparency, fairness, minimisation, security, obligation to provide information...), for large-scale processing of personal data.
2. Nine identical or very similar complaints were made, four to the Data Protection Authority (hereafter "DPA") directly, and five to supervisory authorities in other EU countries via the IMI system.
3. The four complaints were lodged directly with the DPA on 20 May 2019 (DOS-2019-02837), 4 June 2019 (DOS-2019-03124), 2 July 2019 (DOS-2019-03668), and 26 November 2020 (this complaint was directly attached to file DOS-2019-01377) respectively.
4. The five IMI complaints were filed on 1<sup>st</sup> March 2019 (DOS-2019-01377), 26 July 2019 (DOS-2019-04052), 08 August 2019 (DOS-2019-04210), 19 August 2019 (DOS-2019-04269), 16 December 2019 (DOS-2019-02653) respectively.
5. The DPA Inspection Service was also seized on its own initiative in file 2020-02653, which was attached to file DOS-2019-01377.
6. As the complaints are identical or very similar, the above-mentioned files have all been combined into a single case under file DOS-2019-01377.
7. The complainants agreed to this joinder, as well as to the Litigation Chamber's request to join their pleadings and send joint sets, in the interest of economy and efficiency of the proceedings.
8. In this international case, three complainants are domiciled in Belgium, one in Ireland, four in different EU states but are represented by the NGO Panoptikon based in Poland, and one complainant is represented by the NGO Bits of Freedom based in the Netherlands. The complainants reside thus in various language areas.
9. Considering the international nature of this case, the Litigation Chamber addresses in this interlocutory decision the language of the proceedings.

## **2. Justification**

10. When analysing the language of the proceedings, a distinction should be made between the language in which the parties address the DPA and the language in which the DPA addresses them.

11. As regards the language in which the parties address the DPA, Article 30 of the Constitution guarantees linguistic freedom<sup>1</sup>.
12. As regards the language of the proceedings before the DPA, i.e. the language in which the DPA addresses the parties, Article 57 of the DPA Act provides in the context of the litigation procedure for handling complaints that *"the DPA uses the language in which the proceedings are conducted as appropriate to the case"*. [Unofficial translation] Although the lawyer for six complainants argues that Article 57 of the DPA Act is unconstitutional, it is not the role of the Litigation Chamber to express an opinion on this matter, as it is, as an organ of the DPA, bound by the organic law that vests its powers in it. It is not within its competence to express an opinion on the conformity of the organic law with the Constitution.
13. The Litigation chamber therefore applies Article 57 of the DPA Act. Read in conjunction with Article 60 of this Act, the proceedings are conducted in one of the national languages. There is no other language legislation directly applicable to proceedings before the Chamber. The law of 15 June 1935 concerning the use of languages in judicial matters does not apply to the Litigation chamber, as it is not a judicial body. The Act of 18 July 1966 on the use of languages in administrative matters does not apply either because of the existence of the specific provision of Article 57 of the DPA Act 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 place of residence of the complainant.<sup>2</sup> As stated in Article 57 of the DPA Act, however, exceptions can be made to this main rule according to the needs of the case.
15. In this case, as IAB Europe does not speak Dutch and expressly requested the use of French in its exchanges with the Inspection service, and taking into account the fact that its statutes are drafted in French, the contacts between the Inspection service and IAB Europe were largely conducted in this language. As stated in the note on the language policy of the Litigation Chamber, now available on the DPA website, the Chamber may derogate from the general rule of using the language of the place of residence of the complainant in case the defendant does not master this language, and requests the use of another (national) language.
16. The Litigation Chamber therefore maintains French as the language of proceedings, taking into account the international character of this case as well as the numerous parties involved and the multiple complaints in several EU Member States attached to the same file. The implementation of the cooperation between the lead authority (the DPA in this case) and the relevant supervisory

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<sup>1</sup>Article 30 of the Constitution *"The use of languages used in Belgium is optional; it can only be regulated by law, and only for acts of public authority and for judicial matters."* [unofficial translation]

<sup>2</sup> As stated in a note on language use, available on the DPA website : [https://www.autoriteprotectiondonnees.be/citoyen/chercher?q=langue&search\\_category%5B%5D=taxonomy%3Apublications](https://www.autoriteprotectiondonnees.be/citoyen/chercher?q=langue&search_category%5B%5D=taxonomy%3Apublications) (only available in French and in Dutch).

authorities (Article 60 GDPR) is also taken into account. If a second language were to be used, English would be appropriate, as cooperation between supervisory authorities takes place in that language. This is not a national language.

17. Nevertheless, with regard to the language in which the parties address the DPA, the Litigation chamber decides, on the basis of article 57 of the DPA Act, to allow the parties to express themselves in the language of their choice (limited to French, Dutch or English) both in their submissions and at the forthcoming hearing.
18. No translation will be provided of the written documents (submissions, documents in the case file, etc.), as in this case the Litigation chamber is of the opinion that both the complainants' lawyers and the complainants are fluent in French, Dutch and English. Moreover, systematic translations would cause months of delay in the procedure. However, the Chamber is of the opinion that in this particular case, in view of the interests represented and the scope of the case, a decision as soon as possible is desirable.  
In the present case, the Chamber therefore considers that it is in the interest of the proper conduct of the proceedings 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 also be published on the DPA website.
20. The DPA also accepts the underlying supporting documents in French and Dutch, as well as in English<sup>3</sup>. The fact that some of the central reports in these proceedings and in the complaints filed are in English has also been taken into consideration.
21. Given the importance of transparency in the decision-making process and the decisions of the Litigation chamber, as well as the specificity and public interest of this decision, it will be published on the website of the Data Protection Authority. In view of the previous publicity on this case, the Litigation chamber decided not to delete the direct identification data of the parties and the persons named, whether natural or legal persons.

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

**FOR THESE REASONS,**

**THE LITIGATION CHAMBER**

Decides, after deliberation:

- to conduct the proceedings in French, while allowing the parties to express themselves, both in their submissions and at the hearing, in French, Dutch or English;
- not to provide translations of written documents submitted in any of these three languages;
- to issue the final decision in French, and to communicate simultaneously to the parties a Dutch and English version, which will also be made available on the DPA website.

Given the impact of this case, and insofar as this issue is raised for the first time before the Litigation chamber, following an exchange of conflicting views of the parties on this specific issue, the Litigation chamber has adopted an interlocutory decision instead of a position on the procedure.

An appeal against this interlocutory decision can be lodged with the Court of Commerce within 30 days of its notification (art. 108 § 1 of the DPA Act of 3 December 2017) with the Data Protection Authority as defendant.

(pp) Hielke Hijmans

President of the Litigation chamber