



Acquis of the Litigation Chamber

2 September 2024

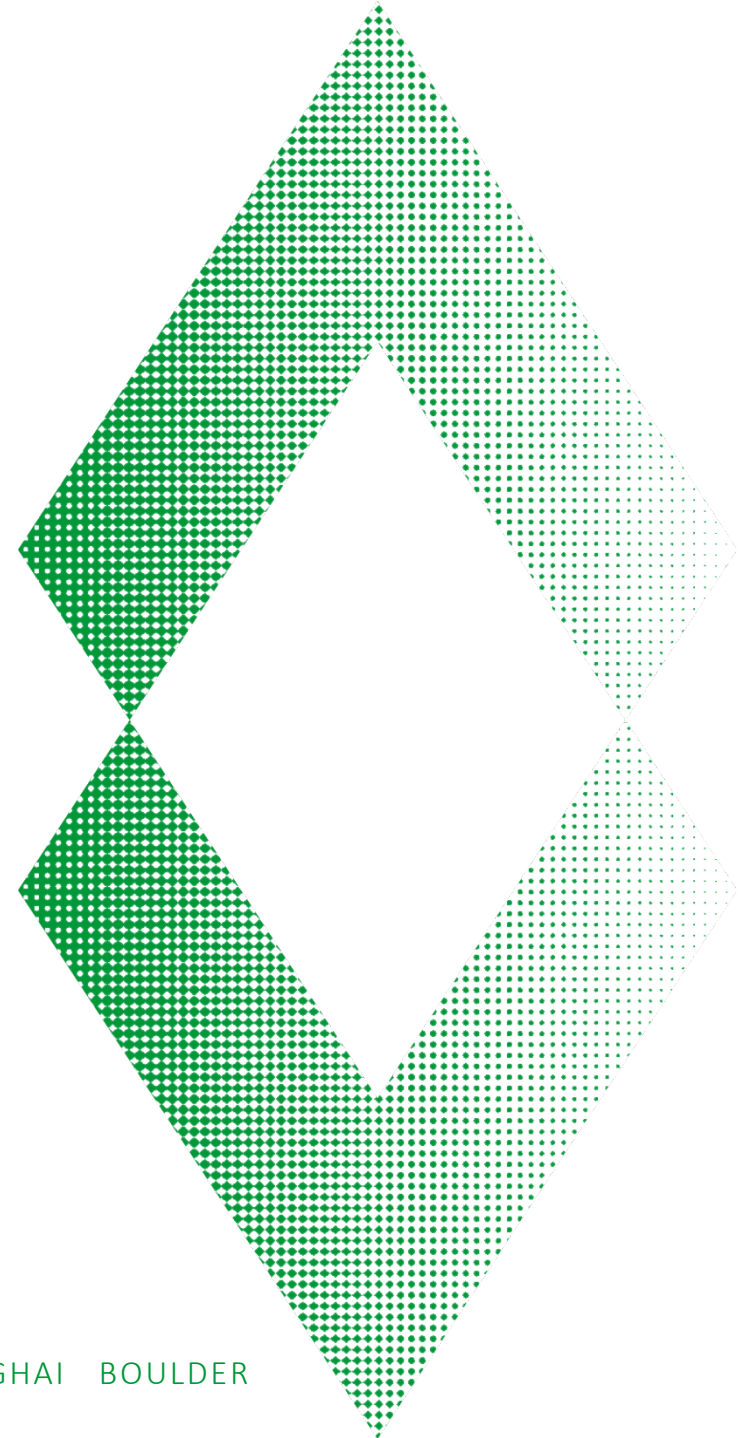
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Trends in the decisions of the Litigation Chamber

I. Changes in Litigation Chamber decisions

- ◆ Evolutions re form
 - ◇ Procedure
 - Links with Inspection Service in particular
 - ◇ Maturity of decisions
 - ◇ Better compliance with principles of good administration?

- ◆ Evolutions re content
 - ◇ More detailed arguments
 - ◇ No appeal? Reference for future cases

Recurring themes

II.A. E-mails

- ◆ Retention of ex-employees' e-mail addresses

- ◆ Constants in the decisions:
 - ◆ Crucial to have a **good internal policy on the use of e-mail and IT**
 - ◆ Mailbox maintained for max. 3 months after departure, access restricted
 - ◆ Autorisation of ex-employee required? Evolution

II.A. E-mails

- ◆ Requests for access to e-mails from (ex-)employees
 - ◇ Crucial to have a **good internal policy on the use of e-mail and IT**
 - ◇ Requests for access to e-mails may be excessive

- ◆ Bonus: sending an e-mail to the wrong recipient = data breach? Unlawful processing? Inadequate security?

II.B. Elections

- ◆ Purpose limitation
 - ◇ Re-use of data for new purposes
 - Example: list of new inhabitants in the municipality, list obtained as mayor
 - ◇ Compatibility? Reasonable expectations?
 - Relationship with legal grounds

- ◆ Transparency
 - ◇ Lack of information (direct or indirect)

- ◆ Fines also for individuals

II.B. Elections

- ◆ Fines for legal entities?
 - ◇ EDPB formula has started to be used
 - ◇ Many outstanding questions

- ◆ Other sanctions in practice?
 - ◇ Compliance orders... without precise indications

- ◆ Penalties for public authorities?
 - ◇ Often limited to warnings/reprimands
 - ◇ No (publicised) use of the possibility of transferring a matter to the public prosecutor's office

II.C. DPO

- ◆ Internal or external DPO?
 - ◇ No preference expressed

- ◆ Selection: proof of expertise
 - ◇ Expertise in data protection law "required", IT expertise a "plus"
 - ◇ Assessment required
 - ◇ Search must continue as long as no suitable candidate
 - ◇ *Towards greater flexibility?*
 - ◇ *Question asked more and more often in the event of an investigation by the Inspection Service*

II.C. DPO

- ◆ Involvement in the event of a data breach?
 - ◇ No involvement in decision-making (regarding risk or possible notification)

- ◆ Conflicts of interest and other duties
 - ◇ Avoid the role of head of another department
 - Questionable? CJEU: C-453/21
 - ◇ Useful to have a procedure for managing conflicts of interest (and to document it)

II.C. DPO

- ◆ Work overload?
 - ◇ Corporate responsibility
 - ◇ Lack of resources?

- ◆ You don't know?
 - ◇ Fault of the company/organisation
 - ◇ Arranging e-mail forwarding?
 - ◇ Debatable?

II.D. Cookies

- ◆ Illustration of individual cases leading to a formal, general position
 - ◇ Cookies checklist (2023)
 - ◇ ... but positions that have not always been the subject of disputes (e.g. use of colours, outright ban on cookies walls)

- ◆ Questions of competence
 - ◇ No systematic verification that personal data is indeed being processed
 - ◇ Necessity analysis based on third-party classifications

II.D. Cookies

- ◆ Illustration of the settlement mechanism
 - ◆ No decision on the merits
 - ◆ Agreement between the Litigation Chamber and the defendant
 - ◆ Does not prevent subsequent complaints

II.E. Data controller

- ◆ Broad interpretation of the concept of "controller"

- ◆ Determining purposes?
 - ◆ Valuation mandate given to an independent expert → principal considered as controller
 - ◆ Belgian Official Journal seen as controller... even though it has no legal personality
 - ◆ Sector organisation considered as controller for standard developed by the sector

EU impact of Litigation Chamber decisions

III EU impact

- ◆ Proceedings that have given rise to references for preliminary rulings:
 - ◆ **IAB Europe v. BDPA** of 7 March 2024 (C-604/22)
 - Concept of personal data
 - Concept of controller
 - Concept of joint controllers
 - ◆ **Belgian State v. BDPA** of 11 January 2024 (C-231/22)
 - Concept of controller
 - Determination of responsibilities for compliance with data processing principles

III EU impact

- ◆ Proceedings that have given rise to references for preliminary rulings:
 - ◆ **Proximus v. BDPA** of 27 October 2022 (C-129/21)
 - Concept of consent
 - Right to erasure ("*right to be forgotten*")
 - Information obligations and responsibility of the controller
 - ◆ **Facebook v. BDPA** of 15 June 2021 (C-645/19)
 - Cross-border processing of personal data
 - Sincere and effective cooperation between supervisory authorities
 - Power to initiate or engage in legal proceedings

