40

Issue

Directory number	Awarded to	Awarded to	Uitgereikt aan
2025/ 1556			
Judgement date	op		
14 May 2025	€ BUR	€ 8UR	€ BUR
Case number			
2022/AR/292			

N°

St Not registerable

Final judgement

Art. 773 Ger.W.

Court of Appeal
Brussels

Market Court section

19the Chamber A

Judgement

Offered on
Do not register

COVER 01-D0004389135-0001-0D71-02-01-1

L J

1. INTERACTIVE ADVERTISING BUREAU EUROPE iVZW (IAB Europe), registered in the Crossroads Bank for Enterprises under number 0812.047.277, with registered office at 1040 BRUSSELS, Robert Schumanplein 11,

Plaintiff,

represented *by* Mr. CRADDOCK Peter Alexander, attorney-at-law with offices at , , Mr. JUDO Frank and Mr. VANDEKERCKHOVE Kwinten, attorneys- at-law with offices at and Mr. VAN QUATHEM Kristof, attorney-at-law with offices at

AGAINST

2. **DATA PROTECTION AUTHORITY,** registered in the Crossroads Bank for Enterprises under the number 0694.679.950, with its registered office at 1000 BRUSSELS, Drukpersstraat 35,

Defendant, hereinafter *"DPA",*

Represented by Mr. ROETS Joos and Mr. ROES Timothy, attorney-at-law with offices at

IN THE PRESENCE OF

3. **AUSLOOS Jef**, with national identification number , domiciled at

Voluntarily intervening party *(No. 1),*

4. DEWITTE Pierre, with national identification number , domiciled at

Voluntarily intervening party (No. 2),

5. **RYAN Johnny**, with national social security number , domiciled at

Voluntarily intervening party (No. 3),

6. FUNDACJA PANOPTYKON, foundation under Polish law, with registered offices at Orzechowska 4/4, 02-068 WARSCHAU, POLAND, as representative of Ms , domiciled at ,

Voluntarily intervening party (No. 4),

7. STICHTING BITS OF FREEDOM stichting naar Nederlands recht, met maatschappelijke zetel te Prinseneiland 97hs, 1013 LN AMSTERDAM, NEDERLAND,

Voluntarily intervening party (No. 5),

8. LIGUE DES DROITS HUMAIN ASBL, as registered in the Crossroads Bank for Enterprises under the number 0410.105.805, with its registered office at 1000 BRUSSELS, Kogelstraat 22, currently at 1080 BRUSSELS, Leopold II avenue 53,

Voluntarily intervening party (No. 6),

represented by Mr. DEBUSSERE Frederic and Mr. ROEX Ruben, both attorneys-at-law with offices at 1000 BRUSSELS, rue Joseph Stevensstraat 7

All voluntarily intervening parties together are hereinafter also referred to as the ***"complainants".***

In view the procedural documents :

- The Decision No 21/2022 in DOS-2019-01377 of 2 February 2022 of the DPA's Litigation Chamber (hereinafter : the "***Contested* Decision** "or the ***"Decision")*** ;
- The petition dated 4 March 2022, by which IAB Europe lodges an appeal against aforementioned decision ;
- the petition for voluntary intervention by Mr Ausloos *and others* filed at the court on 15 March 2022 ;
- the Market Court's interim judgement of 7 September 2022 in which it referred preliminary questions to the Court of Justice of the European Union (hereinafter Court *of Justice");*
- The judgement of the Court of Justice of 7 March 2024 (C-604/22) ;
- The petition under Article 748, §2 Code of Civil Procedure as filed by IAB Europe on 11 October 2024 ;

- Market Court order of 18 October 2024 regulating the calendar for additional submissions ;
- the (third) final submissions and exhibit binders as currently filed by the parties ;
- oral hearing on 8 January 2025 at the case was scheduled for decision on 19 March 2025 ; **the debate on** 8 **January 2025 was resumed ab ovo in view of the modification in the composition of the Market Court following the interim judgement as pronounced on** 7 September 2022 ;
- The petition to reopen the debates under Article 773(2) Code of Civil Procedure as filed by IAB Europe on 25 February 2025 ;
- the DPA's written comments on 7 March 2025 ;
- complainants' written submissions on 7 March 2025 ;

The proceedings were conducted in accordance with the Act of 15 June 1935 on the use of language in court proceedings.

I. Facts and procedural predecessors

1.
IAB Europe is a Belgian-based international non-profit association representing companies in the digital advertising and marketing sector at European level. IAB Europe's members include both companies in this sector - such as publishers, ecommerce and marketing companies and intermediaries - and national associations, including the national IABs (Interactive Advertising Bureaus), which in turn include companies in that sector. IAB Europecounts *amongst* its members, among others, companies that significant revenues from selling advertising space on Internet sites or applications.

IAB Europe has developed the **Transparency & Consent Framework (hereinafter : *"TCF")***, being a "standard"' consisting of guidelines, instructions, technical specifications, protocols and contractual obligations that enable both internet site or application providers and data brokers or advertising platforms to process personal data of internet site or application users.

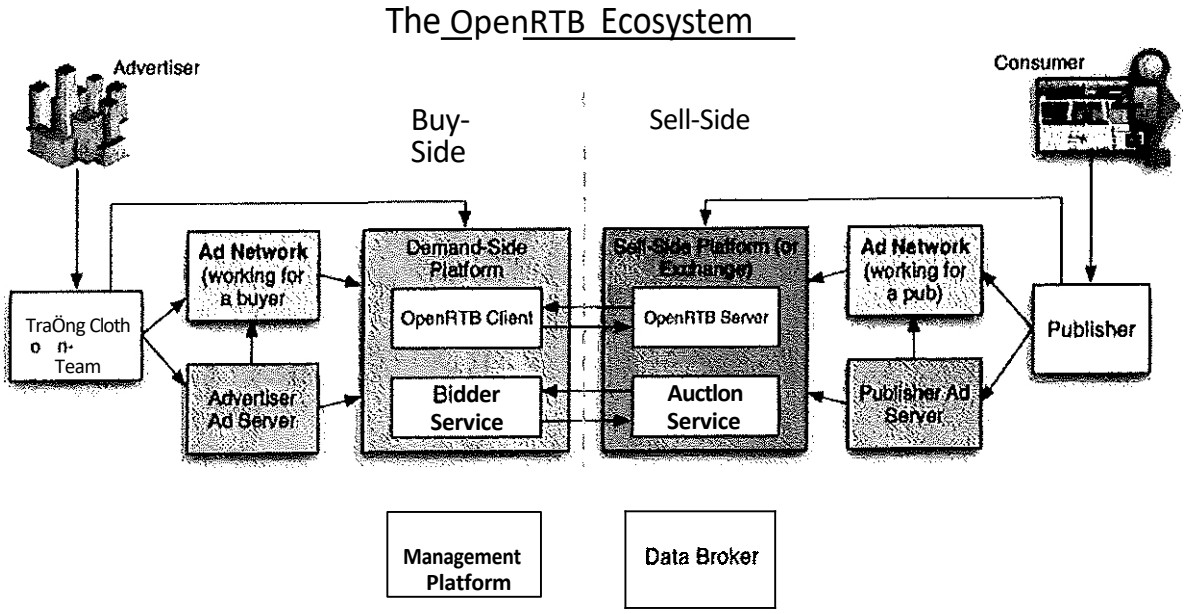
3.
The TCF aims to promote GDPR compliance when those companies use the so-called **OpenRTB protocol, one of the most widely used protocols *for* Real Time Bidding,** i. e. a system for instantaneous automated

There is an ongoing discussion between parties about what exactly the TCF is : a standard, a norm, a code of conduct, framework, framework, etc.

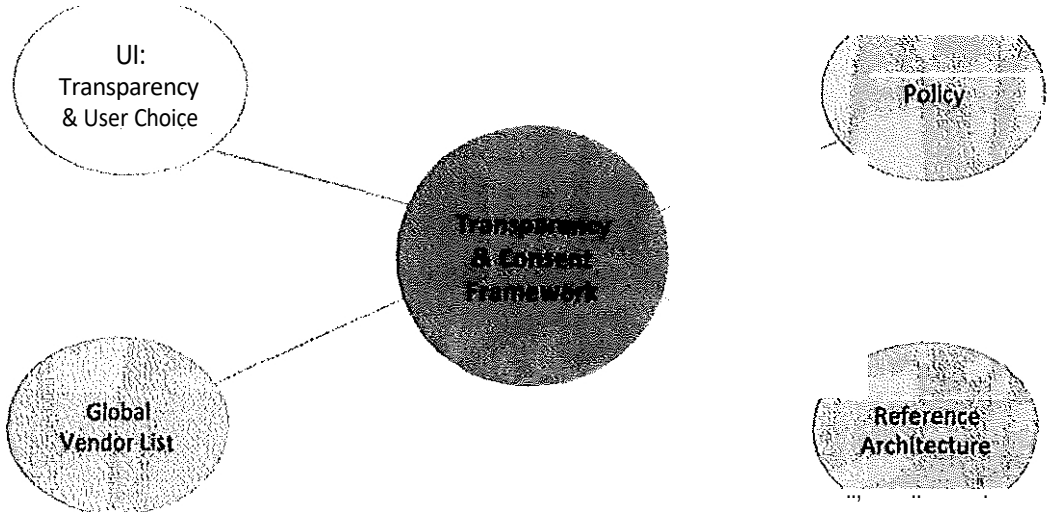
online auction of user profiles for selling and buying advertising space on the internet (hereinafter : *"RTB").* In light of certain practices in by IAB Europe members in the context of this mass exchange of personal data relating to user profiles, IAB Europe proposed the TCF as a possible solution to bring that auction system into compliance with the GDPR.

In particular, from a technical point of view, when a user visits a website or an application that contains advertising space, advertising technology companies, including data brokers and advertising platforms, representing thousands of advertisers, can instantly bid for that advertising space behind the scenes through an automated auction system that uses algorithms, in order to display advertising targeted on that advertising space that is specifically to that user's profile.

The Contested Decision shows this schematically as follows :



' Technical analysis report of the Inspectorate, 4 June 2019, exhibit A24 of the DPA.



\ : . ! : requires central governance ; decentralised governance, fully customisable

4.

However, in order to show such targeted advertising, consent must first, in principle, be obtained from that user. Accordingly, when the data subjects first visit a particular website or application, a **consent management platform** - a **so-called Consent Management (hereinafter : *"CMP")*** - will appear that allows him to give his consent to the provider of the internet site or application to collect and process his personal data for predetermined purposes - such as marketing or advertising in particular - or to share such data with certain providers, as well as to object to various types of processing of such data or to their sharing on the grounds of legitimate interests invoked by providers within the meaning of Article 6(1)(f) GDPR. These personal data relate in particular to the 's location, age, search history and recent purchases.

In this , the TCF provides a framework for the processing of personal data on a large scale and facilitates the recording of users' preferences through the CMP. These preferences are then encrypted and stored in a letter and string that IAB Europe calls **the Transparency** and **Consent**

String (hlerna : ***"TC Strlng"),*** which is shared with personal data brokers and advertising platforms participating in the OpenRTB protocol, so that they know what the has consented to or objected to. The CMP **also places a cookie (euconsent-v2) on the user's device. Combined, the TC String and** the **euconsent-v2 cookie can** be **linked to the user's IP address**.

L y

According to IAB Europe, this was changed in the latest version 2.2 of the TCF, which is not under review here.

6.
The TCF plays a role in the operation of the OpenRTB protocol, as it provides the ability to transcribe preferences in order to communicate them to potential vendors, as well as to achieve various processing purposes, the provision of advertisements. The TCF purportedly aims assure personal data brokers and advertising platforms of GDPR compliance through the TC String.

7.
The DPA has received is 2019 complaints against IAB Europe (most complaints are from other member states, one concerns Mr. Pierre Dewitte from Belgium) that concerned the TCF's compliance with the GDPR.

The DPA investigated certain complaints (with an initial report from the inspection service dated 13 July 2020) and then triggered the cooperation and cofinancing mechanism to reach a joint decision approved by the (21*) national supervisory authorities in that mechanism.

8.
For example, by decision of 2 February 2022 (hereinafter : *"Contested Decision"), the* Litigation Chamber of the DPA ruled that IAB Europe was acting as a data controller in relation to the registration of the consent signal and of the objections and preferences of individual users by means of a TC String, which, according to the Litigation Chamber of the DPA, is linked to an identifiable user. In addition, in that decision, the Litigation Chamber of the DPA Act ordered IAB Europe, pursuant to Article 100, 4 1, 9", DPA Act, to bring the *processing* of personal data the TCF into compliance with the GDPR, and imposed several corrective measures as well as an administrative fine (EUR 250,000.00) on it.

9.
On 4 March 2022 IAB Europe filed an appeal with the Market Court against the decision of 2 February 2022.

10.

° In the facts, there were Z8 because different supervisory authorities from Germany .

L J

IAB Europe, meanwhile, was working (in consultation with the DPA) on modifications to the TCF. **The version** under review here is version 2.0. On 16 **May 2023**, **IAB Europe version 2.2** over which the Market Court currently has no jurisdiction (see further below).

11.
Before Market Court, IAB Europe argued that TS Strings are not personal data for it as IAB Europe itself cannot trace the data back to an individual. It is only the other participants of the system that can do so. For the same reason, IAB Europe would also not be a data controller as it allegedly has no access to the .

12.
On 7 September 2022, the Market Court delivered an interim judgement in which it referred, i.a., two preliminary questions to the Court of Justice which can be summarised as follows :

1. Should a TC String be considered personal data?

2. Should IAB Europe be considered a data controller? If so, does this also apply to subsequent processing by other organisations?

13.
On 7 March 2024, the Court of Justice handed down a judgment (C-604/22) (hereinafter : the *Preliminary Judgement).*

In it, the Court of Justice ruled as follows :

> *"The Court (Fourth Chamber) hereby rules* :
>
> *Article 4(1) of 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) must be interpreted as meaning that a letter and character string such as the TC String (Transparency and Consent String) which contains the preferences* of *an internet user or an application user as regards his consent to the processing of his personal data by internet website or application providers, as well as by personal data brokers and advertising lotteries, is personal data within the meaning of that provision, since that string makes it possible to identify the user concerned when* it *can linked by reasonable means to* an *identifier such as, in particular, the IP address of that user's device. The fact that a sectoral organisation which is in possession of that string cannot, without external cooperation, access the data held by its members is irrelevant.*

therefore does not prevent that *string from being personal data within the meaning of the aforementioned provision.*
does not prevent that string from being personal data within the meaning of the aforementioned provision.

Articles 4, item 7, and article 26, paragraph 1, of regulation 20J6/679 should be interpreted that:

- a sectoral organisation which offers its members a standard drawn up by it which relates to consent the processing of personal data and which, in addition to binding technical rules, also provides for rules determining in detail how personal data relating to such consent are to be stored and disseminated, is to be regarded as a *'joint controller' within the meaning of those provisions if, having regard to the specific circumstances of the case, it* exercises*, for its own purposes, an influence over the processing of personal data in question and thereby determines, together with its members, the purpose and means of that processing. The fact that such a sectoral organisation does not itself have direct access to the personal data processed by its members within that standard does not it' from* having *the status of joint controller within the meaning of the aforementioned provisions*.

- the joint controllership of that sector organisation does not automatically extend
to *subsequent processing of personal data by third parties - such as internet site or application providers - in terms of users' preferences for the purpose of targeted online advertising."*

14.
The parties, after receiving the Preliminary Judgement, further enabled the case and they were heard by the Market Court on 8 January 2025 after which the case was taken in consideration.

II. Contested decision

In its decision of 2 February 2022, the Litigation Chamber of the DPA found as follows :

FOR THESE REASONS,
the Litigation Chamber of the Data Protection Authority, after deliberation, decides to:

– *order the defendant, pursuant to Article 100, § 1, 9° of the DPA Act, to bring the processing of personal data under the TCF into conformity with* the *provisions of the GDPR by:*

a. provide a valid legal basis for the processing and dissemination of users' preferences in context of the TCF, in the form of a TC String and a euconsent-v2 cookie, as well as to prohibit the use of legitimate interests as a for processing(9) personal data, by organisations participating in the TCF in its current form, via the
terms of use, in accordance with5.1.a and 6 of the GDPR,'

b. implement *effective technical and organisational control measures to ensure the integrity and confidentiality of the TC String, in accordance with Articles 5.1.f, 24, 25 and 32 of the GDPR;*

c. maintain strict vetting of organisations joining the TCF to ensure that participating comply with the requirements of the GDPR, in accordance with Articles S.1.f, 24, 25 and 32 GDPR;

d. take technical and organisational mootrege/en *to prevent consent from being ticked by default in the CMP interfaces as well as automatically allowing participating vendors on the basis of legitimate interest, in accordance with Articles 24 and 25 GDPR;*

e. Require CMPs to use a uniform and GDPR-compliant approach to the informotion *the latter provide to users,* in accordance *with Articles 12 to 14 and 24 of the GDPR;*

f. supplement the current register of processing activities, by including the processing of

personal data in the TCF by IAB Europe, in accordance with Article 30 of the *GDPR;*

g. Conduct a data protection impact assessment (DPA) with respect to the processing activities under the TCF *and their impact on the processing activities carried out under the OpenRTB system, as well as adapt this DPA to future versions or amendments to the current version of the TCF, in accordance with Article 35 of the GDPR;*

h. appoint a *data protection officer (DPO) in accordance with Articles 37* fot *39 of the GDPR.*

These compliance measures must be implemented within six months of the validation of an action plan by the Belgian Data Protection Authority, which must be submitted to the Litigation Chamber within two months of this *decision. Failure to comply with the above deadlines will result in a penalty of EUR 5,000 per day, pursuant to* Article *100, §1, 12° of the DPA Act.*

– *impose upon the respondent under Article 101 of the DPA Act an administrative fine of EUR 250.000.*

This decision may be appealed to the Market Court, with the Data Protection Authority as respondent, within a period of 30 days from its notification, in accordance with Article 108 § 1 of the DPA Act.

It is against this decision that the present action is brought by IAB Europe.

III. Parties' claims

IAB Europe asks the Market Court through its final submissions of 15 November 2024 :

Declare [IAB Europe'*s*] *appeal admissible and well-founded,*

- *As a result, regarding the Contested Decision No 21/2022 dated 2 February 2022 in Case No DOS-2019-01377:*
  - *in main order, to annul it;*
  - *In secondary order, to annul and refer it to the DPA;*
  - *In most subordinate order, to annul it and substitute an own decision subject to the organisation of a consultation process.*

– order the DPA and the Complainants to pay the costs of the proceedings, court costs and the procedural indemnity, the latter estimated at 1.800 EUR.

Per final submissions dated 27 September 2024, **the DPA** asks :

To give judgement with full jurisdiction:

- Declare IAB Europe's substantive grievances unfounded,

- Accordingly, declare that IAB Europe has infringed the following provisions: Article 5.1.a GDPR; Article 6 GDPR; Article 12 GDPR; Article 13 GDPR; Article 14 GDPR; Article 24 GDPR; Article 25 GDPR; Article S.1.f GDPR; Article 32 GDPR; Article 30 GDPR,' Article 35 GDPR; Article 37 GDPR, in the manner as

set out in paragraph 535 of the contested decision No 21/2022 of 2 February 2022 of the Litigation Chamber of the DPA ;

- Also declare IAB Europe's procedural grievances unfounded,

- Subsequently confirm the legality of the contested decision No 21/2022 of 2 February 2022, and in particular of penalties imposed therein on IAB Europe (contained in the dictum on pp. 138-139);

In any event to declare that IAB Europe's claim is unfounded;

In any event, to order IAB Europe to pay the costs of the proceedings, including the indexed basic amount of procedural indemnity for non-pecuniary claims.

On behalf of **voluntarily intervening parties** or **complainants** :

To allow the Plaintiffs their voluntarily conservatory intervention;

Declare the DPA's application to dismiss IAB Europe's appeal, unfounded.

IV. Arguments

On behalf of IAB Europe :

FIRST : The Litigation Chamber's handling of the proceedings violates its tasks and competences as Data Protection Authority under the DPA Act and the GDPR. It violates the rights of defence of [IAB Europej and disregards the principle of due diligence as a principle of good administration.

SECOND: The contested decision is not adequately reasoned.

THIRD : The fact that the context of the case has changed completely on appeal violates [IAB Europe's] right to a fair trial as well as the principles of equality and non-discrimination.

FOURTH : The the Litigation Chamber decides that TS Strings are personal data is insufficiently nuanced and reasoned.

FIFTH : The Contested Decision wrongly states that [IAB Europe] processes personal data.

L J

SIXTH : The Contested Decision wrongly concludes that [IAB EuropeJ is a data controller of TS Strings.

SEVENTH : The Contested Decision wrongly concludes that [IAB Europej is a joint controller for the processing of TS Strings and related data.

EIGHTH : The Contested Decision wrongly concludes that (IAB Europej needs a legal basis and that no legal basis exists for the processing of TS Strings and OpenRTB data.

NINTH : The Litigation Chamber wrongly concludes that |IAB EuropeJ is in breach of its duty of transparency.

TENTH *:* The Contested *Decision* wrongly concludes that {IAB *EuropeJ* its obligations of security, integrity and data protection by design and default.

ELEVENTH : [IAB Europe] does not have to carry out a data protection impact assessment.

TWELVETH : [IAB Europe) does not have to appoint a data protection

officer.

THIRTEENTH : [IAB Europej has no legal obligation facilitate the exercise of data subjects' rights.

FOURTEENTH : [IAB Europe] is not required to have a record of processing activities and it is not incomplete in any case.

On behalf of the DPA :

FIRST defence argument : Your Court has no jurisdiction to rule again on the points of law raised in the first grievance - Your Court has exhausted its jurisdiction (defence to IAB Europe's first grievance),

SECOND defence argument : IAB Europe's claim is inadmissible in so far as it relates to changes made to the TCF subsequent to the Contested decision.

THIRD defence argument : The breach of the duty of care established in the interim judgement need not | *to* set aside the contested decision; at least, it can be relitigated by Your Court.

FOURTH defence argument : The TS Strings constitute personal data (defence to IAB 's fourth grievance).

FIFTH defence argument : In the context of the TCF personal data are processed (defence argument against the fifth grievance of IAB Europe).

SIXTH defence argument : IAB Europe is data controller for the processing of TS Strings (defence to IAB 's sixth grievance).

SEVENTH defence argument : IAB Europe is a joint controller for the processing of TS Strings and other data (defence to IAB Europe's seventh grievance).

EIGHTH defence argument : IAB Europe must have a valid legal basis for processing TS Strings and OpenRTB data but there is no such legal basis (defence to IAB 's eighth grievance).

NINTH defence argument : IAB Europe breaches its transparency obligation (defence to IAB 's 14th grievance).

TENTH defence argument : IAB Europe breaches its obligations regarding security, integrity and data protection (defence to IAB 's tenth grievance).

ELEVENTH defence argument : Defence of IAB Europe's eleventh to fourteenth grievances: Impact assessment is required (Art 35 GDPR), Data protection officer is required (Art 37 GDPR), Record of processing activities is required (Art 30 GDPR) and IAB Europe must facilitate the exercise of data subjects' rights (Arts 15-22 GDPR)

On behalf of **voluntarily intervening parties** or **complainants:**

FIRST CLAIM : The DPA's handling of the *proceedings* does not violate its tasks and competences as Data Protection Authority under the DPA Act and GDPR. It does not violate IAB Europe's rights of defence, nor does it disregard the principle of due diligence. Indeed, the DPA Act contains both inquisitorial and adversarial proceedings, and the Litigation Chamber may also rely on a complainants' submissions and evidence without having to have all the facts and allegations in a complainants' submissions examined by the lnspectorate. Neither Articles 63 and 94

DPA Act nor Article 57.1.f GDPR oblige the Litigation Chamber to have all facts and allegations in a complainant's claim examined by the Inspection Service before a decision. Article 57.1.f GDPR even has no direct effect, so IAB Europe cannot derive any rights from it. The only relevant test is whether the defendant's equality of arms and right defence have been respected. This is the case when (1) the defendant knows before its final conclusion what facts and articles of law violated are alleged against it by the complainant and/or the Inspection Service, (2) it was the last one to be able to submit a written opinion on them so that it the last word, and (3) the Litigation Chamber bases its decision solely on the pleas and arguments contained in the parties' pleadings and exhibits and/or the Inspection Service's report. Indeed, in that case, the defendant has been able to defend itself against all the factual and legal pleas and arguments contained in the complainants' conclusions and/or the Inspection Service's report, and ex post judicial review by the Market Court of the decision in relation to the pleas and arguments contained in the 's conclusion is possible, In this case, those conditions have been , so that the equality of arms and IAB Europe's right of defence been respected. For these reasons, IAB Europe's first grievance is unfounded and IAB Europe's claim to annul the Litigation Chamber's decision based on that grievance must be dismissed.

SECOND CLAIM : IAB Europe's assertion that its right to a fair trial and the principles of equality and non-discrimination would have been violated by the fact that the context of the case "in appeal" before Your Court would have been completely changed from the "first instance" before the Litigation Chamber is completely false. Indeed, in an appeal against a decision of the Litigation Chamber of the DPA, Your Court is not seated in appeal but in first and only instance. In any event, the context of the case in this appeal has not changed in any way from the proceedings before the Litigation Chamber. For these reasons, IAB Europe's third grievance is unfounded and IAB Europe's claim to annul the Litigation Chamber's decision on that grievance must be dismissed.

THIRD CLAIM : The Litigation Chamber correctly found that the processing of the TC String constitutes "processing" of "personal data" within the meaning of Articles 4.1 and 4.2 GDPR, as clearly confirmed by the Court of Justice. Indeed, the user preferences collected in the TC String are information "about" a natural person who can identified by online identifiers, in particular the IP address. This personal data is then processed, i.e. collected, structured, ordered, disseminated and made available in accordance with the binding requirements of the TCF. Accordingly, IAB Europe's claim that the Litigation Chamber's decision should be set aside on the grounds that there is allegedly no personal data (fourth grievance) or that it does not involve the processing of personal data (IAB 's fifth grievance) must be dismissed.

L J

FOURTH CLAIM : IAB Europe is ve workng responsibility for the processing of personal data in the . Indeed, the TCF itself, for which IAB Europe expressly declares that it responsible, requires participants process personal data for the alleged purpose of bringing the underlying processing of personal data through the OpenRTB auction system into compliance with the GDPR. In doing so, IAB Europe provides the purpose as well as the essential means for processing personal data. Moreover, IAB Europe is jointly responsible for these processing operations of personal data in the TCF with the other participants, namely the CMPs, Publishers and Vendors who intervene, albeit later in the processing chain. Therefore, IAB Europe's claim to annul the Litigation Chamber's decision on the grounds that it would not be a joint controller for the processing of personal data in the TCF (IAB Europe's sixth grievance) or would not be a joint controller with the participants in that TCF (IAB Europe's seventh grievance) must be dismissed.

FIFTH CLAIM : IAB Europe's processing violates the basic principle of purpose limitation, proportionality and necessity. Indeed, IAB Europe's processing operations are not collected for legitimate purposes and result in the sharing on an immense scale of personal data with all kinds of recipients, without this sharing being in any useful to the processing operations the OpenRTB auction system into compliance with the GDPR. Consequently, IAB Europe is also in breach of its accountability and the obligation to develop the TCF in a way that ensures data protection by design (violation of Articles 5 and 25 GDPR). Accordingly, IAB Europe's claim to annul the Litigation Chamber's decision on the ground that IAB did not breach its obligations regarding data protection by design and default settings (part of IAB Europe's tenth grievance) must be dismissed.

SIXTH CLAIM : IAB Europe's processing of personal data in the TCF violates the basic principle of fair, lawful and transparent processing. Indeed, it does not have any legal basis for the processing, has obtained the personal data in misleading way, and does not provide either the complainants or any other data subjects with the legally required information about the processing of personal data it carries out. (violation of Articles 5, 6, 12, 13 and 14 GDPR) Accordingly, IAB Europe's claim to annul the Litigation Chamber's decision on the grounds that it did not need a legal basis for the processing of personal data in the TCF (IAB 's eighth grievance) and that it did not violate the obligation of transparency (IAB Europe' s ninth grievance) must be dismissed.

SEVENTH CLAIM : IAB Europe breaches the principle of integrity and confidentiality by sharing personal data within the TCF with an indefinite number of recipients without verifying whether those recipients actually provide the necessary safeguards to protect the personal data from unauthorised or unlawful processing. Accordingly, IAB Europe's claim to annul the Litigation Chamber's decision on the ground that IAB Europe did not breach its obligations of security, integrity and confidentiality (part of IAB 's tenth grievance) must be dismissed.

EIGHTH CLAM : IAB Europe violates the conditions for transfer of personal data to third countries, as it has set up the TCF in such a way as to systematically transfer personal data such as the TS Strings to numerous third countries without adequate protection for these transfers. (violation of Article 44 GDPR). Accordingly, IAB Europe's claim that the Litigation Chamber's decision should be set aside on the ground that IAB Europe had not breached its obligations regarding the transfer of personal data to third countries (part of IAB 's tenth grievance) should dismissed.

V. Legal framework

General Data Protection Regulation (hereinafter *"GDPR") :**

Articles 4-7

Articles 12-14

Articles 24-26

Articles 30, 32, 35 and 37

Article 40

Article 51.1

Article 57.1(a) and

(f) Article 58.1

° Regulation [Eur 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection of natural persons with regard to the processing of personal data and on free movement of such data and Directive 95/46/EC (General Data Protection Regulation), *O.J.* 119, 4 May 2016 (hereinafter *"GDPR").*

Article 94

DPA ACT :

Article 58

Article 63, 1°-6°.

Article 94, 1°-3°.

Article 96

Article 108

VI. Review by the Market Court

Preliminary remarks - Petition to reopen debate

15.
On 25 February 2025 (when the case was already under consideration in the Market Court), IAB Europe filed a petition for reopening the debate in accordance with Article 772 Articles.

On 7 March 2025, the DPA filed its comments about this request. The complainants joined the G8A's comments by email dated 7 March 2025.

The subject of IAB Europe's request to reopen the debate concerns the publication on 6 February 2025 of the opinion of advocate general Spielmann in case C-413/23 P (European Supervisory Authority v Joint Resolution Board) before the Court of Justice. In his opinion, the advocate general analyses, in particular, the notion of information "concerning" a natural person and the condition of identifiability of the data subjects.

IAB Europe requests a *reopening of* the debate on the basis *of* this exhibit, which it *qualifies as* new and of predominant relevance to the present case.

The *DPA* considers that the application should be rejected. It argues that the Advocate General's opinion does not qualify as a newly discovered exhibit or fact, at least that the conclusion is not

[5] Act 3 December 2017 establishing the Data Protection Authority, *O.J.* 10 January 2018.

of predominant importance because it cannot alter the Preliminary Judgement delivered by the Court of Justice in the present case.

16.
Article 772 Code of Civil Procedure provides : (EMPHASIS MARKET COURT)

> *"If an appearing party discovers a new exhibit or fact of predominant interest during the deliberations, it can, as long as the judgement* is *not* given, *request the reopening of the debates ".*

The application of the aforementioned legal provision requires that the exhibit or fact must new, i.e. it must **have been** discovered during the deliberations**, and of predominant importance, i.e.** it must be of specific utility to the . Thus, the exhibit or fact must not have been known to the applicant or could have been known before the *conclusion of* hef .

17.
In this case, the considers that the attorney-at-law's opinion indeed qua(ificates as new. Indeed, the opinion was published only after the case had already been for some four weeks. Nevertheless, the Court is not convinced that the content of the attorney-at-law's opinion, however interesting, of predominant importance.

That the term "personal data" *is a* relative concept is stated, inter alia, in paragraph 26 of the GDPR. In particular this paragraph clarifies that, as far as the notion of identifiability of a natural person is concerned, one must take into account all means that can reasonably be expected to be used by the data controller or by another person to directly or indirectly identify the natural person. The Court of Justice also made reference to this reasonableness/relativity test in the Preliminary Judgement of 7 March 2024, placing the final assessment in this regard with the Market Court.

Moreover, in the conclusion in question, the attorney-at-law express° *himself* makes the link to the Preliminary Judgement of the Court of of 7 March 2024 and reasons that case did indeed involve personal data because IAB Europe had reasonable means of indirectly accessing the identifying data.

18.
The Market Court does not consider the exhibit to be of predominant importance and the application to reopen the debates is therefore dismissed for that reason.

PROCEDURAL GRIEVANCES OF IAB EUROPE FOLLOWING INTERIM JUDGEMENT AND PRELIMINARY JUDGEMENT

° Footnote 25 to the Opinion of 6 February 202S Attorney-at-law Spielmann, in Case C-413/23.

FIRST and **SECOND CLAIM IAB Europe** : **The Litigation Chamber's handling of the proceedings is contrary to its tasks and competences as a Gegevensbeschermingsautoriteit under the DPA Act and the GDPR. It violates the rights of defence of IAB EuropeJ and disregards the due care principle as a principle of good administration and The Contested Decision is not adequately reasoned.**

Parties' positions

According to **IAB Europe**, the Litigation Chamber's handling of the proceedings violates its tasks and competences as Data Protection Authority under the DPA Act and GDPR, violates IAB Europe's rights of defence and disregards the principle of due diligence as a principle of good administration.

Invariably, according to **IAB Europe**, the Litigation Chamber failed to state the reasons for the Contested Decision, or failed to do so adequately. Among other things, IAB Europe refers to the interim judgement of 7 September 2022 (no explanation of the one-stop shop rule).

The **DPA** posits that the Market Court has no jurisdiction to rule again on these grievances because it has already ruled on them in the interim judgement of 7 September 2022. It also argues that the established breach of the duty of care and the duty to state reasons should not lead to the setting aside of the Contested Decision.

The complainants agree with the DPAt.

Judgement of the Market Court

19.

The first and second grievances from IAB 's final submissions of 15 November 2024,

correspond respectively to IAB Europe's seventh and eighth grievances assessed by the Court in the interim judgement of 7 September 2022.

In other words, the interim judgement already ruled on IAB Europe's due diligence plea. Specifically, the interim judgement found that the Contested Decision itself did not make sufficiently clear on the basis of which factual findings it was held that TS *Strings* were personal data within the meaning of Article 4(1) GDPR. The Court held that the Litigation Chamber, by processing the complainants' additional complaints and allegations with regard to the qualification of the TC String, without more, after the hearing, did not conduct a proper investigation and fact-finding.

Furthermore, in the interim judgement, the Court found that the Contested Decision was not adequately reasoned insofar as it considers the DPA to be the leading administering authority.

20.

In contrast, the interim judgement considers that IAB Europe's rights of defence have been respected and rejects the violation of Articles 57(1) and 58(1) GDPR and Article 94 DPA Act, Indeed, the judgement emphasises that the Litigation Chamber was entitled to choose to investigate the additional facts or complaints itself. The lnspectorate did not have to be contacted again.

It follows that the Court has already ruled on the points of law alleged in the first two grievances and to that extent has exhausted its jurisdiction. The Court therefore lacks jurisdiction to rule again on these points of law.

2L

By contrast, the interim judgement has not yet ruled on the legal consequences to be attached to the procedural pleas found partly well-founded. The Court has not yet assessed whether and to what extent the procedural pleas found to be partially well-founded should lead to annulment or reform of the Contested Decision. However, in its interim judgement - in view of the request of all the parties *"to assess the substance of the present case"* - the Court did decide to to an assessment of the substance of the pending in that context. It is precisely in order to facilitate that exercise that the interim judgment referred several questions of interpretation to the Court of Justice.

In the dictum of the present Final Judgement, the Court annuls the Contested Decision on the above-mentioned procedural grounds in so far as the Litigation Chamber finds (without conducting a conclusive investigation and fact-finding in this regard) that TS Strings are personal data within the meaning of Article 4(1) GDPR and in so far as it considers the DPA to be the leading supervisory authority without providing specific reasons in the Contested Decision in that .

22.

The legislative history of Article 108(1) of the Act of 3 December 2017 establishing the Data Protection Authority Act shows that in an appeal against a decision of the Litigation Chamber by the plaintiff the Market Court excercises full jurisdiction.

This implies that, within the limits of the devolutive effect of the appeal, the Market Court rules on all questions of law and fact as they were considered by the Litigation Chamber of the Data Protection Authority.'

The Market Court can thus in principle substitute itself entirely the Data Protection Authority in its assessment. It cannot only annul the decision appealed

See Supreme Court 10 January 2025, C.22.0110.N, opinion of S. Ravyse, at w w w u ta be.

but also reform it. It can then take a decision that replaces the contested decision.'

23.

Now the Court, using its *full jurisdiction and taking* into account the Court of Justice's Preliminary Judgement, will itself assess whether the elements in the administrative file can support the classification of the TS Strings as personal data, the existence of at least one cross-border processing *and the* appointment *of* the G8A *as* lead supervisory authority.

24.

It should be noted that the Market Court is in no way obliged by the GDPR or under national to organise a European consultation procedure as IAB Europe wrongly posits in (the dictum of) its conclusion.

Regarding the characterisation of TS Strings as personal data, the Market Court refers to what follows when assessing IAB Europe's fourth grievance.

The existence of at least one cross-border processing and the appointment of the DPA as lead supervisory authority *are assessed* by the Market Court as part of the analysis of IAB Europe's fifth grievance.

THIRD CLAIM IAB Europe : The fact that *the* context of the case has changed completely on violates [IAB Europe's] right to a fair trial as well as the principle of equality and non -discrimination.

Points of view of the parties

According to **IAB Europe**, the DPA deprived it of an effective remedy and violated its right to dissent. IAB Europe, it says, must *"defend* itself *for the first time on appeal against a completely changed context".* It argues that every party except itself has the right to its case tried twice volJigally. According to her, there are violations of both Article 6 ECHR and Articles 10 and 11 of the Constitution.

According to the DPA, it is evident that the changes allegedly made by IAB Europe to the TCF are not relevant when assessing the legality of the Contested Decision. *"Indeed, as a general rule, the ~~legality of a decision must be as~~sessed at the time it was taken"* and

' *See* Supreme Court 12 December 2019, C.18.0250.N, opinion R. Mortier, at www uportal.be.

"based on the data as they were available at the time (they) were taken". Just as IAB Europe stresses that no acknowledgement to its detriment can be from the adjustments made to the TCF, neither can it be inferred from these adjustments that the Litigation Chamber's judgement on the TCF (as it was before the Litigation Chamber at the *time of the* Contested 8 Decision) *would* wrong.

Market Court judgement

2S.

In an appeal against a decision of the DPA's Litigation Chamber, the Court does not sit in

appeal but in first and only instance (Article 108 DPA Act). In this sense, the objective contentiousness with which the Market Court was charged differs from the subjective contentiousness dealt with by the "ordinary" courts and tribunals.

26.
In any case, the context of the case in this narrative has not changed in any way from the proceedings before the Litigation Chamber. The Court is assessing the TCF not in the amended version but in the version submitted to the Litigation Chamber. The Market Court does not even have jurisdiction over TCF version 2.2, as it is caught on the Contested Decision and that deals only with TCF version 2.0.

The notion of full jurisdiction arising from Article 108 DPA Act coupled with Article 78 GDPR is v'erscfiilling from *the notion* concerning the devolutive power of appeal (Article 1068 Ger. W.) and both cannot be used interchangeably. In light of the broad competences to a supervisory authority, according to the Court of Justice, the requirement of effective judicial protection is not met if the decisions of a supervisory authority are subject to only limited judicial 2ouden review. Therefore, the Court considers that such a decision must be subject to full judicial review. The essence of that full jurisdiction is that the parties may, within the limits of the devolutive effect of the appeal, put forward a comprehensive defence before the Market Court, including on facts that were not or insufficiently addressed in the Contested Decision (obviously to the extent that those facts *predate* the Contested Decision itself).

27.
No violation of Article 6 ECHR or Articles 10 and 11 of the Constitution is therefore demonstrated.

Zf5 *Dnde more* ECJ 7 December 2023, C-26/22 and C- 64/22, *UF and AB v Tand Hessen (SCHUFA),* par. 53-59.

For these reasons, IAB Europe's third grievance is unfounded and IA8 Europe's claim to set aside the Litigation Chamber's Contested Decision based on that grievance *must* be dismissed.

GRIEVANCES OF IAB EUROPE ABOUT THE MERITS OF THE CASE

Preliminary remarks

28.

1. In the present case, the Market Court was called upon by the DPA and the complainants to rule on both the substantive and procedural issues in dispute between the parties, and this, in order to ensure the full and effective effect of the GDPR in the domestic legal order. In the interim judgement, the Market Court held that the Contested Decision has some (merely) procedural defects. In order to the full and effective effect of the GDPR in the internal legal order, it seems appropriate - also in view of the Preliminary Judgement of the Court of Justice - for the Market Court to rule as yet also on merits of the infringements of the GDPR withheld by the Litigation Chamber (at least the extent that those merits are disputed by IAB Europe and are therefore the subject of the contradictory debate before the Market Court). In doing so, the Market Court systematically verifies the correctness of the substantive grounds of the Contested Decision, following Preliminary Judgement, and completes or replaces them where necessary or useful.
2. Article 5.2 GDPR provides that the data controller must be able to demonstrate compliance with the principles of the GDPR (accountability). To the that IAB Europe qualifies as a data controller (see below), it bears the burden of proving compliance with the GDPR and cannot rely on Article 870 Code of Civil Procedure to shift that burden of proof to the DPA or the complainants.

FOURTH and FIVE CLAIM IAB Europe : IAB Europe seeks to have the Contested Decision of the Litigation Chamber set aside on the grounds that it does not involve personal data (fourth grievance) or that it does not involve the processing of personal data (fifth grievance)
Fourth and fifth defence arguments DPA, third claim complainants.

Points of view of the parties

In its fourth grievance, **IAB Europe** argues that the Contested Decision violates Article 4(1) GDPR and the substantive obligation to state reasons by qualifying the TC String as personal data within the meaning of the aforementioned provision.

In its fifth grievance, IAB Europe argues that the Contested Decision failed to demonstrate that IAB Europe itself processes personal data within the meaning of Article 4(2) GDPR. Merely demonstrating

that "in *the context of the TCF"* personal data *is* processed is not sufficient according to IAB Europe· As long as it has not been shown that IAB Europe itself processes TS Strings, it could not be considered a data controller, nor could the TS Strings be considered personal data.

The DPA, supported in this by the complainants, argues that the TC String is personal data and that the TC String is processed as it captures a user's preferences through automated processes (even if the user refuses everything) and IAB provides its storage and dissemination.

Judgement of the Market Court

The Constested Decision

29. The Contested Decision finds (paragraphs 302 and following):

> *"302. Although the Litigation Chamber understands that it has not been DnOmstotelically established that the TC String, because of the limited metadata and values it contains, in itself allows direct identification of the user, the Litigation Chamber* finds *that when the consent pop-up is requested by means of a script from on a server managed by the CMP, it inevitably also processes* the *user's IP address, which is expressly classified as personal data in GDPR.*
>
> *303. Indeed, paragraph 30 GDPR provides that notuurliy individuals can be linked to online identi/icotors through their devices, applications, tools and protocols, such as* internet protoco/ *(IP) addresses, identification cookies or other identifiers such as* radio frequency identifi- cation logs. *This may leave traces that, especially when combined' with unique identifiers and information received by the servers, can be used to build profiles of natural persons and recognise notational persons.*
>
> *304. Once a CMP stores or reads the TC String on a user's device using a euconsent-v2 cookie, consent or objections to the* translation *based on legitimate interest, as well as the preferences of this user, may be linked to the IP address of the user's device. In other words, CMPs have the technical means to IP addresses (as indicated in their pop-up) and combine all information relating to an identifiable person. The ability to combine the TC String and IP address means that this is information from an identifiable user.*

305. Moreover, an identification *of the user is possible by linking to other* data *that can be by participating organisations within the TCF, but also in the context of OpenRTB. 0e Litigation Chamber underlines in that respect that* in
are not any parties, but participating or9ani5aties - CMPs and vendDTS- which, as examined in more detail below, are required to disclose information with which
they can identify users, to be communicated to the defendant, upon its simple request.

306. Therefore, the Litigation Chamber finds that the respondent has reasonable resources at its disposal that *it can deploy in relation to registered organisations participating in the TCF, which enable the respondent to directly or indirectly identify the natural person behind a TC String.*

3D7. The Litigation Chamber also understands that the TCF inherently aims and therefore storing a combination of preferences from each user in the form of a unique string in the TC String, in order to communicate those preferences to a large number of adtech vendors.

308. Indeed, the Litigation Chamber finds, based on the inspection reports, that the adtech vendors as well as other participants within the wider OpenRTB ecosystem lend the signal stored in a TS String to determine whether they' have the required *legal basis for* processing *a user's personal data for the purposes to which the user has consented.*

309. In this regard, the Litigation Chamber stresses that it is sufficient that certain information is used in order to individualise a natural person (single outJ *to be able speak of personal data. Also, the purpose of the TC String, in particular the purpose of capturing the preferences of a particular user, leads de facto to the TE String having to be regarded as personal data."*

The Preliminary Judgement

30.
The Court of Justice considers as follows :

"42. In the present case, it should be noted that a letter and string such as the TC String contains the preferences of an internet user or an application user with
regard to his consent to the processing by third parties of his personal data or of data on any objections he may have made to the processing of his personal data for an alleged legitimate interest as referred to in Article 6(1)(f) GDPR.

43 Even if a TC String would not by itself contain data by means of which the data subject can be directly identified, it contains, to begin with, the personal preferences of a specific user with regard to his consent to the processing of his personal data, where it wentot be information "about a (...) natural " within the meaning of Article 4(1) GDPR.

44 In addition, it is also established that linking the information contained in a TC String to an identifier such as, in particular, the IP address of the device of the user concerned can make it possible to draw up a profile of that user and to actually identify the person to whom that information specifically relates.

45 Since a user can be'i'dentified by linking a letter and character string such as the T6 String with additional data, such as, in particular, the IP address of that user's device or other identifiers, it should be that the TC String contains information about an identifiable user and thus personal data within the meaning of Article 4(1) GDPR, which is by paragraph 30 of the GDPR, which expressly refers such a situation.

46 This interpretation is not altered by the mere circumstance that IAB Europe could not itself link the TC String to the IP address of a pebruiyer's device and has no direct access to the data processed within the TCF by its members.

4F As shown by the case-law recalled in paragraph 40 of this judgement, that circumstance9 does not prevent a TC String from being classified as a "personal data" within the meaning of Article 4(1) GDPR.

48 Moreover, it is clear from the file in the Court's possession - and in particular from the decision of 2 February 2022 - that the members of IAB Europe are obliged to provide that organisation, at request, with all the information which would enable it to identify users whose data are contained in a TS .

49 Subject to the verifications to be carried out by the referring court in this regard, IAB Europe thus appears - thanks to the information to be provided to it by its members and other organisations participating in the TCF - to the reasonable means to in paragraph 26 of the GDPR to identify a given natural person by means of a TC String.

50 It follows from the foregoing that a TC String constitutes personal data within the meaning of Article 4(1) GDPR. It is irrelevant in this regard that without *external cooperation, which it may require, such a sector organisation neither* has/has *access to the data its* members *process within the standard it has established, nor can it link the TC String to other identifiers such as, in particular, the IP address of a 's device."*

Review* by *Market Court

TC String as personal data

31.
The definition of personal data in Article 4(1) GDPR essentially includes four elements, which are cumulatively important for determining whether or not certain information should be considered personal data. These are (i) any information (ii) about (iii) an identified or identifiable (iv) natural ."

32.
In addition, a person is considered identifiable if he or she *can be "identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person".* GDPR paragraph 30 clarifies that natural persons can also be linked to online identifiers, as found in IP addresses and identification cookies.

33.
The first condition for talking about personal data is "information". Data are described as objective facts. Once they acquire a meaning, information arises. The nature and content of the information is . The form of the information or its medium is also . Some data have a dual nature in that they both provide information about a person and allow a natural person to be identified.

34.
The second condition states that information must concern or be about a natural person. The DPA implicitly states, followed therein by other supervisory authorities, in the aforementioned paragraph 309 of the Contested Decision, that in order to speak information concerning a natural , (only) one of the three following elements

" DE BOT, O., *The application of the General Data Protection Regulation in the Belgian context. Commentary on the GDPR, the* Data Protection Act *and the* /2egevensbesc/iermingsourority *Act*, WoltersKluwer, 2020, p. 100, paragraph 273.

must be present : content data (infomation about a person) as personal data, purpose data (data used with I t the purpose of assessing a person) as personal data or result data (data that have potential effects on a person's rights or interests) as personal data. This position of the supervisory authorities is not followed by everyone in the legal doctrine, and hence the importance of the Preliminary Judgement."

35.
This second condition therefore plays an important role when the Litigation Chamber or the Market Court has to find judgement on (relatively) new technologies such as TS Strings. Sometimes, as in the present case, information (contained in the data) is in the form of character and letter strings and not persons. In that case, the information is deemed to relate to persons only indirectly.

36.
The third condition states that the GDPR's protection only applies to natural persons or people.

37.
Finally, the fourth condition states that the information must relate to a natural person who is identified or identifiable (directly or indirectly).

Application to this case

38. As mentioned *above*, the Market Court is exercising its full jurisdiction here.

39. In essence, the TCF aims to ensure that all data subjects in the digital advertising chain - from advertisers to publishers - comply with GDPR rules. It allows users to give or withhold their consent to process their personal data for advertising purposes. These preferences are collected and recorded in a so-called *"TC String",* which is then used within the RTB system.

40.
It cannot be reasonably disputed by any of the concerned parties that a TC is information and that a natural person is or could involved at least indirectly.

41.

" DE BOT, D., *The application of the General Data Protection Regulation in the* 8e/gisc/le *context.* ***Commentary*** *on the GDPR, the* Data Protection Act *and the* Databescfiermïngsoutoriteif *Act*, WoltersKluwer, 2020, p. 105 paragraphs, 284.

It remains to examine whether it is information relating to a natural person (second condition) and whether that natural *is* identified or identifiable (fourth *condition).*

42.

The Preliminary Judgement itself clarifies the fulfilment of the second condition in paragraphs 43 to 48 of the Preliminary Judgement quoted above, which explicitly confirms that the TC String *"contains the personal preferences of* a *specific user in relation to his consent to the processing of his personal data, which is information 'relating to a ... natural person'within the meaning of Article 4(1) GDPR".*

43.

With regard to the fourth condition*,* the Prejudice/Arresc *also* provides interpretation in the paragraphs above.

44.

However, in order to finally find whether a TC String is personal data within the meaning of Article 4(1) GDPR, in accordance with the Preliminary Judgement, it is necessary *ufor* the Market Court to examine whether IAB Europe **has reasonable means to identify a particular natural person on the** basis of a TC .

45.

As already held *above*, the Court hereby exercises its full *jurisdiction.*

46.

The Market Court considers as follows.

The inspection service's report (exhibit A133 administrative file DPA : Dutch version of the report) states :'[z]

> *"IAB Europe developed a Transparency and Consent (exhibits no. 30 to 36 and no. 38 of file DOS-2019-01377) in which it imposes binding rules on participating organisations, whose membership is also subject to a financial contribution. These binding rules relate to the processing of personal data in the context of online advertising. IAB* Europe *exercises a form of control in this ecosystem and refers to itself* as a *"Managing* Organisation"*.*
>
> *More concretely.'*

12 It is important to note that the abbreviation "MO" is an abbreviation for the English Managing Organisation or management organisation and in this context IAB Europe meant by it.

- *IAB* Europe *provides binding lists of processing purposes by referring to "Purposes and Features Definitions" and "Purpose and Feature Definitions" in an "Appendix A" [Annex A] (exhibits nos 32 and 38 of file DOS-2019 01377, respectively);*
- *IAB* Europe *provides the wl)ze of processing by imposing "Policies" (policies) on "CMPs" (Consent Management platforms) (Consent Management plotform hereafter* o/geyort *cMPJ , "Vendors" (vendors) and "Publishers" (publishers) participating in the Transparency ond Consent Framework* (*evidence nos 32 and 38 of file DOS-2019-01377);*

- *IAB Europe imposes binding rules on participating through its document "Terms and* Cond/t/onr *for the IAB Europe Transparency & Consent Framework" ("Terms and* Conditions"). *Oit document contains, inter alia, on bIad sides 5 to 6 the obligations for participants ("Your Obligations") and on pages 6 to 7 an obligation to make a financial contribution to the ecosystem ("Payment") (Betalfng) Exhibit No 33 of Dossier DOS-2019-01377)."*

In IAB Europes *"Current tcf policy"* (exhibit A038 from the administrative file *GBAj*, Articles 8 and 15 provide the following : (NADRUKKEN MARKETHOF)

"B. Record keeping
1. A CMP will maintain records of consent, as required under Framework Policies and the Specification, and will provide the MO access to such records upon request without undue delay."

Translated as :

"8. Registration
1. A CMP keeps records of consent, as required by the Framework and *$pecificatfe, and gives the MO access to these* records *on* request *without* undue *delay*."

"J5. Accountability
1. The MO may adopt procedures for periodically reviewing and verifying a Vendor's compliance with Framework Policies. A Vendor will provide, without undue delay, any informotion reasonably requested by the MO to *verify compliance.*
2. The MO may suspend a Vendor from participation in the Framework for its failure to comply with Framework Policies until the Vendor comes *into full compliance and demonstrates its intention and ability to remain so. The MO may expel a Vendor from*

participation in the Framework for violations of Framework Policies that are willful and/or severe."

Translated as :

"15. Accountability

1. The M0 may establish procedures for periodically assessing and verifying a Vendor's with the Framework. ***A Vendor shall provide without undue*** **delay** ***any*** **in/ormot/e** ***reasonably requested*** **by** ***the Mo*** **to** *verify* ***compliance*** **le**.

2. 2. The MO may suspend a *Seller from participation in the Framework for non-compliance with the Framework until the Seller fully complies with the Framework and demonstrates its* intention *and ability to with the Framework.*

The MO may exclude a Vendor from participation in the Framework in case of' wilful and/or serious violations of the Framework."

IAB Europe's Terms conditions (exhibit A033 from the DPA administrative file) states in Article 7 : (ADDRESS MARK TENHOF)

"7) Our Obllgations

b) tou agree that we and IAB Tech Lab may access, store and use any information that you provide in connection with your participation in the Framework in accordance with the terms of our Privacy Policy at https://www.iabeurope.eu/privacy-policy/, as updated from time to ***time."***

Translated as :

"7) Our obligations

(b) You agree that we'and IAB Tech Lab may ***access, store and use any Information you provide*** *in connection with your participation in the Framework* ***in*** *accordance with the terms of our Privacy Policy at https.'//www.iabeurope.eu/privacy-policy/, as updated from tide to tide."*

47.

It is indisputable from the Articles mentioned as a whole that, thanks to the information that its members and other organisations participating in the TCF are required to provide to it, IAB Europe has at its disposal resources that it and/or the participating organisations can reasonably be expected to use (or could use) to (in)directly identify a natural .

48,

However, the fact that IAB Europe itself would not have the reasonable means to proceed with Identification because it cannot make the link between a TC String and the IP address and would not have direct access to the personal data, is in itself irrelevant. This is expressly confirmed by the Court of Justice in paragraphs 46 and 47 of the Preliminary Judgement as quoted above.

It follows from the above that a TC String is personal data within the meaning of Article 4(1) GDPR.

Is there any processing of personal data ?

49.
Article 4(2) GDPR defines a *"processing operation"* as *"any operation or set of operations which is* upon *personal data or sets of personal data, whether or not by automatic means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of data."*

50.
Once created, the TS Strings are then processed, i.e. collected, structured, ordered, distributed and made available in accordance with the binding rules of the TCF. IAB Europe as the management organisation and central figure in the digital ecosystem thereby provides the storage and dissemination of the TS Strings.

The Contested Decision, by establishing in paragraphs 317-321 that at least the *vendors* collect, process, store and share personal data - what Article 4(2) GDPR calls *"providing by means of transmission"* - has legally justified the processing of personal data within the meaning of the aforementioned provision.

According to the TCF Technical Specifications, TC String sharing with CMPs is done in two ways :

a. storing *the* TC String in a shared *global consent* cookie on the *consensu.org internet domain* of IAB Europe or

b. the opsiaah Of *the* TC String in a storage system chosen by the CMP if it a service-specific permission signal.

In both cases, personal data is processed. IAB Europe's intervention in the processing was obviously all the more profound in the shared *global consent* cookie hypothesis. Indeed, that shared *global consent cookie in which* the TC String is stored refers to the consensu.org domain from where CMPs can access and update the gedee(the TS String. This domain was registered and managed by IAB Europe.

Both this making the TC String stored in a shared cookie, and making the TC String available to TCF participants via this central consensu.org domain, were clearly processing of personal data within the meaning of the GDPR.

52.

Independently of the *g/obo/* consent cookie and the consensu.org domain, there is a processing of personal data in the TCF managed *by* IAB Europe :

- O user preferences are collected via a CMP and the CMP also gets the 's IP address *at* that time ;
- 0 user preferences are structured and ordered in a TC String ;
- 0 the TC String is retained, distributed and made available to participants in the TCF.

53.

Notwithstanding what IAB Europe argues, this is not a mere theoretical determination but a concrete finding based exhibits (see, others, complainants' exhibits C1 to C4 : bailiff and/or notarial determinations of processing[13] . Nor is it merely a *"standard"* that would not in itself constitute processing as IAB Europe argues : the TCF is a framework that makes certain processing happen in a certain way, otherwise the framework would not work at all. Of course, the participants themselves choose whether they want to participate, but as soon as they join, they are obliged to process personal data (user preferences and associated identifiers) within the . After all, the TCF includes, as

---

[13] Official report of bailiff [ ] dated 15 February 2021 with determinations of Jef Ausloos (official and unofficial version), Official report of bailiff [ ] dated 16 *February*2021 with determinations of Pierre Dewitte (official and unofficial version), Affidavit *["affidavif "j* dated 12 February 2021 with determinations by Johnny Ryan (official and unofficial version), Notarial deed notary [ ] dated 3 February 2021 with determinations by [ ] (official version and free English translation).

already mentioned, is also mandatory in nature, with the rules and regulations contained therein additionally being enforceable by IAB Europe.

Is there cross-border processing of personal data?

54.
As announced above, the Market Court also uses full jurisdiction here :

Data flows to countries within the European Union do occur within the system described above (TCF). This is apparent from paragraphs 5 to 11 of the contested decision and the exhibits from the administrative file as submitted by the DPA. However, the exhibits submitted to the Court do not show that, as far as IAB Europe is concerned, there is a transfer to third countries within the meaning of Article 44 GDPR.

Account must therefore be taken of Article 1(3) GDPR, which provides that the free movement of personal data in the Union must neither be restricted nor prohibited for reasons relating to the protection of natural persons with regard to the processing of personal data.

Article 423) GDPR clarifies the concept of cross-border processing in following terms :

> *"(a) processing of personal data in the course of the activities of establishments in more than one* Member State *of an establishment of a controller or a processor in the Union in more than one Member State; or (b) processing of personal data in the of the activities of one establishment of a controller or a in the Union which materially affects or is likely to materially affect data subjects in more than one Member State."*

The DPA as lead supervisory authority

As announced above, the Market Court also full jurisdiction here : Paragraph 11 of the Contested

Decision states :

> *"The defendant has its sole seat in Belgium, but its activities have significant effects on stakeholders in several Member States, including complainants in Ireland, Poland and the Netherlands, as well as in Belgium. The Litigation Chamber draws its jurisdiction on a combined reading of Articles 56 and 4(23)(b) of the GDPR. The DPA was caught by the Polish, Dutch and Irish data protection authorities following a*

complainants' complaint to' them, pursuant to Article 77.1 GDPR. It declares that it *the lead supervisory autorireir (orticle 60 GDPR)."*

56.

This summary justification should be supplemented by the following findings from the inspection report (exhibit A133 DPA) showing (page 8 and following) that the DPA can only act as lead *supervisory* authority in relation to IAB Europe'° and limited to the TCF.

The lnspectorate justifies this on pages 10 and 11 of its report as follows : (EMPHASIS MARKET COURT)

IAB Europe's registered office is located Place Robert Schuman 11 in 1040 Brussels (Belgium) and registered with" the Crossroads Bank for Enterprises under No 0812.04 7.2776, establishment confirmed in its "privacy policy" (privacy policy) (exhibit No 41 of file DOS-2019-01377). According to Article S6 § 1 of the GDPR, the DPA is therefore the main supervisory authority for *the Transparency and Consent Framework.*

IAB Europe is the data controller for the Transparency and Consent Framework, as described above.

IAB Europe developed a *Transparency and Consent Framework exhibits nos 30 to 36 and no 38 of file D0S-2019-01377) in which it'* imposed *binding rules on participating* organisations, *whose membership also subject to a financial . These* binding *rules relate to the processing of personal data in the context of online advertising. IAB* Europe oe/ent *out a uorm of* confro/e *In this ecosystem and* venv/sr *to itself as "Managing Organizaf/on" (managing* organisafieJ.

The Market Court endorsed the above-mentioned findings of the inspection report. In

view of all that precedes, *both* IAB's *fourth* and fifth grievances are *unfounded.*

SIXTH and SEVENTH GRIEF IAB Europe : The Contested Decision wrongly concludes that IAB Europe is a data controller of TS Strings (§§322-361) and The Contested Decision wrongly concludes that IAB Europe is a joint controller of TS Strings and related data (§§262-400).

[14] The Inspection Service notes that as far as *Authorised* Buyers are concerned, the DPA is not the lead supervisory authority but rather the Irish regulator and that *IAB Tech tab* from the United States not a processing agent for RNB.

Sixth and seventh defence arguments DPA, fourth plea complainants.

Summary of the points of view of the parties

Through its sixth grievance**, IAB Europe** challenges the Litigation Chambers characterisation of IAB Europe as a data controller in respect of personal data that might be processed by TCF participants. IAB Europe argues that even if it were deemed to have some degree of control over the resources, that does not necessarily make it a data controller.

Regarding its seventh grievance, IAB Europe argues that the reasoning of the Contested Decision is unclear and incoherent and that the Litigation Chamber fails to clearly establish who is a (joint) controller or processor for which processing. The assessment of IAB Europe's joint processing responsibility with the CMPs, publishers and vendors is seriously flawed, according to IAB Europe.

Both cases, according to IAB Europe, involve a manifest error of assessment under the DPA.

The DPA argues that IAB Europe data controller for the processing of TS Strings under the TCF given that it exercises (as part of its own agenda as *Managing Organisation)* decisive influence over the processing through the framework it has set up. The real purpose of the framework is to enable and promote the buying and selling of online advertising space. IAB Europe establishes the essential means by, among other things, prescribing in a binding manner through the TCF how CMPs should capture users' consent or objections in a TC String. Finally, the Litigation Chamber is mindful that IAB Europe also participates in finding the purpose and means of processing personal data under the OpenRTB.

Regarding IAB 's seventh grievance, the DPA reiterates that IAB Europe is a joint controller. Both CMPs and publishers and Adtech vendors are joint controllers. However, their joint processing responsibility cannot detract from IAB 's responsibility.

The **complainants** argue that IAB Europe is the data controller for the processing of personal data in the TCF itself given its overriding control over the operation of the . It is IAB Europe as the authoritative industry organisation that organises, coordinates and promotes the processing operations within the TCF, while the participants in the TCF only carry out what IAB Europe has prescribed. TCF participants, together with IAB Europe, are data controllers : IAB Europe decides on the overall purposes and means of the

processing of personal data in the TCF, while the other participants decide on implementation in their own context.

Market court's judgement

57.
According to Article 4(7), GDPR, the "processing controller/j "ye" is the *"natural person or* rec/ir person, *an* over/ieids institution, *a service or other body which/which, alone o/ together with others, determines the purpose and means of processing personal data"* (EMPHASIS MARKETHOF).

The Contested Decision

58.
The Contested Decision concludes in section B.2 that IAB Europe is the data controller for the processing of TS Strings under the TCF (paragraphs 361 of the Contested Decision).

59.
The reason for this is threefold.

First, the framework set up by IAB Europe - the TCF - plays a decisive role in the collection, processing and dissemination of users' preferences, consents and objections, regardless of whether IAB itself comes into contact with these (paragraph 330 of the Contested Decision).

Second, the documentation accompanying the TC String shows that the purpose *("why")* of the TC String and of its processing within the TCF was defined by IAB Europe. According to this documentation, the TCF was developed to capture, *document* and transmit internet users' transparency and consent data in a standardised manner (paragraph 338 of the Contested Decision). However, the list of purposes contained in the TCF shows that the real purpose of this framework is to enable and promote the purchase and sale of online advertising space (paragraph 336 of the Contested Decision).

Third, the Contested Decision considers that IAB Europe has also established the essential means of processing TS Strings (i.e. *"whose data, what data, how lang and by whom are they processed").* Indeed, it is IAB Europe that the TCF prescribes in binding fashion how CMPs should capture users' consent or objections in a TC String, how vendors can access the TC managed by the CMP in a standardised way, how this TC String should be stored in a cookie, which CMPs and

vendors may be provided with the TC String and what criteria determine how long the TC String should be kept (paragraph 360 of the Contested Decision).

The Preliminary Judgement

60.
The Court of Justice considers as follows : (EMPHASIS MARKETS COURT)

> *"60 In view of the foregoing, it must be assumed that the first part of second preliminary question seeks to establish whether* a *sectoral organisation such as IAB Europe can be classified as a joint controller within the meaning of Articles 4(7) and 26(1) GDPR.*
>
> *61 To this end, it must therefore be assessed whether - given the particular circumstances of the case - that organisation influences the processing uan personal data for its own purposes, such as the TE string, and establishes together with others the purpose of and means* for *that* process/ng.
>
> *62 As , firstly, the purpose of such processing of personal data, it appears that - subject to the verifications to be carried out by the referring court - from the file to the Court,* as *in paragraphs 21 and 22 of this judgement, that the TCF drawn up by IAB Europe is a standard intended to ensure compliance with the GDPR when the personal data of users of an internet site or application are processed by certain undertakings participating in the online auctioning of* ozone space.
>
> *63 The TCF is therefore essentially aimed at promoting and enabling the sale and purchase of advertising space on the internet by those companies.*
>
> *64 Therefore* - subject to *the verifications to be carried out by the rejecting court - it can be assumed that IAB Europe, for its own purposes, influences the processing uan personal data at* issue *in the main proceedings and thereby, together with its members, determines the purpose of those processing operations.*
>
> *65 Secondly, as regards the means for such processing of personal data, it is clear from the file in the Court's possession - to checks to be carried out by the referring court - that the TCF is a standard which the members of IAB Europe are expected to if they" wish to" join" that association. In particular, IAB Europe - as* it *confirmed at the hearing before the Court - is able to prove one of its members that the*

L

rules of left *TCF non-compliant, take a suspension decision for non-compliance that may result in the member concerned being excluded from the TCF and consequently, for the processing of personal data it carries out through TS Strings, not being able to rely on the GDPR compliance guarantee that this system is supposed to provide.*

66 *In addition, from a practical point of view - as mentioned in paragraph 21 of this judgement - the TCF prepared by IAB Europe contains technical specifications for processing the TC String. In particular, those specifications describe precisely how the CMPs should record the preferences that users have regarding the processing of their personal data, and how those should be processed in order to a TC String. It also lays down precise rules on* the *content of the TC String as well as its storage and sharing.*

67 *The decision of 2 February 2022 shows that IAB Europe prescribes* in *these , among other things, the standardised way in which the various data subjects involved in the TCF can consult the preferences, objections and consents* recorded *in the TC String.*

68 *Therefore - subject to the findings to be made* by *the referring court - it must* be *held that a sectoral body such as IAB Europe influences, for its own purposes, the processing of personal data at issue in the main proceedings and thus determines, together with its members, the means of those processing operations. It follows that," in accordance with the case-law recalled in paragraph 57 of this judgement, it is to be classified as* a *"joint uer processing controller" within the meaning of Articles 4(7) and 26(1) GDPR."*

Review by *Market Court*

In this case, after verification by the Market Court, it is clear that IAB Europe has real decision-making power, both over the purposes and means of processing within the , and this given its overriding control over the operation of the TCF :

a) IAB Europe acknowledges its accountability for the TCF in its own documentation

62.
IAB Europe itself states in its *"Frequently Asked Questions"* on the TCF (version 2.0) that it is the data controller for the TCF Policies.'°

'* See, available at https://iabeurope.eu/wp-content/uploads/2019/08/TCF-v2.0-FAQs-1.pdf (Exhibit B.15, complainants p. 2-3).

For example, in response to the question *"Who manages the TCF"*, it states the following : (EMPHASIS MARKET COURT)

> *"The Managing Organisation (BO) is IAB Europe. IAB Europe works closely with IAB Tech Lab to jointly observe the management of the participating organisations, experts and working groups that* let *create joint policies* and *technical specifications that underpin the TCF." Within its role as BOufodraa IA e the s e* ele *ve antwoo de i k for the F Policies co'm[rmitit,e and* let *manage the Global Vendor List (GVL) and the administration of the permission management plat(orms. IAB Tech Lab is data controller for the development and iterations regarding the technical specifications associated with the TCF."*

And in its TCF Policies, IAB Europe defines *itself* as : (NADRUKKEN MARKETHOF)

> *"the entity that manages and governs the Framework, understanding the Policies de jpeci(ications and the GVL. IAB Europe may update these Policies from time to time as it' reasonably deems necessary to the continued success of the Framework."*

63.
IAB Europe thus acknowledges that it is the data controller of the Policies, the Specifications and the list of Vendors that may participate in the TCF. It goes without saying that the organisation thus ***managing and administering*** the TCF is also 'responsible for it, including any processing of personal data imposed and organised by the TCF. After all, it is IAB Europe that imposes these processing of personal data on the other participants in an enforceable manner.

For example, IAB Europe provides in the TCF Policies : (EMPHASIS MARKETHOF)

> *"A CMP must comply with all Policies applicable to CMPs distributed by the management orgaganisation in the Policies o/ in the documentation implementing the Policies, such as in operational Policies and procedures, guidelines, and enforcement decisions."*

IAB Europe thus states that all CMPs are obliged to strictly follow IAB Europe's instructions within the , even IAB Europe's enforcement decisions. In addition, IAB Europe requires CMPs to implement the TCF according to its Technical Specifications : (EMPHASIS MARKET COURT)

> *"On top of implementing the Framework according to the Specifications, a CMP must support the fulliqe Speci(ications support, unless' the*

Specifications expressly state that a certain property is optional, in which case the CMP may choose to implement the optional property but is not obliged to so."

64.

IAB Europe essentially argues that it would only be a small industry organisation that wishes to players in the digital marketing ecosystem a standard or even a code of conduct for possible processing of user preferences.

65.
The Litigation Chamber correctly found in its decision that IAB Europe does process personal data with the TCF (paragraphs 317-321 of the Contested Decision). Several of the world's largest Vendors and Publishers are represented on the board of IAB Europe, including Microsoft, Google and so on (Complainants' Exhibit E.5). So this is indeed a central body that, with decisive influence, certain processing of personal data.

IAB Europe's essential raison d'être is indisputably to represent the interests of the digital advertising industry. It therefore influences the processing of personal data for its own purposes.

66.
In paragraph 330 of the Contested Decision, the Litigation Chamber indicates that it considers IAB Europe to be a data controller for the collection, processing and dissemination of users' preferences, consents and objections and therefore for the processing in within the TCF.

b) On determining the purpose and means of these processing operations, IAB Europe exercises indeed a decisive influence

67.

- IAB Europe has a shared purpose with the other participants for the processing of personal data, which incidentally all have the same [shared1 purpose, which is to ensure that user preferences are captured in a structured way and then shared with all other participants. Even though many TCF participants may be competitors, when it comes to the processing of user preferences under the TCF, they all have similar interests, which are also similar to those of IAB

Europe as an industry federation : ensuring that digital advertising practices such as OpenRTB can .

- IAB Europe organises, coordinates and promotes the processing of personal data in the . Indeed, IAB Europe itself states that it manages and administers the TCF and describes in detail its organising and coordinating task. After all, it determines the minimum personal data to be , the means for sharing the TC String, and above all, it also enforces compliance with the .

- The concept of data controller *in this case* [just did] have to be interpreted broadly, as IAB Europe is the only one, as it claims itself, to manage and administer the TCF and thus to be able to resolve the issues identified by the Litigation Chamber, after consultation with all other supervisory authorities in the EU.

The Litigation Chamber therefore correctly found in the Contested Decision that IAB Europe is a data controller for the processing of TS Strings within the TCF.

c) The qualification of IAB Europe In the Contested Decision as joint data controller

68.
Joint responsibility is set forth in Article 26
GDPR :

"1. Where two or more joint controllers jointly determine the purposes and means of processing, they "re families/ijye *data controllers. They' shall determine transparently their respective responsibilities for complying with the obligations under this Regulation,* in *particular in relation to the exercise of data subjects' rights and their* respective obligations *to provide the information referred to in Articles 13 and 14, by means of an arrangement between them, unless' and to the extent that the respective responsibilities of the data controllers are laid down by' a Union law or* /idstootrechte/i *provision applicable to the data controllers. The scheme may a contact point for data subjects.*

2. The arrangement referred to in paragraph 1 shall make clear the respective roles of the *joint data controllers and their respective relationships with data subjects. The substantive content of the arrangement shall be made available to the data subjects.*

3. Notwithstanding the terms of the scheme referred to in paragraph 1, the data subject may exercise his/her rights under this Regulation in relation to and against any data controller ui's."

69.

The Contested Decision finds in section B.3 that IAB Europe together with the TCF participants (CMPs, publishers, *vendors)* are *jointly responsible* for the processing of personal data in the context of the TCF and OpenRTB.

70.

In paragraph 544 of the Contested Decision, the Litigation Chamber does not find that IAB Europe is solely responsible for the processing of personal data under OpenRTB. The proportion of the TCF participants' respective responsibilities varies depending on the stage of processing (TCF *versus* OpenRTB) and depending on whether they act within or outside the TCF.

71.

IAB Europe denies that it qualifies as a joint controller with publishers, CMPs and *adtech vendors* for the processing of personal data under the TCF and OpenRT6.

It should be generally pointed out that the Litigation Chamber's finding in the Contested Decision, that a party other than IAB Europe also exercises influence over the purposes and means of , in no way implies that IAB Europe not.

72.

No exhibits submitted to the Market Court show how IAB Europe and the TCF participants have agreed on a mutual and transparent arrangement regarding their respective responsibilities as required by the aforementioned Article of the GDPR.

73.

The Court of Justice, subject to the verifications to be carried out by the referring court, ruled in Preliminary Judgement that IAB Europe is a joint processing controller in respect of the processing of personal data that it carries out jointly with its members through TS Strings within the TCF (Preliminary Judgement, paragraph 68).

However, the Court of Justice also ruled the following in Preliminary Judgement : (EMPHASIS MARKE COURT)

> *"70. In addition, in response to the doubts of the dissenting judge, it must be held that any joint responsibility of that sectoral organisation does not automatically extend* to *the subsequent processing of personal data by third parties, such as*

providers of internet sites or applications, users' preferences for the purpose of targeted online advertising.

71. In this regard, it should first be noted that the "processing" of personal data is defined in Article 4(2) GDPR as "any operation or set of operations which performed upon personal data or sets of personal data, whether or not by automatic means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of data".

72. This definition shows that the processing of personal data can consist of one or more processing operations, each of which relates to a different stage of that processing.

73. Second, it follows from Articles 4(7) and 26(1) GDPR - as the Court already held - that a natural oy "rht person can be regarded as jointly responsible for the processing of personal data only if he" determines, jointly with others, the purpose and means of that processing. Accordingly, that natural or legal person - without prejudice to any civil liability provided for by national law in that regard - cannot be regarded as being responsible, within the meaning of those provisions, for processing operations which take place earlier or later in the processing chain *and for which, respectively, he' does not determine the purpose and means (see, by analogy, judgement of 29 July 2019, Fashion ID, C-40/J7, EU.'C.'2019:629, paragraph 74).*

74. In this case, a distinction must be made between, on the one hand, the processing of personal data by IAB Europe's members - i.e. internet site or application providers and data brokers or advertising platforms - when storing the consent preferences of the data subjects in a TS String in accordance with the standard laid down in the TCF and, on the other hand, the processing of personal data subsequently carried out by those companies *and ¢*ferrfen *on the basis of those preferences, for example by forwarding those to third parties or personalised advertising offers to those users.*

75. Subject to the verifications to be carried out by the referring court, IAB Europe does not *appear to involved in that subsequent processing, so that* it must be *held that such an organisation is not automatically responsible, together with those companies and third parties, for the processing of the personal data on the data subject.*
based on the preference data stored in a TC String of the subjects.

76. An industry organisation such as IAB Europe can therefore only be be deemed to be responsible for such subsequent processing if it is established that *it has influence*

L

exerts on the finding of the purpose of those processing operations and manner in which o'e they *are carried out, which it is for the court to ascertain in the light of all the relevant circumstances of the main proceedings."*

Thus, it must first be ascertained how the **Contested Decision establishes** joint controllership **of IAB Europe for the processing of personal data in the context of TCF justified.**

74.

Step by step and reasoned, the Litigation Chamber sets out *why* and *for what* IAB Europe is data controller, as well as with *whom :*

- personal data are processed within the TCF (paragraph 321 of the Contested Decision) ;
- the purpose for processing personal data within the TCF, with the TC String in particular, is set out by IAB Europe in its TCF Policies (paragraph 338 of *the* Contested Decision) ;
- IAB Europe provides the means of processing personal data within the TCF, with in particular the TC String (paragraph 360 of the Contested Decision) ;
- IAB Europe is responsible for the processing of personal data within the TCF, with in particular the TC String (paragraph 361 of the Contested Decision);
- Moreover, IAB Europe is jointly responsible for the processing of personal data within the TCF, with in particular the TC String (paragraph 402 of the Contested Decision), together with :
    - o the CMPs (paragraphs 382 and 38J of the Contested 8 Decision) ;
    - o the Publishers (paragraphs 392-394 of the Contested Decision) and
    - o the Vendors (paragraph 399 of the Contested Decision).

75.

The above demonstrates that the Litigation Chamber has established in the Contested Decision where the responsibility of IAB Europe goes. The *"offering" ot* imposing by IAB Europe of a *"standard"* or framework (TCF) for GDPR compliance must in this case, and in view of the exhibits from the file referred to above, actually be considered a processing purpose in itself

considered *for which* IAB Europe is as much a data controller as its members. To this end, IAB Europe is in a position to safeguard the rights of data subjects and to comply with the obligations by the GDPR.

IAB Europe is thus jointly responsible with TCF participants for storing data subjects' consent preferences in the TC String.

The Contested Decision is correctly reasoned on this point.

It is then necessary to consider how the Contested Decision justified **IAB Europe's co-responsibility for the processing of personal data In the context of OpenRTB**.

76.

RTB stands for *reo/-time biddi* 9. RTB is *a* way of buying and selling ads through real- time auctions, meaning transactions are made in the time it takes for a web page to load.

77.

When an internet user visits a website, his or her browsing behaviour on that website is (often) tracked to enable personalised ads. Personal information concerning the user is then matched with available advertisers and a real-tïme auction takes place between advertisers that *meet* certain . A distinction must be made here between data processing by the providers of a website or application and subsequent data processing by third parties. A simple example : a user visits a website offering organic dog food, but does not buy anything. The next *moment*, the same user visits a news website and suddenly sees ads about organic dog food. These ads are placed using real-time bidding.

78.

The Court of Justice stated that the joint responsibility of IAB Europe and its members for the processing of consent preferences in a TC String must be distinguished from the processing of personal data based on those preferences (in the context of Open RTB). The Court of Justice also notes that IAB Europe does not IAB Europe appear to be involved in, and thus does not IAB Europe appear to influence, such subsequent processing, such as, for example, the provision of personalised advertising offers to users.

79.

Thus, as IAB Europe's co-responsibility for further processing under OpenRTB, following the Preliminary Judgement, the Market Court should itself assess whether IAB

Europe with the TCF "influences" *the* further processing of personal data under OpenRTB. Indeed, that assessment was not yet made by the Court of Justice as the DPA rightly notes In its conclusions.

The complainants argue in paragraph 777 of their conclusions :

> *"This case concerns the processing of personal data under the . While DpenRTB is the motivating reason for IAB Europe why the TCF came ,* it *does not consider the specific processing of personal data that takes place in OpenRTB."*

The DPA defends a slightly different view : 2it tries to argue in the Contested Decision that the TCF does not stand alone but serves OpenRTB (paragraph 370 of the Contested Decision), that acts / subsequent processing of CMPs, of publishers and of TCF vendors outside the TCF are of interest and lead to IAB Europe co-responsible for them. It refers for that purpose to what is described in paragraphs 367 et seq. of the Contested Decision : (NADRUK MARKTENHOF)

> *"367. Both in its conclusions and during the hearing, IAB Europe emphasised that the T€F and the OpenRTB system are completely independent of each other, in the sense* that *adtech vendors can process personal data within the framework of OpenRTB even without participating in* the *TCF. Complainants, on the other hand, have always mentioned the inherent interdependence between OpenRTB and the TCF, which the defendant itself confirms - according to complainants - in the TCF Implementation Guidelines.*
>
> *368. The Litigation Chamber finds that the defendant's argument cannot be followed, given that, on the one hand, the defendant repeatedly states in its conclusions that the very reason for the TCF's existence* was *to bring the processing of personal data based on the OpenRTB protocol into conformity with the applicable regulations, including the GDPR and the ePrivacy Directives. While the Litigation Chamber understands that the TCF can also be used for other applications by publishers, whether or not in collaboration with CMPs, it is equally certain that the TCF was never intended to be an ollestablished, onayhankeliyk ecosystem.*
>
> *369. On the contrary, the Litigation Chamber notes that the Transporency and Consent Framework: includes policies and technical specifications that should enable* ***publishers*** **of** *websites and applications (publishers) and adtech partners that support the torgeting, delivery and measurement of advertising and content (vendors) to obtain consent or* establish *objections, transparently disclose their processing purposes, and determine* a *valid legal basis for the processing of personal data for the provision of digital advertising.*

370. Thus, the Litigation Chamber considers *that the decisions translated by IAB Europe into, on the one hand, the provisions uan the policy rules and technical speci)ications uan the TCü and, on the other hand, the means and purposes determined by the participating organisations with regard to the processing - whether or not within the framework of OpenRTB - of users' personal data, should be considered* as convergent *decisions. Indeed, IAB Europe* d/edf *an ecosystem within which consent, user objections and preferences are not collected and exchanged for their own purposes or self-preservation, but to facilitate further processing by third parties (i.e. publishers and adtech vendors)* re.

371. As a result, the Litigation Chamber finds that IAB Europe and the respective participating organisations should be regarded as jointly responsible for the collection and subsequent 'dissemination' of users' consents, objections and preferences, as well as for the related processing of their personal data, without, however, the responsibility of participating CMPs and adtech vendors detracting from that of IAB Europe."

The following paragraphs from the Contested Decision contradict the previous findings of the Litigation Chamber : (NADRUKKEN MARKETHOF)

"495. Although the Litigation Chamber has already ruled in the present decision on the processing carried out in the OpenRTB and concluded that these processing operations do not comply with the fundamental principles of purpose limitation and data minimisation (since no safeguards are provided to ensure that personal data collected and disseminated within the framework of the OpenRTB are *limited to* in/ormotions *strictly necessary for the purposes envisaged), the Litigation Chamber again stresses that the complainants have indicated in their conclusions that they limit the scope of their allegations to the processing operations within the TCF. In its report, the Inspectorate also made it clear that IAB Europe does not act as data controller for the processing operations carried out entirely under the OpenRTB protocol.*

544. Wot the nature and purpose of the processing, and more the nature of the data, the Litigation Chamber notes that the TC String, as an expression of users' preferences regarding *the purposes of processing and the potential adtech vendors offered through the CMP interface,* is *the cornerstone of the TCF. Although the scope of this decision is the TCF and its TC* Sfr/ng, *and the sanction imposed on the Defendant relates only to that framework, the compliance* of *OpenRTB with the GDPR is assessed as part of a holistlsche*

> ***analysis of the TCF and its Interaction with the GDPR.*** *Since the current version of the TCF is* late *tool relied upon by the* defendant *to demonstrate compliance with the GDPR, and since* the defendant *facilitates membership* and *use of the OpenRTB for a significant number of participating organisations,* ***the Litigation Chamber finds that the IAB Europe plays a central role in relation to the OpenRTB,*** **without being a** ***data controller in that context."***

IAB Europe concludes in the present (paragraphs 39 et seq. of its conclusions):

> *"By extending the scope of the decision to OpenRTB and its stakeholders, the Litigation Chamber lost the ability to clearly distinguish the roles of* the *parties and their corresponding responsibilities, for the different data processing operations. Very often it is unclear what data the Litigation Chamber is talking about, whose interests it's'taking into account and who it considers responsible for what."*

80.

The Market Court finds that the Contested Decision thus has contradictory reasoning on this point.

The Market Court further considers that the complainants, in their submissions, have indicated that they limit the scope of the present dispute to the processing operations within the TCF.

Moreover, the Court notes that the lnspectorate itself clarifies in its report that IAB Europe does not act as data controller for the processing carried out entirely under the OpenRTB .

In any case, none of the exhibits submitted to the Court show that IAB Europe acts as a (joint) data controller for the processing operations carried out entirely under the OpenRTB protocol.

Based on the foregoing, IAB Europe's sixth grievance is unfounded and IAB Europe's seventh grievance is only well-founded to the extent that the Contested Decision suggests, but does not demonstrate, that IAB Europe is acting as a (joint) controller for the processing operations carried entirely under the OpenRTB .

GRIEVANCES REGARDING THE DETERMINATION OF GDPR INFRINGEMENTS IN THE CONTESTED DECISION

81.
The Contested Decision establishes the following infringements :

> *"The Litigation Chamber found in the Contested Decision that IAB Europe had committed infringements of the following Articles:*

• *Articles 5.1.a and 6 GDPR - The current TCF does not provide a legal basis for processing users' preferences under the form of* a *TC String. Moreover, the Litigation Chamber notes that the TCF offers two bases for the processing of personal data by participating adtech vendors, but finds that neither can be used. First, data subjects' consent is currently not given in a sufficiently specific, informed and granular manner. Second, the legitimate interests of the organisations participating in the TCF do not outweigh the interests of data subjects, given the large-scale processing of their TCF preferences under the OpenRTB and the impact* this *may have on them. Since none of the grounds for lawfulness set out in Article 6 GDPR apply to this processing, as set out above, the defendant infringes Articles 5(1)(a) and 6 GDPR.*

~~*g van hun TCF-voorkeuren in het kader van het OpenRTB en de gevolgen die dit voor hen kan hebben. Aangezien geen van de in artikel 6 AVG genoemde gronden voor rechtmatigheid van toepassing is op deze verwerking, zoals hierboven uiteengezet, maakt de verweerster inbreuk op artikel 5, lid 1, onder a), en artikel 6 van de AVG.*~~

once they have been generated by the CMPs and stored on users' cfpporots*, the Litigation Chamber finds that it cannot oblige the defendant to remove a posteriori all TS Strings generated to date. More , it is the responsibility of CMPs* and *publishers implementing the TCF to take appropriate measures, in accordance with Articles 24 and 25 of the GDPR, to that personal data collected in breach of Articles 5 and 6 of the GDPR are no longer processed and also disposed of. To the extent that IAB Europe still stores TS Strings originating from the* no *longer available globally scoped consent cookies, the Litigation Chamber also finds that the Defendant must take the necessary measures to ensure that these no longer necessary personal data are* perm¢ently *deleted.*

• *Articles J2, J3, and 14 GDPR - The way in which information is provided to data subjects does not meet the requirement of being "transparent, comprehensible and easily accessible". Users of a website or* opp/icoty *participating in the TCh do not receive sufficient information about the categories of personal data about them and, moreover, cannot determine in advance the scope and consequences of the processing. The information provided to users is* too *general to the specific processing of each vendor, which also makes it impossible to determine the granularity - thus the validity - of the consent obtained for processing carried out using the OpenRTB protocol. Data subjects cannot know in advance the scope and impact of the processing*

oversee and therefore have insufficient control over the processing of their data to not to *be surprised later by the further processing of their personal data.*

• Articles 24, 25, S.1./ *and 32 GDPR - As explained above, under5(1)(f) and 32 GDPR, the controller is obliged to the security₉of* the *processing and the integrity of the personal data processed. The*

Litigation Chamber that the combined reading of Articles 5(1)(b) and 32, as well as Article 5(2) and Article 24 GDPR (under which the controller is to the principle of accountability) requires the controller to demonstrate compliance with' Article 32 GDPR by implementing appropriate technical and organisational measures in a transparent and traceable manner. Under the current TCF system, adtech vendors receive a consent signal without any technical or organisational measures to ensure that this *consent signal is valid or that an adtech vendor has actually received (rather than generated) the signal. In" the absence of systematic and automated monitoring systems of the participating CMPs and adtech vendors by the defendant, the integrity of the TC String is not sufficiently guaranteed,* as *it is possible for CMPs to forge the signal to generate a euconsent-v2 cookie and thus reproduce a "false consent" from users for all purposes and for all types of partners. As indicated above, this hypothesis is also expressly included in the terms and conditions of* let *TCF. The Litigation Chamber therefore finds that IAB Europe In its capacity Managing Organisation has designed and provides a consent management system, but* does not *take the necessary steps to ensure the validity, integrity and compliance of preferences as well as users consent* le. *The Litigation Chamber also finds that the current version of the TCF does not facilitate the exercise of the rights of data subjects,* particularly *in view of the joint processing responsibility of the publisher, the implemented CMP and the defendant. The Dispute Resolution Chamber also underlines that the GDPR requires data subjects to be able to exercise their rights vis-à-vis each of the joint data controllers in the TCF, in order to comply with* orfi/re/en *24 and 25 of the GDPR. In view of the above, the Litigation Chamber finds that the defendant has breached its obligations in the areas of security, personal data integrity and data protection by design and default settings (Article 24, Article 25, Article 5.1.f, and* ortiLe/ *32 of the GDPR).*

F, in order to comply with Articles 24 and 25 of the GDPR. In view of the above, the Litigation Chamber finds that the defendant breached its obligations regarding security of processing, integrity of personal data and data protection by design and default settings (Article 24, Article 25, Article 5.1.f, and Article 32 uan the GDPR).

• Article 30 GDPR - As "expounded above, "the Litigation Chamber cannot follow the defendant's argument that it can' qualify for the exceptions to the obligation to a register *of* processing ocfivities*" provided for in Article 30.5 GDPR. Since the Defendant's register of processing activities does not contain any process:ing in to the TCF, except for the management of the members as well as the administration of the TCF, although IAB Europe, as Managing Organisation, can* access ele *records of consent, the DA establishes an infringement of Article 30 GDPR.*

• Article 35 GDPR - the large number of data subjects who come into contact with websites and applications implementing the TCF, as well as organisations participating in the TCF, on the one hand, and the impact of the TCF on the large-scale processing of personal data in the OpenRTB protocol, on the other hand, the Litigation Chamber that IAB Europe has *failed to carry* a *comprehensive data protection impact assessment (GE-B) with regard to the processing of personal data within the TCF. The Litigation Chamber finds that the TCF was developed, inter alia, for the RTB system, which "systematically and automatically observes, collects, records or influences users' online behaviour, including for advertising purposes". It is also not disputed that within the OpenRTB, data are widely collected from third parties (DMPs) in order to analyse or predict the economic situation, health, personal preferences or interests, reliability or behaviour, location or movements of natural persons.*

• Article 37 GDPR - Because of the large-scale, regular and systematic observation of identifiable users entailed by the TCF, and in view of the defendant's role, specifically its capacity as Managing Organisation, the Litigation Chamber finds that IAB Europe should have appointed a *data protection officer (DPO). By failing to do so, the defendant' is in infringement of Article 37, GDPR."*

EIGHTH GRIEF IAB Europe : **The Contested Decision wrongly concludes that IAB Europe needs a legal basis and that no legal basis exists for the processing of TS Strings and OpenRTB data. (breach of Articles 5.1.a and** 6 GDPR)
Eighth defence argument DPA, part sixth plea complainants.

Summary of parties' positions

As the processing of TS Strings, IAB Europe argues that the Contested Decision recognises that they are processed by the CMPs and that the CMPs are jointly responsible with IAB Europe for that processing ; consequently, at least the CMPs should also be held responsible for the possible lack of a legal basis, *and* not (only) IAB Europe. Moreover, the Litigation Chamber would not have examined whether CMPs, in their user interface

seek the data subjects' consent to record their consent, objections and preferences. IAB Europe draws the conclusion from this that the Contested Decision cannot find that consent has not been obtained. Finally, IAB Europe considers the balancing of interests with regard to the (lack of a) legitimate interest within the meaning of Article 6(1)(f) GDPR (paragraphs 421-423 of the Contested Decision) to be wrong.

The DPA argues that IAB Europe, in its capacity as data controller, requires a legal basis for the processing of TS Strings by CMPs, but there is no such legal basis. IAB Europe therefore breached Article 6 GDPR.

According to the **complainants**, IAB Europe's processing of personal data in the TCF violates the basic principle of fair, lawful and transparent processing. Indeed, it does not have any legal basis for the processing, has obtained the personal data in a misleading way, and does not provide either the complainants or any other data subjects with the legally required information about the processing of personal data it carries out (violation of Articles 5, 6, 12, 13 and 14 GDPR).

Market Court judgement 82.

Article 5(1)(a) GDPR provides that all processing of personal data must be processed in *"a manner which is lawful, appropriate and in relation to the data subject".*

The "rechtfmot/g" nature of a processing essentially means that it must meet àll legal requirements, in particular having a legal basis.

Since IAB Europe does not provide any information about the processing of personal data to data subjects, data subjects are left guessing as to which legal basis, provided for in Article 6 GDPR, IAB Europe would invoke for its processing of personal data in the TCF.

However, it cannot on any legal basis under Article 6 GDPR for the processing of the TC String in the TCF. Moreover, the Litigation Chamber correctly states that IAB Europe cannot suffice merely by to subsequent notifications that might be made to data subjects by *Publishers or Publishers.*

83.

IAB Europe cannot rely on the consent of complainants and other data subjects (Article 6(1)(a) GDPR), as it never sought, let alone obtained, such consent. Nor anywhere the TCF Policies, Technical Specifications or General Terms and Conditions is there a mechanism

cited where IAB Europe would ask "data subjects' consent to cure a uniquely-identifying string that shares their privacy preferences with a very large number of recipients. This lack of consent is even more egregious when those data subjects indicate in a CMP that they do not want to share personal data with anyone.

The Litigation Chamber was right to find in the Contested Decision that nowhere does IAB Europe obtain consent to process the personal data in the TCF, with particular reference to the TC String (paragraph 407 of the Contested Decision).

84.
IAB Europe also cannot rely on the necessity of the TC String's processing within the TCF for the performance of an agreement with the complainants and other data subjects (Article 6(1)(b) GDPR), as there is no agreement at all between them and IAB Europe. The Litigation Chamber therefore correctly established this in the Contested Decision (paragraph 408 of the Contested Decision).

85.
Nor can it rely on the necessity of the TC String's processing within the TCF to comply with a legal obligation incumbent upon it (Article 6(1)(c) GDPR), or protect the vital interests of the complainants and other data subjects (Article 6(1)(d) GDPR), or in the performance of a task carried out in the public interest (Article 6(1)(e) GDPR), as none of these justifications are present in this regard.

86.
Finally, it also cannot rely on the necessity of the TC String's processing within the TCF to protect its legitimate interests, or those of a third party (Article 6(1)(f) GDPR). Indeed, the Litigation Chamber did the balancing of interests in the Contested Decision and rightly found that the conditions for an application of Article 6(1)(f) GDPR were not met. IAB Europe - on whom the burden of proof of lawful data processing rests - did not provide sufficient insight into the considerations it made and the relevant factual information in that regard. The conclusion is therefore that it has not been established that the processing of personal data within the TCF is necessary for a legitimate interest of IAB Europe or its members. IAB Europe does not sufficiently recognise that users have a right and an interest in the protection of their privacy and personal data, and that the processing of personal data for advertising purposes may this. Furthermore, as a data controller, it must take into account the reasonable expectations of data subjects. No exhibits submitted to the Court showed that IAB Europe actually so.

87.

The analysis relating to the lack of a legal basis in the Contested Decision is not incoherent as IAB Europe argues. Moreover, the Litigation Chamber did not make its analysis *in the abstract* but applied it in a concrete manner.

The Contested Decision is correctly reasoned on the issue of the lack of a legal basis on part of IAB Europe for its processing of personal data in the TCF.

IAB Europe's eighth grievance is therefore *unfounded.*

NEGOTIVE GRIEF IAB Europe : **The Litigation Chamber wrongly concludes that IAB Europe**'s **breaches transparency duty (§§465-473).**
Ninth defence argument DPA, part sixth plea complainants.

Summary of parties' positions

IAB Europe disputes the Litigation Chamber's judgement in the Contested Decision according to which it violates the transparency obligation in Articles 12, 13 and 14 GDPR. , the Contested Decision would not have examined and established the defective disclosure itself. Second, any information not provided by IAB Europe could and should be supplemented by the CMPs and publishers. Third, IAB Europe opposes the finding that the large number of third-party recipients makes it impossible for data subjects to give informed consent to processing and thus violates the principle of transparency.

According to the DPA, the lack of disclosure was convincingly demonstrated by the complainants and additionally relies on the lnspectorate's technical report.

As for the obligation to compliance with the transparency obligation, this rests on the data controller, being IAB Europe, and cannot be passed on to the CMPs and publishers. The Litigation Chamber's factual assessment does not appear manifestly unreasonable. It is irrelevant whether the consent preferences were already encoded in a TC String or encoded, given that making such personal data available also qualifies as processing under Article 4 GDPR and the data subject must therefore be informed of this.

Where the Contested Decision establishes a breach of the obligation of transparency, the lawfulness of the Contested Decision cannot be affected if the reasoning were incorrect. Indeed, the violation rests on several findings, only one of which is by IAB Europe. In any event, even if the TCF is only a minimum framework, it must then still comply with the GDPR.

According to the complainants, IAB Europe, as data controller, breached its duty of transparency and the Litigation Chamber rightly relies for this conclusion on a thorough analysis of IAB Europe's own TCF documentation (e.g. paragraphs 467-473 of the Contested Decision).

Market Court judgement finds

88.
The Market Court found that the Contested Decision rightly makes the following determinations based on the exhibits prepared by IAB Europe itself.

Neither on its own website nor in other sources does IAB explain data subjects such as complainants or the DPA as a supervisory authority :

1. That IAB Europe is (joint) controller for the TCF and what its contact details are ;
2. what the contact details of its data protection officer are (which IAB Europe should appoint, as the Inspectorate also noted in its report, given its essential activity and role within the TCF) ;
3. what its processing purposes are and the legal basis for the processing (which, by the way, in this case it does not have at all, see above) ;
4. which categories of personal data it processes (in particular the TC Stringj ;
5. Who all receives the personal data (this already includes at least all participants in the TS Strings who receive the TC String) ;
6. whether it intends to transfer the personal data to recipients in third countries ;
7. how long personal data will be kept ;
8. what the rights of data subjects are ;
9. That data subjects may lodge complaints with the Data Protection Authority ;
10. that data subjects can withdraw their given consents ;
11. What the source of the personal data.

89.
IAB Europe's own privacy policy on its website (exhibit B.18 **complainants)** cannot help this in any way. Indeed, IAB Europe makes it clear that its privacy policy applies to only a limited number of data subjects :

> *"IAB Europe respects the privacy of the visitors on* its *websites ("Websites") ("Users"), its registered members ("Members") to which it provides services as further specified in the General Terms of Use ("Services") and of Transparency & Consent Framework participants /"7CF* Participants"). *In this Privacy Policy, references to Members or TCF Participants mean both individual Members or TCF Participants and individuals who are employed by corporate*

Members or TCF Participants. This Privacy Policy is also addressed to individuals outside IAB Europe involved in the public debote concerning digital advertising, with whom IAB Europe may interact and whose personal data it processes ("Stakeholders")."

Or in Dutch (no official translation known):

"IAB Europe respects the privacy of visitors to its websites ("Websites") ("Users"), of its registered members ("Members") to whom it provides services *as further specified in the General Terms of Use ("Services") and of participants in the Transparency & Consent Framework ("TCF Participants"). In this Privacy Policy, Members or TCF Participants refers to both individual teden or TCF Participants and individuals employed by member companies o] TCF Participants. This Privacy Policy is also addressed to individuals outside IAB Europe who are involved " the public debate on digital advertising, with whom IAB Europe may communicate and whose personal data it processes ("Stakeholders")."*

None of the categories of data subjects mentioned in this quote relates to data subjects whose personal data is processed in the TCF when they express certain preferences through a CMP and a TC String is generated for them. Consequently, the2nd privacy policy is not relevant in this case and cannot be considered in assessing whether IAB Europe has complied with its transparency obligation.

Consequently, IAB Europe violates Article 5(1)(a), Article 12 and Article 14 GDPR, as the Litigation Chamber was right to find in the Contested Decision.

90.
IAB Europe did not inform data subjects prior to the processing operations. At the same time, it cannot rely on any of the exceptions provided for in Article 14S) GDPR not to provide this information, since '

- the data subjects do not yet have the information, as the processing with regard to them has so far been done without any transparency (Article 14(5)(a) GDPR) ;
- it is neither impossible nor requires a disproportionate effort to disclose this information to data subjects, given IAB Europes influence over the operation of the TCF (Article 14(5)(b) GDPR) ;
- obtaining this data is not required by Act (aftikei 14(5)(c) GDPR) and
- the personal data should not remain confidential by virtue of professional secrecy (Article 14(5)d) GDPR).

The Contested Decision is correctly reasoned on the issue of lack of transparency on the part of IAB Europe for its processing of personal data in the TCF.

IAB Europe's ninth grievance is therefore *unfounded.*

TENTH GRIEF IAB EUROPE : The Contested Decision wrongly concludes that tIAB Europe) breached its **obligations** regarding security, Integrity and data protection by design and default settings **(§§477-494).**
Tenth defence argument DPA, fifth, seventh and eighth pleas complainants.

sSametvatain anten aden

IAB Europe argues that it is not subject to the accountability obligation in Article 24 GDPR, nor to the data protection obligation in Article 25 Articles, as it does not qualify as a data controller. Nor does it consider that it is obliged to enforce compliance with the TCF by the organisations participating in it, as it would merely be a private law agreement and, moreover, it would not be data controller. Finally, IAB Europe also disputes that it would bear any responsibility for any international transfers of data, as such transfers outside the scope of the TCF.

In subordinate order, IAB Europe argues that even if it were to be accepted that it is a joint controller with publishers and *vendors,* the GDPR does not require it to supervise what joint controllers in that case. In addition, it accuses the Litigation Chamber of failing to provide evidence of inadequacy of the TCF's security and does claim to so-called validation.

The DPA argues that IAB Europe as data controller is subject to the obligations In Articles 24(1) ; 5(1)(f) ; Article 32 and Chapter V of the GDPR and that IAB has breached the security obligation.

Also according to the complainants supporting the DPA's position, IAB Europe does not have an adequate protection mechanism. For instance, IAB Europe does not specify how it will then ensure that CMPs effectively do not cooperate with Publishers who do not comply with the agreements made. All it claims is that the *"compliance mechanisms in the TCF would ".* However, how this is supposed provide real protection is a to complainants. Indeed, none of the mechanisms are based on real, proactive monitoring of TCF compliance. It is totally unclear to the complainants how IAB Europe could ensure the security of the TC String processed at all when shared with the thousands of receiving companies.

Market Court judgement finds

91.

The Market Court refers to what precedes and the correct assessment by the Litigation Chamber in the Contested Decision of IAB Europe as a (joint) data controller for the processing of personal data in the context of TCF.

92.

The starting point is that, in order to protect the rights and freedoms of data subjects and the responsibility and liability of data controllers, it is necessary that the responsibilities established by the GDPR be allocated in a clear manner (the mutual arrangement to be established by the joint controllers under Article 26 GDPR, which is not before us *in this case*). The allocation of responsibilities is thus a matter for the joint controllers themselves, taking into account, on the one hand, the need for full compliance with the GDPR and, on the other hand, undesirable complexity (which could lead to an infringement of the principles of lawfulness and transparency under Article 51) GDPR).

The Market Court has already held above that the absence of a mutual arrangement or evidence thereof and the fact that both IAB Europe and the parties processing personal data with it under the TCF are all large or significant personal data processors (and thus by no means small entities with little influence over processing operations), implies **equal convergent responsibility hero** in this particular case.

This is appropriately expressed by the Litigation Chamber in the Contested Decision at paragraph 371 in the following manner :

> *"Accordingly, the Disputes Committee finds that IAB Europe and the respective participating organisations must* be *regarded as jointly responsible for the collection and subsequent dissemination of users' consents, objections and preferences, as well as for the related processing of their personal data, without, however, the responsibility of participating CMPs and adtech vendors detracting from that of IAB Europe."*

As judged *above*, IAB Europe does qualify as the (joint) data controller for the processing of TS Strings under the TCF.

Consequently, it has both an accountability obligation (Article 24(1) *in conjunction with* Article 5(2) GDPR) and a security obligation (Article 32 GDPR *in conjunction with* Article 5(1)(f) GDPR).

93.

IAB Europe is also a data controller with respect to TS Strings that would be by CMPs outside the EEA. On this point, IAB Europe raises that the TCF was explicitly not developed for international transfers by publishers, *vendors* and CMPs. However, that is not a relevant criterion under the GDPR. IAB Europe has been identified as a data controller of TS Strings under the TCF because it appears to determine the purposes and mtd parts of the processing of the personal data contained in the TS Strings. As the data controller, like the processor(s), it is obliged under Article 44 GDPR to comply with the conditions in Chapter V of the GDPR before such personal data is transferred to a third country.

94.

IAB Europe further maintains that the TCF itself is contractual in nature. But this contractual nature does not at all prevent IAB Europe from requiring, pursuant to Article 24(1) GDPR*, "appropriate technical* and *organisational measures (to) ensure and be able to demonstrate that the processing is carried out in accordance with (the GDPR)". it* goes without saying that if the existence of an agreement between joint controllers were sufficient to escape this obligation, Article 24(1) GDPR would be deprived of any useful effect.

The Contested Decision does provide evidence of a lack of security. It substantiates this by referring to a recent academic submission which IAB Europe claims one of the complainants participated in" and further deduces this from the fact that the TCF Policy does refer to the possibility of falsification or alteration of the TS Strings but only stipulates that such manipulation is not . Accordingly, it fell to IAB Europe to put forward before the Litigation Chamber or the Market Court any appropriate exhibits to demonstrate the contrary, *quod non.*

IAB Europe claim to provide so-called validation, but it is a one-off, prior validation of the software used by CMPs to generate the TS Strings. This validation prevents CMPs from generating unreadable, incorrect or non-TCF-compliant TS Strings in the first place.

In contrast, the Contested Decision rightly points to the lack of validation of individual TS Strings. Only such validation can prevent *vendors* from (being able to) falsify users' consent.

" C. SANTOS, M. **NOUWENS, M. TOTH,** N. BIELOVA, V. ROCA, "Consent Management Platforms Under the GDPR: Processors and/or Controllers?", in *Privacy Technologies and Policy,* APF 2021, LNCS, vol 12703, Springer, 2021. The Market Court finds that any contribution from a complainant does not undermine the neutrality or quality of an academic contribution.

The Contested Decision is correctly reasoned in terms of breaches of obligations relating to security, integrity and data protection by design and default settings on the part of IAB Europe for its processing of personal data in the TCF.

IAB Europe's tenth grievance is therefore *unfounded.*

ELFTH, TWAALFTH, THIRTEEN and **FOURTH** GRIEF IAB **Europe** : [IAB **Europe) does not have to** data protection impact assessment §§ **511-516 of the** Contested Decision), [IAB EuropeJ is not required to appoint a **data protection** functlonary (§§ 517-524), [IAB **Europe] has** no legal **obligation to facilitate** the ultimation of **data subjects**' rights (§§ 504-506) and [IAB **Europe) Is not required to** have **a register of processing actlvities** and this Is not incomplete in any case (§§ 507-510).
Eleventh defence argument DPA.

Summary of parties' positions

By its eleventh to fourteenth grievance, IAB Europe disputes that it is required to conduct a data protection impact assessment under Article 35 GDPR, appoint a data protection officer under Article 37 GDPR, keep a register of processing activities under Article 30 GDPR, and facilitate the exercise of data subjects' rights under Articles 1S-22 GDPR.

According to the DPA, it is pertinently incorrect that IAB Europe would only process personal data of its staff and of applicants, members and suppliers. It also argues that in order to qualify as a data controller, it in no way requires that a person have access to the personal data concerned. Articles 30, 35 and 37 GDPR do not make this a condition for the obligation to carry out a data protection impact assessment or appoint an officer either, she said. Without the TCF, according to the DPA, the processing of personal data under RTB would simply be prohibited, as no consent can be obtained or demonstrated for these (lightning-fast) processing operations. For that reason alone - the DPA argues - it is 'unsympathetic' to claim that the TCF protects internet users, rather than exposes them to the mass exchange of their personal data.

The **complainants** endorse the DPA's position.

Market Court judgement finds.

On *the obligation to* **carry** *out a data protection impact assessment* ***(Art. 3s GDPR).***

95.

After reviewing the Contested Decision and the exhibits submitted to it (including the reports of the lnspectorate, exhibit A133 DPA file), the Market Court cannot follow IAB Europe's argument that it can benefit from the exceptions to the obligation to a register of processing activities provided in Article 30(S) GDPR. Since IAB Europe's register of processing activities does not include any processing operations in relation to the TCF, other than the management of members as well as the administration of the , although IAB Europe, as *Managing Organisation* or management organisation, can access the *records of consent* (as above), the Litigation Chamber correctly found an infringement of Article 30 GDPR in the Contested Decision. This was rightly expressed much earlier by the lnspectorate as follows :

> *"The lnspectorate finds that* ter *non-communication by IAB Europe of its register of processing activities following its request of 04/06/2019 (exhibit no. 18 of file DOS-2019-01377)* is in *breach of the provisions of Article 30(4) of the GDPR. Moreover, IAB Europe's position that it" does not have* to *keep records of processing activities" is in* srryd *mel orti#e/ 30(5)* von *the GDPR and with* let *position of the ECGB."*

96.
Considering the large number of data subjects who (may) come into contact with websites and applications the TCF, as well as organisations in the TCF, on the one hand, and the impact of the TCF on the large-scale processing of personal data in the OpenRTB protocol, on the other hand, the Litigation Chamber rightly finds in the Contested Decision that IAB Europe wrongfully failed to carry out a comprehensive data protection impact assessment in relation to the processing of personal data within the .

About the obligation to appoint a data protection officer (Art. 37 GDPR).

97.
Because of the large-scale, regular and systematic observation of identifiable users that the TCF entails, and given IAB Europe's role, as *Managing Organisation,* the Litigation Chamber correctly finds in the Contested Decision that IAB Europe should have appointed a data protection officer (DPO). By failing to do so, IAB Europe infringed Article GDPR. This was also reasoned in the lnspectorate's report (exhibit A133 file DPA):

> *"The Inspectorate finds that IAB Europe has failed to comply with its obligations under Article 24(1) of the GDPR.* 0e *reasons for this* vostste/ling *are as follows: In its replies oon the inspection service of 26/06/2019 (exhibit no. 22) and 20/08/20J9 (exhibit no. 29), IAB Europe states that "IAB Europe is a professional association whose main activities are the provision of information and tools to stakeholders (in particular companies) active in the digital advertising sector, as well as the provision of information*

to the general public to broaden their knowledge and inform them about the value that digital advertising for the market. As IAB Europe did not meet the conditions referred to in Article 37 §1(b) of the GDPR, it" did not appoint a data protection officer."
According to the lnspectorate, IAB Europe's approach set out above is not by the facts. The conditions of Article 37(1)(b) of the GDPR are , as IAB Europe develops and manages the TCF in its capacity as " Managing Organization " exhibits 32 and 38 of file DOS-2019-01377) and pursuant to page 7 of the Terms and Conditions for the IAB Europe Transparency & Consent Framework of IAB Europe ("Terms and ConditionsJ ("General Terms and Conditions "J *(exhibit 33 of file DOS-2019-01377) has a right to access, store and process any information by the organisations in this ecosystem, stated in its "Privacy Policy."*

In so far as the Contested Decision finds a breach by IAB Europe of the obligations on data protection impact assessment, on the appointment of a data protection officer and on keeping a register of processing activities, as regards its processing of personal data in the TCF, it is correctly reasoned.

98.
This is also the case for the following passage in the Contested Decision which deals with the alleged infringements of data subjects' rights (Articles 15 to 22 GDPR):

"504. First of all, the lnspectorate notes in its report that certain complainants have argued that it is impossible for data subjects to exercise their rights, although the investigation conducted by the lnspectorate not revealed these infringements. In" absence von *bewiys* von *an infringement, the Litigation Chamber limits its reasoning to general comments regarding the exercise of data subjects' rights.*

505. Second, the Litigation Chamber refers to the scope of the complainants' written submissions, in which they" specifically limited their grievances tof *the processing of the complainants' personal data by the defendant in the specific context of the TCF. Bj "consequence, the* Geschï/fenkomer *will* niec find on *circumstances in which data subjects can exercise their rights in relation to the processing of personal data in the 'bid requests' vis-à-vis the adtech vendors, as this processing takes place in full compliance with the OpenRTB protocol.*

506. However, as regards the current version of the TCF, the Litigation Chamber finds that the TCF does not appear to facilitate the exercise of data subjects' rights, in the sense that users cannot easily the CMP interface at any time, so that

they can change their preferences and request the identity of the adtech vendors with whom their personal data has been shared by means of a bid request, in accordance with *the OpenRTB protocol. In this context, the Litigation Chamber underlines the importance of proper implementation and enforcement of the interface requirements set out in the TCF Policies so that data subjects can effectively exercise their rights vis-à-vis each of* the *joint processing responsibility, and notes" that the shared responsibility for this* lies *primarily with the CMPs and publishers*. *Based on the* govensroonde*, the Litigation Chamber is not In a position to find an infringement uast* of *Articles 15-22 GDPR."*

Accordingly, IAB Europe's 11de, 12de, 13d' and 14th grievances are unfounded.

THE ORDERS AND THE FINE !N THE CONTESTED DECISION

99.
In its conclusion, IAB Europe does not develop a separate grievance regarding the injunctions imposed on it and the administrative fine.

100.
In paragraph 353 of its conclusions, IAB Europe states :

"S53. *Annulment of the fine - It should also be emphasised that in calculating the fine* in *the Contested Decision, no distinction is made between the various alleged GDPR infringements and their impact on the amount of the fine for* [IAB Europe]. *However, it is clear from the CJEU Judgement that* they/s *the Contested Decision as such does not contain sufficient justification for a huge proportion of the infringements alleged. As indicated earlier, five of the six infringements in the Contested Decision are based on* (IAB Europe's*) alleged processing responsibility for subsequent processing. However, it is clear from the CJEU Judgement that there no processing responsibility on the part of* [IAB Europe] *for subsequent processing by third parties. This means that at least B0% of the Contested Decision is based on an erroneous assessment of the factual and legal facts of the .*

This already suffices as a circumstance to substantially reduce the fine (should a fine be justified - quod non, as further explained below).

Moreover, according to the case-law of the Court of Justice, an administrative fine can only be imposed "if it is established that the , which is both a legal person and an undertaking, has , intentionally or negligently, an infringement referred to in paragraphs 4 to 6 of that Article (83 GDPR)".

L y

In this case, (IAB Europe] *certainly was not and cannot be accused of intentional unlawful conduct. Even in the Contested Decision, negligence was only alleged but not demonstrated and then only in respect of the integrity of the TC String (§547 Contested Decision). In the light of the above case law, only a fine can be imposed in proportion to the negligence established. In practice,* [IAB Europe|has *already taken the necessary steps within the limits of* hear ro/ *- as a non-processing responsiblely - to promote GDPR compliance by TCF participants.*

The *lack of negligence (and deliberate* unrec/itmoric *behaviour) is all the more evident as fundamental questions to the CJEU were raised on which* the whole history *depends, even if presented to your Court for the first time by the Litigation Chamber itself. Putting questions to the CJEU clearly shows that a certain legal question* is *pertinent and that there is no unique and manifestly clear answer (yet).*

Consequently, the imposition of an administrative fine was not justified."

The DPA and the complainants no longer address the injunction and the administrative fine imposed in their briefs.

Market Court judgement finds

101.
Article 58(2) GDPR provides for the jurisdiction of supervisory authorities to take one or more corrective measures against data controllers or processors.

Under Article 58(2)(i) GDPR, a supervisory authority may, depending on the circumstances of each case, also impose an administrative fine in addition to or instead of aforementioned corrective measures.

102.
In this regard, Article 83(1) GDPR requires that an administrative fine imposed by an authority must effective, proportionate and dissuasive in each case. Article B32) GDPR contains a number of criteria that must be duly taken into account in a concrete case. A sanction to be by the DPA in the form of an administrative fine must be adequately justified, with the size of this sanction being, on the one hand, in line with the circumstances and, on the other hand, proportionate to the infringement established and to the ability of the infringing party to bear it.

103.

A fine of a criminal nature should be reviewable by the court with full jurisdiction."

To determine whether or a sanction is criminal in nature within the meaning of Article 6 ECHR, the Court the so-called Engel'' criteria.

There are three Engel criteria :

- the qualification of the sanction in the internal law of the State concerned ;
- the nature of the infringement for which the sanction is to be imposed ;
- The nature and severity of the maximum penalty the data subject risks.

The three criteria are not cumulative. Even if a sanction does not have the qualification of criminal sanction under domestic law, it may still have a criminal under the second or third criteria."

In order for an administrative fine to have a preventive and punitive purpose, it is required that it essentially seeks to prevent and punish an act or omission that is considered illegal by the legislature and that the fine thus causes suffering to the perpetrator of that act or omission.[20]

104.
When the Market Court is asked to review an administrative fine that is punitive in nature within the meaning of Article 6 ECHR, it may examine the legality of that sanction and, in particular, whether it is reconcilable with the mandatory requirements of international conventions and domestic law, including general principles of law.

In particular, this right of review should allow the Court to consider whether the penalty is not disproportionate to the infringement, so that it may examine whether it was reasonable to impose a fine of such a .

This right of review does not mean that the Market Court can remit or reduce a fine based on a subjective appreciation of what it considers reasonable, for mere expediency and against statutory rules.[(3) ']

'* ECHR 4 March 2004, Si v Vester's *Horeca Service v Belgium,* no 47650/99, RO 27 and ECHR 4 March 2014, *Grande Stevens t. Italy,* **no 18640/10, RO :t39.**

" Named after ECHR judgement 6 June 1976, *Engel v Netherlands.* " *See* Supreme Court 23 September 2022, opinion J. Van der , wwwdgprtLaobe. '

See Supreme Court 2 June 2023, F.22.0005.N, opinion, S. Ravyse, www.juportal.be.

21 *See* Supreme Court 17 June 2024, C.23.0144.N .iuportal.be.

105.
The court finds that the fine of 250,000.00 imposed by the DPA, given its amount, is criminal in nature within the meaning of Article 6(1) ECHR.

106.
On 11 October 2021, the Litigation Chamber of the DPA made clear to IAB Europe (exhibit A179 file DPA) its intention to impose an administrative fine and, in accordance with indications from the Market Court, asked IAB Europe to submit its reaction in that regard. IAB Europe therefore had the opportunity to specifically defend itself with regard to the fine, which it did (exhibit A180 file DPA).

107.
To determine the fine, the DPA took into the following circumstances (exhibit A179 file DPA) '

- *"IAB Europe is a trade association whose main activities are said to be the provision of information and tools to stakeholders (in particular companies) active in* the *digital advertising sector in the European Union as well as the provision of information to the general public to improve their knowledge and inform them of the value of digital advertising to the market. The defendant therefore has a leading role in relation to its members as well as the wider digital marketing and advertising sector in the European Union."*
- *"IAB Europe is part of the IAB Global Network as well as* von *the Interactive Advertising Bureau (IAB) consortium, based in New York."*
- *"IAB Europe's TCF in its current version aims to be implemented* ***in an increasing number*** *of websites and applications, which will expose more and more data subjects to the TCF and the associated processing of their personal data."*

It also took into account the following criteria : a) nature of the infringement, b) seriousness of the infringement, c) duration of the infringement and d) the necessary deterrent effect to prevent further infringements.

108.
IAB Europe essentially accuses the DPA of failing to take into account *the lack negligence (and intentional wrongful conduct).*

109.
However, in the Contested Decision (paragraph 547), the Litigation Chamber responds specifically and pertinently to this point which is now being raised again by IAB Europe before the Market Court :

> *"Article 83.2.b GDPR requires the Data Protection Authority to take into account the intentional or negligent nature* of the *infringement. Given that the defendant, in its capacity of management organisation,* was aware of *the* risks *associated with non-compliance with the TCF, in particular with regard* to *the integrity of the TC String and users' encapsulated choices and preferences, and given the impact of the TC String on subsequent processing under the OpenRTB, the Litigation Chamber finds that IAB Europe has been negligent in' adopting the measures to implement the current version of the TCF."*

The Contested Decision(s) is correctly justified on this point.

After review, the Court finds that, in view of the above, the Litigation Chamber of the DPA could reasonably impose a fine of 250,000.00 EUR.

The conclusion is that, although the Contested Decision contains some procedural defects as set out in the Interim Judgment, IAB Europe's substantive claims against the Contested Decision are unfounded, except to the extent that the Contested Decision finds that IAB Europe acts as a (joint) data controller for the processing that takes place entirely within the framework of the OpenRTB protocol. The Market Court also confirm the sanctions imposed on IAB Europe by means of the Contested Decision that relate solely to the processing within the TCF. It is not necessary to refer the case back to the Litigation Chamber, nor is it a legal requirement for the Market to proceed to a European consultation procedure.

ABOUT COSTS AND PROCEDURAL INDEMNITY

110.
The costs of the proceedings including a procedural indemnity in the amount of EUR 7,848.84 (it concerns an application to set aside a fine of EUR 250,000.00) (in accordance with the case law of the Suppreme Court - Supreme Court 23 January 2023, C.22.0158.N and Supreme Court 16 January 2023, C.21.0193.F - the Market Court automatically adjusts the rate to that applicable at the time of the judgment) for the DPA shall be borne by IAB Europe, being the largely unsuccessful party.

IAB Europe is also responsible for role rights and Budget contribution.

Since the complainants in the present proceedings are only intervening as voluntarily intervening parties (custodial intervention), they cannot be ordered to pay procedural indemnity or receive one.

FOR THESE REASONS ,
THE MARKET COURT,
Deciding by adversarial judgement,

The proceedings were conducted in accordance with the Act of 15 June 1935 on the use of language in court proceedings,

Refuses the request to reopen the debates originating from IAB Europe.

Further elaborating on the interim judgement,

Annuls the Contested Decision only because of the procedural defects established in the interim judgement and thus in particular to the extent that the DPA bluntly finds that TS Strings are personal data within the meaning of Article 4(1) GDPR, and to the extent that the DPA appoints itself bluntly in the Contested Decision as the leading supervisory authority.

Giving judgement with full jurisdiction and following the Preliminary Judgement,

Declares IAB Europe's substantive grievances against the Contested Decision unfounded except insofar as the Contested Decision finds that IAB Europe is acting as (joint) data controller for the processing operations carried out entirely in the context of the OpenRTB protocol (a judgment which the Market Court does not endorse).

Finds that IAB Europe has committed infringements of the following provisions : Article 5(1)(a) GDPR ; Article 6 GDPR ; Article 12 GDPR ; Article 13 GDPR ; Article 14 GDPR ; Article 24 GDPR ; Article 25 GDPR ; Article 5(1)f) GDPR ; Article 32 GDPR ; Article 30 GDPR ; Article 35 GDPR ; Article 37 GDPR, and this in the manner set out in paragraph 535 of the Contested Decision except to the extent that the Contested Decision finds that IAB Europe acts as (joint) data controller for the processing operations carried out entirely in the context of the OpenRTB protocol.

Confirms the sanctions imposed on IAB Europe by the Contested Decision.

Orders IAB Europe to pay the costs of the proceedings, including the basic indexed amount of the procedural indemnity of EUR 7.848,84 to the DPA.

Orders IAB Europe to pay to the Belgian State, the FPS Finance, the court fee for the appeal amounting to 400,00 EUR, in accordance with Article 269 of the Code of Registration, Mortgage and Court Fees, and to pay definitively the contribution of the Budgetary Fund amounting to 24,00 EUR.

Thus given and pronounced in public civil hearing of the 19th Chamber A of the Court of Appeal of Brussels on 14 May 2025, where were present :

A-M. WITTERS, Judge acting President,
C. VERBRUGGEN, Judge,
A. BOSSUYT, Judge,
S. THE
COOMAN, Clerk

S. DE COOMAN

A. BOSSUYT

C. VERBRUGGEN

A-M. WITTERS