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1140 Vienna
Austria

Data Protection Authority
Rue de la Presse 35
1000 Brussels
by e-Mail: [REDACTED]

Vienna, 18.07.2023

noyb Case-No: C-062-11

Complainant:

[REDACTED], domiciled at [REDACTED]
[REDACTED]

Represented by

noyb - European Center for Digital Rights
Goldschlagstraße 172/4/3/2, 1140 Vienna pursuant to
Article 80 of the RGPD

Against:

IPM GROUP sa,
79 Rue des Francs, 1140 Etterbeek, Belgium, privacy@cim.be

COMPLAINT

File number : C062-11

Complainant: [REDACTED], [REDACTED], [REDACTED]

Data controller/defendant: IPM GROUP sa , 79 Rue des Francs à 1140 Etterbeek , Belgium, privacy@cim.be

The Complainant is represented by the Austrian non-profit association *noyb* - European Center for Digital Rights, Goldschlagstraße 172/4/3/2, 1140 Vienna, Austria, pursuant to Article 80(1) of the GDPR. The representation agreement is attached as Exhibit 1.

1. THE FACTS

The complainant visited the website of the controller <https://www.lalibre.be/> on 10 February 2023. This website displayed a banner relating to cookies placed on its site. A screenshot of the website and the banner is attached as exhibit 2.

This banner appears to seek to establish a legal basis under Article 5(3) of the Directive (2002/58/EC), transposed into Belgian law by Article 10/2 of the Law of 30 July 2018 on the protection of individuals with regard to the processing of personal data and Article 6(1)(a) GDPR to store information and/or access information stored in the complainant's terminal equipment.

This complaint relates not only to the installation and reading of cookies on the website, but also to the processing of personal data by the controller (including co-controllers) and the communication of such data to third parties.

As indicated below, at least one cookie in question involved the processing of personal data (see HAR file in the appendix).

Domain	Name	Value	Purpose
www.lalibre.be	_pubcid	[REDACTED]	.Advertising
www.lalibre.be	_gcl_au	[REDACTED]	Marketing/tracking

2. PRINCIPLES AND APPLICABLE LEGAL BASES

In accordance with Article 10/2 of the Act of 30 July 2018 on the protection of individuals with regard to the processing of personal data, transposing Article 5(3) of the e-privacy Directive, the placement of a cookie is only possible with the consent of the data subject within the meaning of Article 4(11) of the GDPR, as also confirmed by the EDPB.¹

In addition to the breach of Article 10/2 of the Act of 30 July 2018 referred to above, this complaint relates to the breach of the provisions of the GDPR better identified below.

¹ EDPB report published on 18 January 2023, https://edpb.europa.eu/system/files/2023-01/edpb_20230118_report_cookie_banner_taskforce_en.pdf.

3. CONTEXT: MISLEADING BANNERS AND DARK PATTERNS

For years, cookie banners have posed problems in terms of user consent to the processing of their data. Independent studies show that the acceptance rate is around 0.16% for neutral banners.² However, data controllers are recording consent rates in excess of 90%.³ There is a strategy on the part of data controllers to offer an 'easy' solution (accepting cookies) while making other options appear complicated. Non-compliant cookie practices were the subject of the above-mentioned EDPB report, to which your Authority referred in its communication of 10 February 2023⁴.

4. VIOLATIONS

The controller who is the subject of this complaint has clearly breached the GDPR and/or Article 10/2 of the aforementioned Act of 30 July 2018 in the following way:

Type 1 violation: no "refuse" option at the first level of information on the cookie banner

While the cookie banner had a button to accept all relevant processing activities and a button allowing the data subject to access other options, the option to "opt out" of relevant processing activities was deliberately hidden on the second layer of the banner by the controller. There is no logical, technical or ethical reason to hide the "opt-out" option, other than to confuse data subjects or make opt-outs more burdensome and unlikely.

According to industry research, 98% of users never visit the second layer of consent banners. This means that only 2% of all users are offered the option to "reject all".⁵

Similarly, the EDPB, in its aforementioned report, considered that the absence of a "refuse" button at the same level as the "accept" button was a non-compliant practice. In this respect, please also refer to the aforementioned communication from the AMF dated 10 February 2023 and the recommendations of the CNIL⁶, the German guidelines⁷, the Danish guidelines⁸, the Greek guidelines⁹ and the Finnish guidelines¹⁰ published by the supervisory authorities.

In this case, as shown in Exhibit 2, the data controller has not set up a "refuse all" button on the first level of information, where there is an "accept & close" button.

This constitutes, without further explanation, a breach of Article 10/2 of the Act of 30 July 2018 and Article 6(1)(a) RGPD

² See the Usercentrics webinar at around 30:00 (available at <https://www.youtube.com/watch?t=1800&v=oux9uBUtscE&feature=youtu.be>) and Utz, Degeling, Fahl, Schaub and Holz, (Un)informed Consent, table 2 available at the following link: <https://arxiv.org/pdf/1909.02638.pdf>.

³ "According to Quantcast's own analysis, more than 10,000 domains worldwide have deployed Quantcast Choice, generating an average consent rate among consumers of more than 90 percent", see: www.quantcast.com

⁴ Cookie banners: EDPB publishes examples of non-compliant practices, <https://www.autoriteprotectiondonnees.be>, 10 February 2023.

⁵ <https://www.quantcast.com/press-release/quantcast-choice-powers-one-billion-consumer-consent-choices/>

⁶ Deliberation SAN-2021-023 of 31 December 2021, available at www.legifrance.gouv.fr; Deliberation no. 2020-092 "recommendation" no. 28 available at www.cnil.fr, See also the CNIL action "refusing cookies should be as easy as accepting them" (www.cnil.fr)

⁷ Länderübergreifende Prüfung: Einwilligungen auf Webseiten von Medienunternehmen sind meist unwirksam (<https://datenschutz-hamburg.de/pressemitteilungen/2021/06/2021-06-30-medienwebsites>)

⁸ Datatilsynet, Behandling af personoplysninger om hjemmesidebesøgende, available at www.datatilsynet.dk

⁹ Guidelines of the Greek Supervisory Authority at C.5, available at www.dpa.gr

¹⁰ Tietosuojavaltuutetun toimisto available at <https://tietosuoja.fi>

Type 2 violation: Misleading button colours

The controller used different colours for the different options presented to the complainant by the cookie banner. As can be seen from Exhibit 2 and Exhibit 3, the colours of the options were as follows.

Banner background: White

"Accept & Close" and "Accept All" buttons: Pink with white text

"Find out more" and "Reject all" buttons: Light grey with black text.

When the user clicks on the "Find out more" button, a second banner appears (*see* exhibit 3), which also includes a pink button on a white background offering the user to "Accept all" and a light grey button on a white background offering the user to "Reject all".

In this respect, the Greek supervisory authority recommends that the banner should include "buttons and characters of identical size, prominence and colour".¹¹ The EDPB considered that the practice of highlighting the "Accept" button in relation to the other options was also problematic.¹²

In the case in point, exhibit 2 shows that in the first banner, the pink "Accept & Close" button is clearly highlighted in relation to the light grey "Find out more" button, indicating to the data subject that "Accept & Close" is the expected action and the only "easy way out" of the website, especially if they only look at the banner briefly. In the second banner (*see* exhibit 3), which appears when the user clicks on "Find out more", the "Accept all" button is also clearly highlighted using the same colours.

In addition, the "Find out more" button on the first level and the "Refuse all" button appear in a light grey shade, in keeping with the white background of the banner. This button contrasts only subtly with the background. By choosing this colour, the data controller has clearly sought to highlight the "Accept" buttons.

There is no logical, technical or ethical reason to use such button colours, other than to confuse the people concerned or make refusals more tedious.

The data controller has therefore breached the following legal provisions in the circumstances explained below:

1. Highlighting the "accept and close" and "accept all" options over the other options violates the principle of fairness and transparency (Article 5(1)(a) GDPR).
2. Where the data subject is clearly led to give consent rather than refuse processing, the wish expressed is obviously not "unequivocal" (Article 4(11) GDPR) and is therefore not valid under Article 6(1)(a) GDPR.

Type 3 violation: It is not as easy to withdraw consent as to give it

To choose to accept the processing activities, the user only has to click once (or twice if they have chosen to "Learn more") on the button offering them to Accept all cookies. However, there is no button for rejecting cookies or withdrawing consent once cookies have been accepted. Instead, you need to go to the cookies section of the site. At the very bottom, a "Cookie settings" button opens a banner that does not display a "Reject all" button (*see* Exhibit 5). Instead, you need to deselect the consent button for each cookie.

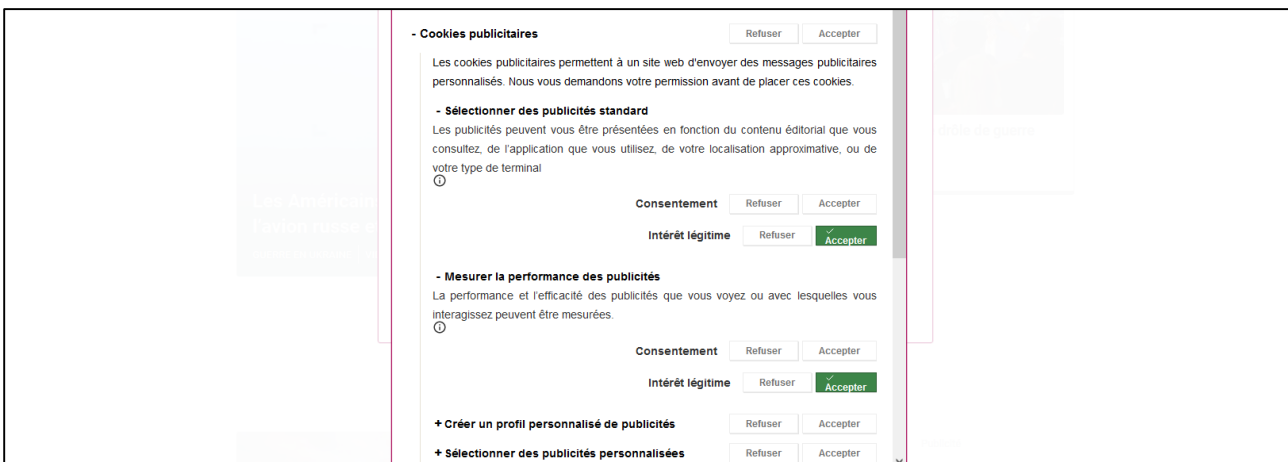
¹¹Guidelines of the Greek Supervisory Authority at C.7. (<https://www.dpa.gr/el/enimerwtiko/deltia/systaseis-gia-ti-symmorfosiptythnon-epexergasias-dedomenon-me-tin-eidiki>)

¹²Report of the work undertaken by the Cookie Banner Taskforce, *op. cit.* p. 6.

By not allowing users to withdraw their consent as easily as they gave it, the data controller is in breach of Articles 4(11) and 7(3) of the GDPR.

Type 4 infringement: Reference to legitimate interest

The second banner, which is displayed when the user clicks on "Find out more" (see Exhibit 3), shows a list of cookie types in text format that can be clicked on. When the user clicks on a cookie type, a detail is displayed. In this detail, the user can accept or refuse the cookie in question and the data controller also refers to its legitimate interest, for which the "Accept" button is pre-ticked (see Exhibit 4, an extract of which we have reproduced below). To give just two examples, when the user clicks on "select standard advertisements", or on "measure the performance of advertisements", the banner refers to the legitimate interest, for which an "accept" button is pre-ticked (see exhibit 4).



This practice poses a number of problems: firstly, the controller only allows the details of cookies to be seen if the user clicks on the text, which is counter-intuitive for the user, as generally it is buttons or links that users are used to clicking on, rather than text.

Secondly, the reference to a legitimate interest cannot replace the requirement for consent, as the EDPB pointed out in its aforementioned report, which confirms that a legitimate interest cannot provide a legal basis for the placement of cookies, tracking or online advertising. It should be added that the nature of such legitimate interests on the part of the data controller is not specified.

The data controller thus breached the following provisions in the circumstances explained below:

1. It does not have a legal basis under Article 6(1)(f) RGPD for processing data.
2. It did not make it easy to exercise the right to object to the processing but concealed the option to object in secondary banners, thereby breaching Article 12(2) GDPR.
3. He did not explicitly, clearly and separately from the other information draw the user's attention to his right to object at the time of the first communication (i.e.) the first banner, thereby breaching Article 21(4) GDPR.
4. Hiding the possibility of objecting to processing based on legitimate interest (Article 6(1)(f)) while highlighting the possibility of giving (or not giving) consent on the basis of Article 6(1)(a) is contrary to the principles of transparency and fairness set out in Article 5(1)(a) GDPR.
5. Interpreting a refusal as only a refusal of consent under Article 6(1)(a) but not as an objection under Article 21 GDPR is a breach of the principle of fairness set out in Article 5(1)(a). This is because it is clearly a case of ignoring the clear wish of the user.

5. REQUESTS

5.1. Survey

The Complainant hereby requests that the DPA conducts a full and prompt investigation of the complaint under Article 58(1) GDPR.

If the data controller makes representations or the DPA requires further information, we will ask for the opportunity to provide further details, arguments or legal or factual evidence that may be relevant during the proceedings.

5.2 Order to cease all unlawful processing and bring the banner into compliance

As provided for in Articles 17, 19 and 58(2)(c) GDPR, the complainant requests the DPA to order the controller to cease all unlawful practices and processing covered by this complaint, to erase all personal data covered by such processing, and to communicate the erasure to all recipients to whom the data have been disclosed.

The DPA is also asked to find that there has been a breach of the various provisions of the GDPR referred to in this complaint and of Article 10/2 of the Act of 30 July 2018 on the protection of individuals with regard to the processing of personal data and to order that the cookie banners be brought into compliance.

5.3 Imposition of an effective, proportionate and dissuasive fine

The complainant suggests the imposition of an effective, proportionate and dissuasive fine in accordance with Articles 58(2)(i) and 83(5) GDPR, up to a maximum of €20 million or 4% of annual turnover.

6. CONTACT

For all communication with *noyb* please use [REDACTED], quoting case number C062-11. We are also available on [REDACTED].

For *noyb*
Max Schrems

7. PARTS

Exhibit 1 - Representation agreement pursuant to Article 80(1) RGD

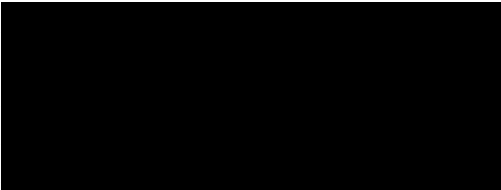
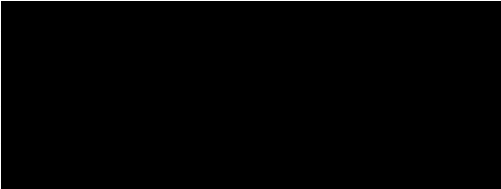
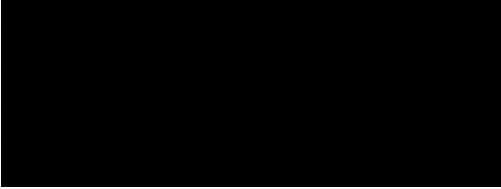


Exhibit 2 - Cookies banner

The image shows a screenshot of the La Libre website with a cookie consent banner overlaid. The banner is titled "La Libre respecte votre vie privée" and contains the following text:

Avec votre accord, [nos partenaires](#) et nous utilisons des cookies ou technologies similaires pour stocker et accéder à des informations personnelles comme votre visite sur ce site. Vous pouvez retirer votre consentement ou vous opposer aux traitements basés sur l'intérêt légitime à tout moment en cliquant sur "En savoir plus" ou dans notre politique de confidentialité sur ce site.

Avec nos partenaires, nous traitons les données suivantes :

Cookies d'analyse, Données de géolocalisation précises et identification par analyse du terminal, Publicités et contenu personnalisés, mesure de performance des publicités et du contenu, données d'audience et développement de produit, Réseaux sociaux

At the bottom of the banner, there are two buttons: "En savoir plus →" and "Accepter & Fermer".

The background of the website shows the La Libre logo, navigation links (Journal, Nouvelles, LI RADIO, Se connecter, Abonnez-vous), and a search icon. Below the banner, there are several article thumbnails with titles like "Master en médecine 'poignard' de la", "Enseignement", "Edito", "Enseignants? Il faut", "10", and "Publicité".

Exhibit 3 - Cookies banner

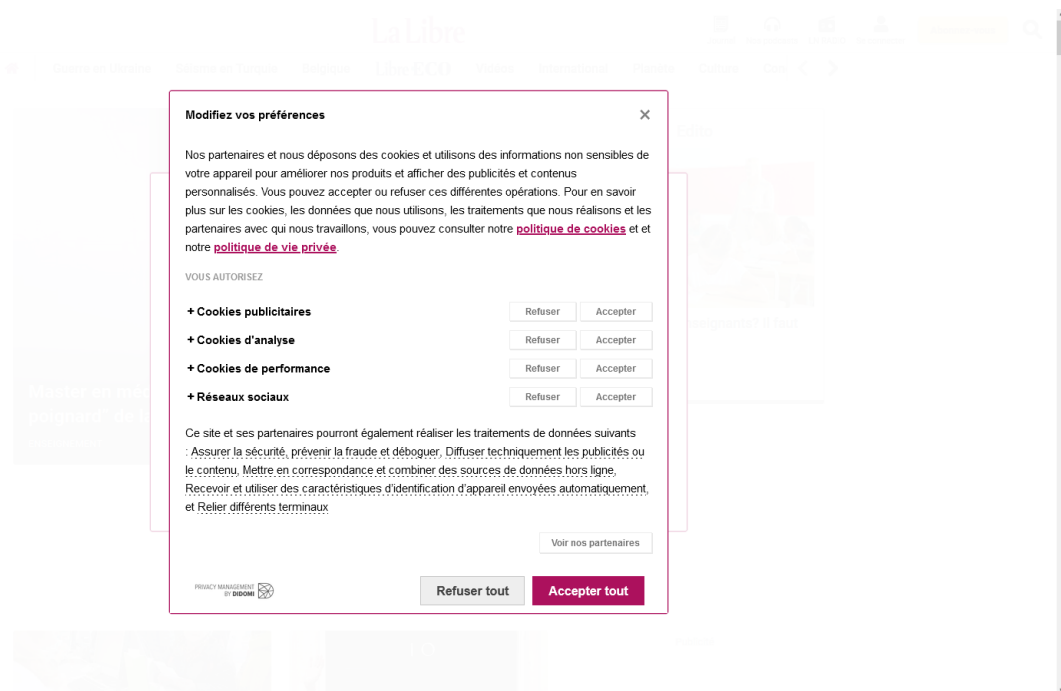


Exhibit 4 - Legitimate interest

Modifiez vos préférences

Nos partenaires et nous déposons des cookies et utilisons des informations non sensibles de votre appareil pour améliorer nos produits et afficher des publicités et contenus personnalisés. Vous pouvez accepter ou refuser ces différentes opérations. Pour en savoir plus sur les cookies, les données que nous utilisons, les traitements que nous réalisons et les partenaires avec qui nous travaillons, vous pouvez consulter notre [politique de cookies](#) et et notre [politique de vie privée](#).

VOUS AUTORISEZ

- Cookies publicitaires

Les cookies publicitaires permettent à un site web d'envoyer des messages publicitaires personnalisés. Nous vous demandons votre permission avant de placer ces cookies.

- Sélectionner des publicités standard
Les publicités peuvent vous être présentées en fonction du contenu éditorial que vous consultez, de l'application que vous utilisez, de votre localisation approximative, ou de votre type de terminal

Consentement

Intérêt légitime

- Mesurer la performance des publicités
La performance et l'efficacité des publicités que vous voyez ou avec lesquelles vous interagissez peuvent être mesurées.

Consentement

Intérêt légitime

+ Créer un profil personnalisé de publicités

+ Sélectionner des publicités personnalisées

PRIVACY MANAGEMENT BY DIDORI

Exhibit 5 - Type 3 violation

Modifiez vos préférences X

Nos partenaires et nous déposons des cookies et utilisons des informations non sensibles de votre appareil pour améliorer nos produits et afficher des publicités et contenus personnalisés. Vous pouvez accepter ou refuser ces différentes opérations. Pour en savoir plus sur les cookies, les données que nous utilisons, les traitements que nous réalisons et les partenaires avec qui nous travaillons, vous pouvez consulter notre [politique de cookies](#) et notre [politique de vie privée](#).

VOUS AUTORISEZ

+ Cookies publicitaires	<input type="button" value="Refuser"/>	<input checked="" type="button" value="Accepter"/>
+ Cookies d'analyse	<input type="button" value="Refuser"/>	<input checked="" type="button" value="Accepter"/>
+ Cookies de performance	<input type="button" value="Refuser"/>	<input checked="" type="button" value="Accepter"/>
+ Réseaux sociaux	<input type="button" value="Refuser"/>	<input checked="" type="button" value="Accepter"/>

Ce site et ses partenaires pourront également réaliser les traitements de données suivants : Assurer la sécurité, prévenir la fraude et déboguer, Diffuser techniquement les publicités ou le contenu, Mettre en correspondance et combiner des sources de données hors ligne, Recevoir et utiliser des caractéristiques d'identification d'appareil envoyées automatiquement, et Relier différents terminaux.

Les autres sites IPM

DH LesSports+	Moustique
Cinebel	Gourmandiz
L'avenir	La Libre Afrique
Paris Match Belgique	Continents Inso
Logic-Immo	LN RADIO

Mentions légales

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