Litigation Chamber

Draft Decision of 19 december 2025

Case number: DOS-2025-00506

Concerns: proposal to dismiss a complaint file regarding DPG Media NV cookie banners after the withdrawal of the complaint | Draft Decision (Article 60.3 GDPR)

The Litigation Chamber of the Data Protection Authority;

Having regard to Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016, *on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC* (General Data Protection Regulation - GDPR);

Having regard to the Law of 3 December 2017 *establishing the Data Protection Authority,* hereinafter "LDPA";

Having regard to the Law of 30 July 2018 *regarding the protection of natural persons related to the processing of their personal data*, hereinafter "LPD";

Having regard to the Rules of Internal Procedure, as approved by the Chamber of Representatives on 20 December 2018 and published in the *Belgian Official Journal* on 15 January 2019;

Having regard to the documents in the file;

Has taken the following decision regarding:

The complainant: Mrs. x, with residence at [...],
represented by NOYB – European Center for Digital Rights, which has its seat at [...], hereinafter "the complainant", and;

The defendant: DPG Media N.V., which has its seat at [...] with enterprise number in the Belgian Crossroad Bank for Enterprises [...], hereinafter "the defendant";

I. Facts and proceedings

1. The subject of the complaint concerns alleged breaches in collecting consent for the placement of cookies on a website of the defendant (www.vtwonen.be). Specifically, the complaint asserts that the defendant does not request consent in a lawful manner.

2. On 10 August 2021, NOYB lodged a complaint with the Austrian supervisory authority ("Datenschutzbehörde" or "DSB") against the defendant on behalf of a natural person. Other complaints were filed simultaneously with the DSB against websites related to the defendant's brand.

3. The DSB then forwarded the complaints to the Dutch supervisory authority ("Autoriteit Persoonsgegevens" or "AP"). With regard to the complaint that prompted this decision, the transfer took place on 19 January 2022 as part of the procedure initiated by the DSB under Article 56 of the GDPR — which, among other things, aims to identify the lead supervisory authority ("LSA"). The AP then accepted its status as LSA. After the initial steps in its investigation, the AP received a letter from the legal representatives of the Dutch establishment of DPG Media on 17 May 2023, clarifying that the controller for the website at hand (www.vtwonen.be) is the Belgian enterprise DPG Media NV.[1]

4. Following the request for mutual assistance of 22 January 2025 pursuant to Article 61 of the GDPR, the AP informed the Belgian Data Protection Authority ("Gegevensbeschermingsautoriteit", "Belgian DPA" or "GBA") that the controller of the disputed website (www.vtwonen.be) is the Belgian enterprise DPG Media NV. For this reason, the AP considers that the Belgian DPA should act as LSA. Based on the information provided, the GBA confirmed on 23 January 2025 that it would act as LSA for the complaint in question.

5. On 4 February 2025, the GBA broadcasted the information on the (changed) status of the GBA as LSA to the DSB via the Internal Market Information System ("IMI").

6. On 13 February 2025, the DSB confirmed via IMI that the GBA will act as LSA for this complaint.

7. On 14 February 2025, the DSB informed the complainant about this updated status.

8. On 18 September 2025, the Belgian DPA broadcasted a draft decision (also "DD") with regard to the present case file. The DD contained the following reasoning. To enhance the readability of the present decision, the paragraph numbering continues in line with the present decision, but the text of the DD is presented in dark blue and *italics* and is enclosed between the markers '(begin text)' and '(end text)'.

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[1] The privacy policy on www.vtwonen.be links to the policy of the defendant, in particular:: https://privacy.dpgmedia.be/nl/document/privacy-policy.

9. (Begin text) "*NOYB is an association established under Austrian law.[2] This association can lodge complaints under Article 80(1) GDPR with a supervisory authority when it represents an actual data subject or a natural person with an actual interest.[3]*

10. *This case is part of the "Cookie Banner Complaints" project of the association NOYB, whereby the latter lodged a whole series of complaints on the same subject with multiple supervisory authorities in 2021. The EDPB founded a Taskforce[4] to coordinate the legal assessment of the complaints, leading to a report in 2023.[5]*

11. *Two factual aspects are important for the further justification of the present dismissal decision.*

12. *First of all, in the course of several previous investigations conducted by the GBA's Inspection Service[6], several elements appear to indicate that there may be problems with the mandating and/or the interest of the complainants in question. In particular, the Inspection Service noted in some cases that there were indications that the mandating appears to have a "fictive character". [7]*

13. *Secondly, the Litigation Chamber refers to the Belgian Market Court judgment of 19 March 2025, in which the Court identified a violation of the principle of the prohibition of abuse of law under both the Belgian legal order and Union law, both by NOYB and the complainant in that case.[8] Although it was not proven before the Litigation Chamber that the project had been set up by the association NOYB (and the accompanying instructions to the ultimate complainant) prior to the actual grievances claimed by the data subjects, the Market Court annulled the administrative decision on the ground of abuse of law - very similar in its wording to the decision of the Litigation Chamber in the Roularta case.*

14. *The Litigation Chamber further addresses both aspects below.*

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[2] Austrian Central Register of Associations (ZVR) nr. 1354838270.

[3] Court of Cassation 7 October 2021, C.20.0323.N, concl. E. HERREGODTS, available via: www.juportal.be

[4] EDPB News, *EDPB establishes Cookie Banner Taskforce*, 27 September 2021, available at: https://www.edpb.europa.eu/news/news/2021/edpb-establishes-cookie-banner-taskforce_de.

[5] EDPB, *Report of the work undertaken by the Cookie Banner Taskforce*, 18 January 2023, available at: https://www.edpb.europa.eu/our-work-tools/our-documents/other/report-work-undertaken-cookie-banner-taskforce_en.

[6] For example in the files with reference number DOS-2021-06465, DOS-2021-06946, or DOS-2024-01136; see Decision 106/2025 to Decision 110/2025 of the Litigation Chamber of the Belgian DPA.

[7] The Litigation Chamber refers to two previous decisions in which it moved to dismiss the case in similar circumstances: Decision 22/2024 of 24 January 2024, DOS-2021-06438, available at: https://gegevensbeschermingsautoriteit.be/publications/beslissing-ten-gronde-nr.-22-2024.pdf; Decision 112/2024 of 6 September 2024, *Roularta,* DOS-2020-03924, available at: https://gegevensbeschermingsautoriteit.be/publications/beslissing-ten-gronde-nr.-112-2024-van-6-september-2024.pdf - [this Decision is also translated into English, and consultable here: https://www.gegevensbeschermingsautoriteit.be/publications/beslissing-ten-gronde-nr.-112-2024-van-6-september-2024-engels.pdf] (hereinafter also "Roularta case").

[8] See Brussels Court of Appeal (Section Market Court, Chamber 19A) judgment of 19 March 2025, 2024/AR/1690, specifically paragraphs 33 et seq.; the ruling is available (in Dutch) on the website of the Belgian DPA: https://www.gegevensbeschermingsautoriteit.be/publications/arrest-van-19-maart-2025-van-het-marktenhof-ar-1690.pdf.

[Section title I.1.] Previous investigations of the GBA's Inspection Service and public declarations by NOYB: findings of irregularities when complaint was lodged

15. *Based on the documents in the file, as well as previous investigations by the GBA's Inspection Service into files covered by NOYB's 'Cookie Banner Complaints' project, the following timeline can be established:*

i. The technical findings from NOYB initially date from 17 May 2021;

ii. On 30 May 2021, NOYB sent a "pre-litigation" letter to the defendant, which contained a "draft complaint" urging the latter to take steps to be in compliance with regard to the infringements alleged by NOYB;

iii. The Litigation Chamber adds the following factual element: on 31 May 2021, NOYB published a press release[9], clarifying that, as an association, it had sent 560 similar draft complaints to companies in 33 countries, and that it intended to further increase this to "10,000 further complaints" via an 'automated system". The press release explicitly details NOYB's modus operandi, both in text and with images.

(a) In the text, the press release states, among other things:

*"To address this extremely widespread issue, **noyb** has developed a system that **automatically** discovers different types of violations. The **noyb legal team** reviews each website, while the system automatically generates a GDPR complaint."[10] (emphasis and underlining added by the Litigation Chamber)*

This shows, within this particular project,

(i) that NOYB, as an association, searches for controllers who are committing infringements, it is not at the initiative of specific data subjects with current and existing grievances within the meaning of the GDPR,

(ii) that NOYB uses automated means in this regard, which further demonstrates the mismatch between the ultimately aggrieved Complainant and the origin of the complaint, and

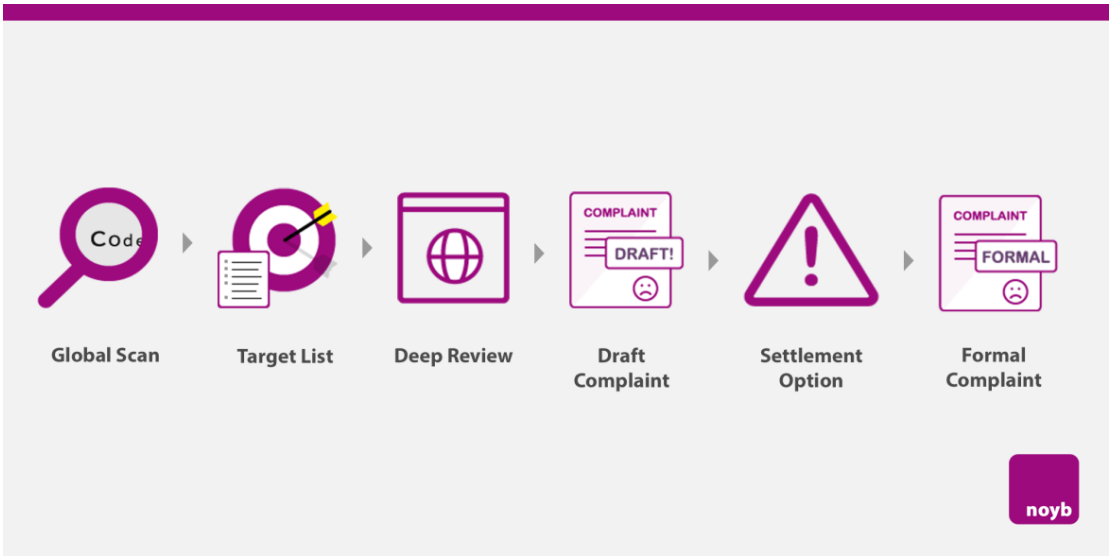
(iii) that NOYB explicitly does not refer to data subjects or complainants, but rather to its "legal team" for investigating the controllers in question. It is more than clear from the latter point that the ultimate complainants were therefore not

[9] Noyb's press release "Noyb aims to end 'cookie banner terror' and issues more than 500 GDPR complaints" is available at: https://noyb.eu/en/noyb-aims-end-cookie-banner-terror-and-issues-more-500-gdpr-complaints.

[10] Ibid

acting as data subjects in a private capacity, but rather as employees (voluntarily or otherwise, and regardless of their concrete status) of the NOYB association.

(b) visually, the explanation given in the text is further explained in images in the same press release:



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From left to right, the timeline set out by NOYB itself states: 'Global Scan" – 'Target List" – 'Deep Review" – 'Draft Complaint" – 'Settlement Option" – 'Formal Complaint";

iv. The Litigation Chamber also adds the following factual element. On an FAQ-webpage drafted by NOYB and related to the project, directed at 'targeted" controllers, NOYB clarifies how the websites were identified under the section 'why did you choose my website?":

*'To make our approach as transparent as possible, **we chose** websites based on (1) jurisdictions, (2) the number of visits, (3) the CMP used, and (4) the detected violations. These **factors have legal, technical and practical reasons**.*

In simple terms: we chose websites where the relevant EU law applies, where we could easily detect violations, and based on the relevant numbers of visitors."[12]

[11] Noyb's press release entitled "Noyb aims to end 'cookie banner terror' and issues more than 500 GDPR complaints" is available at: https://noyb.eu/en/noyb-aims-end-cookie-banner-terror-and-issues-more-500-gdpr-complaints.

[12] Webpage NOYB WeComply!, "FAQs", available at https://wecomply.noyb.eu/en/app/faq#what-happens-if-my-website-fully-complies-with-the-issues-raised-in-the-draft-complaint; the Litigation Chamber boldens and underlines in the quote.

v. *Only on 2 August 2021, after the defendant had failed to change its practices according to the proposals made by NOYB, did the Complainant issue a mandate to NOYB;*

vi. *On 10 August 2021, NOYB finally lodged a complaint - on behalf of the Complainant in that case - with the DSB.*

[section title I.2.] Judgment of the Brussels Court of Appeal (section Market Court) of 19 March 2025

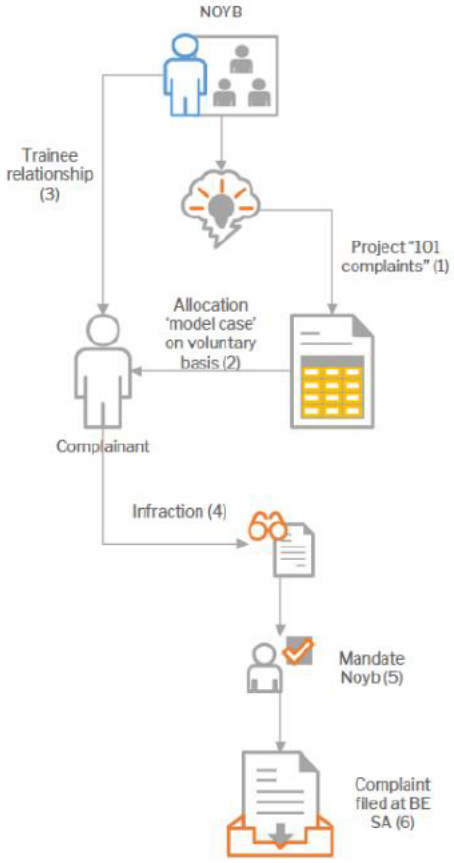
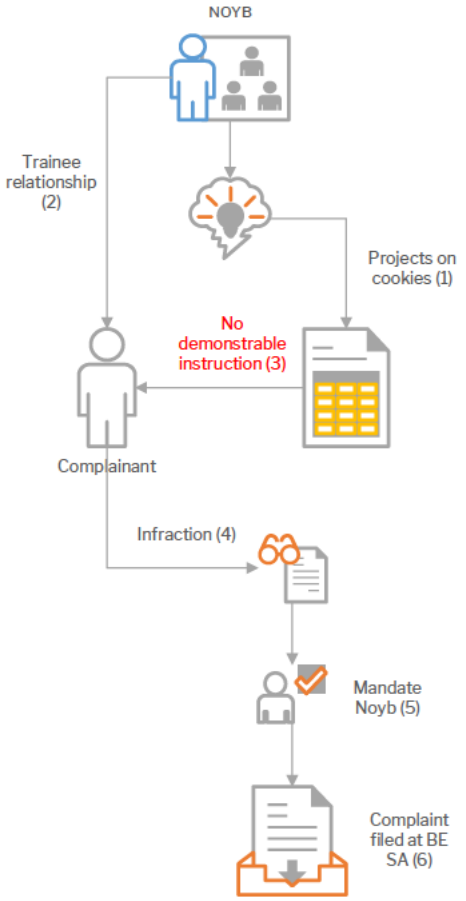
16. *The Litigation Chamber had, in its decision 113/2024 of 6 September 2024, also investigated the possibility of an abuse of law on the part of NOYB. Mediahuis as defendant had in that context, among other things, referred to the fact that the complainant was an intern of NOYB at the time of the initial website visit as well as the mandate to NOYB.*

17. *Unlike in the Roularta case, the Litigation Chamber ruled* ***there was no abuse of law*** *because a number of objective and fundamental elements to conclude that there was an abuse of law were missing. The Litigation Chamber therefore concluded - in line with the complainants' statements applied according to the principle of good faith - that a personal interest on the part of the complainant concerned could be established and that there was no abuse of law.*

Notably, as opposed to the present scenario, the complainant declared that he himself had initiated the project and, with that, identified the controller that the complainant found to be infringing his rights before seeking representation by NOYB.[13]

Visually, the Litigation Chamber pointed out the differences between the Roularta case on the one hand, and the Mediahuis case on the other, as follows:

[13] Litigation Chamber, 6 September 2024, Decision 113/2024, available at: https://www.gegevensbeschermingsautoriteit.be/publications/beslissing-ten-gronde-nr.-113-2024.pdf, par. 83 and 88.

Roularta case (par. 39, unofficial English version)	*Mediahuis case (par. 70, freely translated from Dutch)*
	

The present procedural scenario is comparable to the circumstances in the Roularta case.

18. *Mediahuis appealed against this decision before the Brussels Court of Appeal, Section Market Court, and the proceedings were registered under the Court's registry number 2024/AR/1690.*[14] *In these proceedings before the Court, the complainant in the Mediahuis case, represented by NOYB, intervened to support the position of the Belgian DPA.*

19. *The Market Court handed down a judgment on 19 March 2025 in which it ruled that there was also an abuse of law in this context, and that the Litigation Chamber [freely translated]*

[14] The judgment is available on the website of the Data Protection Authority (Dutch only): https://www.gegevensbeschermingsautoriteit.be/publications/arrest-van-19-maart-2025-van-het-marktenhof-ar-1690.pdf.

"could not possibly have held that there was 'no indication' of an abuse of law without making a manifest error of assessment."[15]

20. *The Market Court found that there was a violation of the general legal principle of the prohibition of abuse of law "as applied in the Belgian legal order and under Union law."*[16]

21. *Notably, the Market Court found that controllers had been 'identified (by NOYB) and assigned (to the complainant)".*[17]

    In other words, the Market Court found it sufficient in the Mediahuis case that there were presumptions that prior instructions had been given - as nowhere in the administrative file did it show that NOYB had actually identified controllers and assigned them. Indeed, the Litigation Chamber had ruled, based on the facts, that no instructions had been given from NOYB in the Mediahuis case.[18]

22. *Furthermore, the Market Court stated that: "The infringement here is provoked by NOYB for the purpose of qualifying the complainant as a data subject." The complainant stated in the Mediahuis proceedings that he himself had initiated the "project" and so here too, the presumption of provocation "by NOYB" is sufficient for the Market Court to qualify it as a separate aspect within the objective component of abuse of law.*[19]

23. *Based on this finding of abuse of law by the Market Court, this Court annulled the Litigation Chamber's Decision 113/2024 regarding Mediahuis. Following the annulment, the Market Court did not use its full jurisdiction to further investigate the alleged infringements.*

24. *The Market Court decision was not appealed before the Belgian Court of Cassation , neither by the Belgian DPA, nor by the complainant or NOYB.*

[chapter title II.] Reasoning

25. *The present case involves apparent abuse of law in the context of the lodging of the complaint.*

    Indeed, with regard to this case, publicly available elements on the NOYB website, as well as previous findings by the Belgian DPA's Inspection Service, clearly show that the ***essential aspects of the complaint were identified by NOYB*** *as an association, and not by the Complainant. These essential aspects include the claimed grievances, but also the identity*

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[15] Brussels Court of Appeal judgment (Chamber 19A, Market Court Section), 19 March 2025, role no 2024/AR/1690, para 33.

[16] Brussels Court of Appeal judgment (Chamber 19A, Market Court Section), 19 March 2025, role no 2024/AR/1690, para 33.

[17] Brussels Court of Appeal judgment (Chamber 19A, Market Court Section), 19 March 2025, role no 2024/AR/1690, para 33 - bullet point 6.

[18] Litigation Chamber, 6 September 2024, Decision 113/2024, available at: https://www.gegevensbeschermingsautoriteit.be/publications/beslissing-ten-gronde-nr.-113-2024.pdf, par. 91, among others.

[19] Brussels Court of Appeal judgment (Chamber 19A, Market Court Section), 19 March 2025, role no 2024/AR/1690, para 33 - bullet point 7.

of the targeted controllers (NOYB explicitly mentions a 'target list"). Therefore, there are even more (provable) objective elements than in the Mediahuis case (cf. supra, Market Court judgment of 19 March 2025) to conclude that there has been an abuse of law.

26. *Notably, the public declarations by NOYB with regard to the project under which this complaint falls, **clearly and undeniably prove the circumvention** of the law – which does not allow NOYB to file complaints by itself (cfr. Article 80(2) GDPR) but rather requires a mandate (cfr. Article 80(1) GDPR) by a data subject or other person with an actual interest to file a complaint under Article 77 GDPR.*[20]

27. *The complainant in this case was instructed on how to lodge the complaint, in line with the defendant's objectives. Nevertheless, a representative should - according to both the letter and the spirit of Article 80(1) GDPR - put the interests of the person(s) it represents first, and not (merely) pursue its own policy objectives. Indeed, these policy objectives are linked to interests other than those of an individual data subject: for instance, strategic objectives of the board or the wishes of donors may come into play, and therefore de facto take precedence over the mandating in this context.*

[section title II.1.] The EU legal principle of prohibition of abuse of law – violation

[section subtitle II.1.1.] Context of the EU legal principle of prohibition of abuse of law

28. *In its aforementioned judgment of 19 March 2025, the Market Court, like the Litigation Chamber in its decision in the Roularta case, referred to the European Court of Justice's jurisprudence on abuse of law.* [21] *This principle is an integral part of the Union's acquis communautaire and does not require a separate legal provision for each scenario.*

29. *In other words: the fact that the legal rule from which the subjective right*[22] *to lodge a complaint emanates does not expressly exclude the possibility of lodging a complaint on the basis of a created grievance does not mean that the legal rule has been correctly applied. As framed in the legal doctrine: 'Indeed, the full interpretation of the rule of law seems to allow the subjective right to be exercised in any manner or circumstances. The prohibition of (legal) abuse . . . clarifies that this is not the case."*[23]

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[20] Court of Cassation 7 October 2021, C.20.0323.N, concl. E. Herregodts, available via: www.juportal.be

[21] CJEU, judgment of 26 February 2019, *T Danmark and Y Denmark*, joined cases C-116/16 and C-117 /16, no. 97 and case law cited there, and CJEU judgment of 9 September 2021, *Volkswagen Banke.a.*, joined cases C-33/20, C-155/20 and C-187 /20, no. 122.

[22] In this case, Art. 77 in conjunction with Art. 80(1) GDPR.

[23] MEIRLAEN M., *Ongeschreven rechtsgrenzen – Verbod van rechtsregelontduiking, fraus omnia corrumpit en verbod van (rechts)misbruik*, Antwerp, Intersentia, 2022, 277 (freely translated); also compare Court of Cassation judgment, 13 June 2024, C.23.0223.N; see also Court of Cassation judgment, 16 November 2023, C.23.0052.N and Court of Cassation judgment, 15 February 2019, C.18.0428.N.

30. *The existence of an abuse of law requires, on the one hand, a set of objective circumstances whereby, despite formal compliance with the conditions imposed by the Union rules, the aim pursued by those rules has not been achieved. On the other hand, a subjective element is required, namely the intention to obtain an advantage conferred by the Union rules by artificially creating the conditions under which the right to that advantage arises.*[24]

31. *As regards the abusive use of the right to lodge a complaint under Art. 80(1) j° Art. 77 GDPR, the principle of the prohibition of abuse of law can therefore be applied.*[25] *Here, abuse of law is based on* ***circumvention****, which differentiates the concept from fraud - which is based on deception.*[26]

32. *The application of a* ***general legal principle*** *under Union law is evidently not limited to the admissibility of a complaint. If elements of abuse of law appear later in the procedure – for example because they were not assessed in an earlier phase – these elements need to be taken into account and applied to the case at hand at the moment these elements become relevant for the file.*

    [section subtitle 2] Application to the present case: ***objective*** *component of abuse of law present*

33. *The Litigation Chamber refers to the elements which the Market Court has identified as sufficient to support the objective component of disregarding the prohibition on abuse of law, and applies them to the present case:*

    a) *The various complaints submitted within the 'Cookie Banner Complaints' project had been drawn up and signed in the same way. The different complaints frequently featured the same data subject, who gave a power of attorney to NOYB - European Center for Digital Rights.*

       The Inspection Service as well as the Litigation Chamber of the GBA also previously noted that several elements point to a standardised approach. This approach reflects the objective of submitting complaints ***'in bulk'****.*

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[24] Judgment of the Court of Justice EU, 26 February 2019, joined cases C-115/16, C-118/16, C-119/16 and C-299/16, specifically §§ 96, 97, 102, 105 and 109.

See also the following ECJ judgments: 1) 14 December 2000, *Emsland-Stärke,* C-110-99; 2) 21 February 2006, *Halifax*, C-255/02; 3) 22 November 2017, *Cussens*, C-251/16.

[25] VELAERS J. "Rechtsmisbruik: begrip, grondslag en legitimiteit" in Rozie J., Rutten S., Van Oevelen A. (eds.), *Rechtsmisbruik,* Antwerpen, Intersentia, (1)4, referring in footnote 19 to, inter alia, CJEU, 5 May 2007, *Hans Markus Kofoed v. Skatteministeriet,* C-321/05, ECLI:EU:C:2007:408.;

DANON R. *et al*, "The Prohibition of Abuse of Rights after the ECJ Danish Cases" in *Intertax*, Vol. 49, Is. 6/7, 2021, 482-516, https://doi.org/10.54648/taxi2021050;

LÓPEZ RODRÍGUEZ J., "Some Thoughts to Understand the Court of Justice Recent Case-Law in the Danmark Cases on Tax Abuse", *Ec Tax Review*, Vol. 29, Is. 2, 71-83, https://doi.org/10.54648/ecta2020009.

[26] Compare with: "*If both frauds and abuses of law aim at wrongfully obtaining a benefit from the legal system, frauds involve misrepresentation, whereas abuses of law rely on circumvention*." in A. SAYDE, *Abuse of EU Law and the Regulation of the Internal Market*, Oxford, Hart Publishing, 2014, 24;

*The Litigation Chamber notes that NOYB refers on its website to an **automated** process for generating complaints after controllers have been identified. From NOYB's press release:* [27]

> *'To address this extremely wide-spread issue, noyb has developed a system that automatically discovers different types of violations. The noyb legal team reviews each website, while the system automatically generates a GDPR complaint."*

b) *At the time of the complaint, the Complainant was domiciled in Vienna and does not belong to the average target audience of a Belgian website in Dutch. The Complainant himself has also at no time exercised his rights vis-à-vis the controller (with regard to the practices on the website of the defendant).*

Both elements are not in themselves problematic; it is normal - a fortiori in the single European market - that websites targeting specific nationalities can also be visited by European citizens who are not part of the target audience of the websites.

*These elements would not in themselves be sufficient to conclude that there has been abuse of law, yet in this specific context they are **illustrative** of the **artificial construction of the complaint,** with the objective to **circumvent Article 80(1) GDPR**.*

c) *The **initiative** for lodging the complaints **undeniably** lies with **NOYB**, not the Complainant.*

Various elements illustrate the fact that the set-up of the mandating instrument had been deliberately reversed, whereby the initiative went from NOYB to the complainant, and not vice versa. The 'pre-litigation' letters sent by NOYB use the following wording: 'The identity of the Complainant will be made available in the ultimate complaint".

NOYB states on its website: [28]

> *'[...] **noyb developed** a software that recognizes various types of unlawful cookie banners and automatically generates complaints. Nevertheless, **noyb will give companies** a one-month grace period to comply with EU laws before filing the formal complaint. Over the course of a year, noyb **will use** this system **to ensure compliance** of up to 10,000 of the most visited websites in Europe." (emphasis added by the Litigation Chamber)*

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[27] https://noyb.eu/en/noyb-aims-end-cookie-banner-terror-and-issues-more-500-gdpr-complaints

[28] Press release NOYB, *op. cit.*, https://noyb.eu/en/noyb-aims-end-cookie-banner-terror-and-issues-more-500-gdpr-complaints.

d) *When NOYB's project was initiated, and the Complainant undertook to be a data subject, and lodged a complaint in this regard, there was a working relationship (in this case, an **internship**) between the Complainant and NOYB. In this context, the Litigation Chamber points out that it is difficult for an employee (even a voluntary one) to question the overall set-up of a project in this context and not give his or her consent to the mandating according to the **details outlined** - just as it is difficult for a data subject to give his or her consent to the processing of personal data within the meaning of Article 6(1)(a) GDPR under various circumstances in an employment relationship.[29] This is the case even when the Complainant in question was given a say and even a leading role in the project - as this **association-led project deviates from the letter and spirit of what a mandating relationship should entail** under Article 80(1) GDPR.*

e) *The Complainant mandated NOYB after the details of the project had been outlined, and the controllers were **identified by NOYB** and **assigned** (on a voluntary basis) to the complainant.*

*It is noteworthy in this context that a **complainant** in another complaint file **declared** at a hearing before the Litigation Chamber that five files were allocated to the person **by NOYB**.[30]*

34. *Taking all of these elements into account, it is clear that the intended **purpose** of the right to lodge a complaint in the context of mandating (Article 77 j° Article 80(1) GDPR) is **not respected** in this case: Article 80(1) GDPR states that it is the data subject who retains the right to mandate an organisation to represent him or her.*

*The wording "data subject" shows, first of all, that personal data and associated processing in the context of the claimed grievances must already exist prior to (the coordination leading up to) the mandating. In turn, the wording "to mandate" indicates that the assignment (compare other language versions of the GDPR[31]) is **one-way**: from the Complainant to the representative, and **not the other way around**.*

*Moreover, recital 142 of the preamble to the GDPR clarifies that the **data subject** must first **himself or herself "consider**" that their rights have been infringed under the GDPR, and not following concrete instructions from the representative, before the mandate is given. The*

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[29] Compare in this regard the Litigation Chamber's Decision 22/2024 dated 24 January 2024, §§46-52.

[30] Decision Litigation Chamber Belgian DPA 22/2024, 24 January 2024, available in French (https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-22-2024.pdf) and Dutch (https://www.gegevensbeschermingsautoriteit.be/publications/beslissing-ten-gronde-nr.-22-2024.pdf), par. 46.

[31] Other language versions of the GDPR clarify the material nature of the assignment, s.a. "opdracht te geven" in the Dutch language version, and, "zu beauftragten" in the German language version,

infringement here is provoked by NOYB for the purpose of qualifying the Complainant as a data subject.

35. *In other words: the complaints are fabricated within a fictive structure not envisioned by the legislator under Article 80(1) GDPR.*

36. *In identifying the purpose of the legislator with Article 80.1 GDPR, the existence of* ***Article 80(2) GDPR*** *is important: because of the existence of this provision, it is indisputable that the European legislator clearly did not intend that associations could 'seek' a mandate under Article 80(1) GDPR based on their own priorities and strategies. Such 'association-driven' initiatives are precisely the intention of Article 80(2) GDPR.*

37. *As the Court of Justice has already stated, 'it is for the national legal order of each Member State to establish procedural rules for actions intended to safeguard the rights of individuals, in accordance with the principle of procedural autonomy."*[32]

38. *The* ***national***[33] *legislator is given the possibility to decide on how the legal provisions within Art. 80(2) GDPR are activated, for example to avoid an unmanageable influx of (be it or not, automatically generated) complaints, just as the GDPR envisages the possibility for supervisory authorities to refuse to handle complaints of individual data subjects in the event of excessive*[34] *use. According to the CJEU, article 80(2) GDPR has a preventive function, giving the organisations concerned the possibility to lodge complaints in an overarching manner, when they consider that a data subject's rights under the GDPR have been infringed as a result of the processing.*[35]

39. *All of this outlines the context in which it is important to respect the limits set by the legislator. These limits were also upheld by the Court of Justice.*[36] *Within the European Economic Area, (well over) 100,000 complaints*[37] *are lodged annually under the complaint mechanism of the GDPR, and within all supervisory authorities, just under 4,000 staff*[38] *were*

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[32] CJEU judgment, 4 May 2023, *Österreichische Post*, C-300/21, §53.

[33] In this context, it is important to underline that the Court of Cassation has also previously clarified that a right arising from a provision of Union law - such as Article 77 *j°* Article 80(1) GDPR - may be subject to the general legal principle of the prohibition of abuse of law under national law, as long as it does not alter the scope of a provision of Union law or jeopardise the objective pursued by it: Court of Cassation, 10 January 2025, C.22.0110.N, concl. S. Ravyse.

[34] Compare with art. 57(4) GDPR.

[35] CJEU judgment of 28 April 2022, *Meta Platforms v. Verbraucherzentrale Bundesverband e.V.*, C-319/20, § 76; CJEU judgment of 11 July 2024, *Meta Platforms Ireland Ltd. V. Bundesverband der Verbraucherzentralen e.a.*, C-757/22, ECLI:EU:C:2024:598, §64.

[36] CJEU judgment of 28 April 2022, *Meta Platforms v. Verbraucherzentrale Bundesverband e.V.*, C-319/20, § 76; CJEU judgment of 11 July 2024, *Meta Platforms Ireland Ltd. V. Bundesverband der Verbraucherzentralen e.a.*, C-757/22, ECLI:EU:C:2024:598, §64.

[37] European Commission Communication of 25 July 2024, *Second report on the application of the General Data Protection Regulation*, COM(2024) 357 final, section 2.3, see also the section 2.5.2 regarding the "Difficulties handling a high number of complaints".

[38] Based on the sum of the projections provided by the supervisory authorities in EDPB, *Contribution of the EDPB to the report on the application of the GDPR under Article 97*, 12 December 2023, p. 28-9.

at work as of 2024 – which also have other duties besides complaint handling s.a. with regard to information to the public, certification mechanisms, codes of conduct and international cooperation. Handing the complaints of individual data subjects demands the necessary attention and diligence with the limited resources available to the authorities.

In this regard, neither the Austrian, nor Belgian legislator have activated Article 80(2) GDPR.

40. *The foregoing does not mean that **civil society** should not play a role in litigation relating to data protection law, or in lodging complaints. What is more, representative organisations can clearly play a role in Belgium, Austria or any other EEA-country in facilitating the lodging of complaints via representation and informing data subjects and controllers of their rights and obligations. However, this is different from designing complaints for complainants who do not exist at that time.*

41. *All elements that are sufficient to assert that the objective component of abuse of law being met under EU law are therefore present in the present case.*

42. *The fact that a **clear and deliberate circumvention** by NOYB of the objectives of the legal dispositions – notably Articles 77 juncto 80 GDPR – has taken place, means that the objective component of abuse of law is present.*

*[section subtitle II.1.2] Application to the present case: **subjective** component of abuse of law present*

43. *As regards the subjective element, NOYB seeks to have the power to bring proceedings before the DPA for its "cookie banner complaints" project; a power to bring proceedings cannot exist without the Complainant as an individual based on Belgian or Austrian law (where Article 80(2) GDPR has not been implemented).*

44. *NOYB asks trainees or staff if they want to become data subjects in model cases (as was explicitly stated by a representative of NOYB in another case[39]) to artificially fall under Article 80(1) GDPR. The incitement to create a legal pathway to the Belgian DPA constitutes the subjective element of abuse of law under Union law on the part of NOYB. In this case, the benefit is aimed at pursuing the general (policy) objectives of NOYB, which follows clearly from the declarations on the NOYB website, declaring 'NOYB aims to end 'cookie banner terror'" by filing the complaints.*

[section subtitle II.1.3] Conclusion in the present case: violation of EU principle of prohibition of abuse of law

45. *The two conditions in order to assert an abuse of law under Union law are therefore satisfied and, in accordance with the case-law of the Court, it follows that the Litigation Chamber*

[39] Compare with Decision 112/2024 of 6 September 2024, *Roularta*, available at: https://gegevensbeschermingsautoriteit.be/publications/beslissing-ten-gronde-nr.-112-2024-van-6-september-2024.pdf, par. 41.

must refuse NOYB's use of the right (i.e. to lodge a complaint under Articles 77 juncto 80.1 GDPR). That case-law specifies:

'It is apparent from these factors that it is incumbent upon the national authorities and courts to refuse to grant entitlement to rights … where they are invoked for fraudulent or abusive ends."[40]

and

'It thus follows from that principle that a Member State must refuse, even in the absence of provisions of national law providing for such a refusal, to grant the benefit of the provisions of EU law where they are relied upon by a person not with a view to achieving the objectives of those provisions, but with the aim of benefiting from an advantage granted to that person by EU law when the objective conditions required for obtaining the advantage sought, prescribed by EU law, are met only formally."[41]

46. *In this context, the Litigation Chamber specifically underlines the potential harmful consequences of the abuse of law, potentially leading to damages for the complainants within the scope of Article 82 GDPR. Legal disputes could arise on (shared) responsibilities in the chain of necessary events leading up to the damages.*

47. *It is true that the Complainant in question actually visited the website and allegedly underwent an actual infringement to their rights under the GDPR. NOYB has previously argued before the Litigation Chamber of the Belgian DPA that a complainant could actually file a complaint on his or her own behalf in any case, and that therefore the complaint should be accepted.*[42]

Filing a complaint without a mandate, however, is not the scenario in casu." (End text)

48. After the broadcasting of the draft decision via the IMI system on 18 September 2025 pursuant to Article 60.3 GDPR ("first DD"), the Austrian SA submitted a relevant and reasoned objection against this first DD on 23 September 2025 in accordance with Article 60.4 GDPR ("RRO"). No additional relevant and reasoned objections were submitted within four weeks after the broadcasting of the first DD.

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[40] CJEU judgment of 26 February 2019, joined cases C-115/16, C-118/16, C-119/16 and C-299/16, §110.

[41] CJEU judgment of 21 December 2023, *BMW Bank GmbH a.o.,* joint cases C-38/21, C-47/21 and C-232/21, par. 283.

[42] Decision 112/2024 of 6 September 2024, *Roularta,* DOS-2020-03924, available at: https://gegevensbeschermingsautoriteit.be/publications/beslissing-ten-gronde-nr.-112-2024-van-6-september-2024.pdf - [this Decision is also translated into English, and available here: https://www.gegevensbeschermingsautoriteit.be/publications/beslissing-ten-gronde-nr.-112-2024-van-6-september-2024-engels.pdf] , par. 92 et seq.

49. The RRO of the DSB contained the following wording. To enhance the readability of the present decision, the paragraph numbering continues in line with the present decision, but the text of the RRO is presented in dark green and *italics* and is enclosed between the markets '(begin text)' and '(end text)'.

50. (begin text) "*[Chapter title III.] The objection in detail*

51. *[section a)] Relevance of the Objection*

52. *Firstly, the AT SA notes that NOYB has already brought numerous clusters of complaints before various Supervisory Authorities. These include, for instance, the 'Google Analytics" and 'Facebook Pixel cases" (which subsequently led to the establishment of the EDPB's 101 Taskforce) and the more recent 'Cookie Banner cases" (which led to the EDPB's Cookie Banner Taskforce). Virtually every Supervisory Authority has dealt with such cases.To the best of our knowledge, the present dismissal of the complaint 'on the grounds of apparent abuse of law" is the first case in which a Supervisory Authority has relied on such reasoning in the context of NOYB complaints.*

53. *It can be expected that NOYB, as an organisation pursuant to Article 80(1) GDPR, will continue to bring forward individual cases or entire clusters of complaints (such as the Cookie Banner cases) before Supervisory Authorities.*

54. *The Supervisory Authorities and the EDPB are required, in light of Article 57(1)(a) and Article 70(1) GDPR, to contribute to the consistent application of the Regulation.*

55. *Therefore, the relevance of the present objection follows from the fact that such consistency is jeopardised if certain Supervisory Authorities – such as, at least in this case, the BE SA – dismiss a complaint on the grounds of apparent abuse of law, while others examine similar or even identical complaints on their merits.*

56. *Furthermore, as explained in more detail under point b), the conditions for an abuse of the right to lodge a complaint are not met. Clarifying the legal question of under which circumstances a Supervisory Authority may refuse to deal with the substance of a complaint under Article 77 GDPR is of relevance beyond the individual case, since – as already stated – further complaints from NOYB can be expected.*

57. *Therefore, the objection fulfils the criterion of being 'relevant" pursuant to Article 4(24) GDPR.*

[section b)] Reasons for Objection 1

58. *Firstly, the AT SA emphasises that the present complaint forms part of the so-called 'Cookie Banner Complaints" which NOYB lodged with various Supervisory Authorities, see: https://noyb.eu/en/noyb-aims-end-cookie-banner-terror-and-issues-more-500-gdpr-complaints and https://noyb.eu/en/226-complaints-lodged-against-deceptive-cookie-*

banners.These complaints were all based on the fact that the websites in question had first been accessed and evidence collected, and only afterwards a complaint was submitted – and NOYB referred to these complaints as a 'project".

59. *Within the 'EDPB Cookie Banner Taskforce", these complaints were discussed. However, no other Supervisory Authority has considered them to constitute an 'apparent abuse of law." On the contrary, the Supervisory Authorities have thus far – albeit in different ways depending on their respective procedural frameworks – issued decisions on the merits.*

60. *The competent court of appeal under Article 79 GDPR, the Austrian Federal Administrative Court Bundesverwaltungsgericht, BVwG), has already dealt with the question of whether there has been an abuse of the right to lodge a complaint under Article 77 GDPR by NOYB. Similar to the BE SA, the controllers (website operators) in these cases argued that the complaints were part of a 'NOYB project" and that there were no genuine grounds for complaint, as the respective website had only been accessed to 'construct a complaint.*

61. *In several cases, most recently in a Cookie Banner Case from August 2025, the Austrian Federal Administrative Court rejected these arguments and ruled that there was no abuse of law. In detail, the following was considered (see BVwG, 18 August 2020, W137 2264614-1, translation by the AT SA):*

"3.3.4. On the representation of XXXX by NOYB in the proceedings before the DSB and the Federal Administrative Court, as well as on the admissibility of the data protection complaint of 18.08.2020 (standing to lodge a complaint)

Pursuant to Article 80(1) GDPR, a data subject has the right to mandate a body, organisation, or association not operating for profit, which is duly constituted under the law of a Member State, whose statutory objectives are in the public interest, and which is active in the field of protecting the rights and freedoms of data subjects with regard to the protection of their personal data, to lodge a complaint on their behalf, to exercise on their behalf the rights referred to in Articles 77, 78, and 79, and to claim compensation under Article 82, insofar as this is provided for in Member State law.

The above criteria are indisputably met by NOYB. For the Federal Administrative Court (as previously for the DSB), there are no doubts as to the existence of a valid power of attorney in the proceedings at first instance. The notion that a person - such as the joined party 1 in the present proceedings - could not be represented by a relevantly active non-profit association merely because they hold a leading function within that association cannot be inferred from the above provision.

Nor can the fact that Austria has not provided for an action by associations (Article 80(2) GDPR) lead to the conclusion that employees or members of such an association are barred from lodging individual data protection complaints in the event of alleged data protection infringements arising from their personal activities. On the contrary, a right of action under Article 80(2) GDPR would go significantly further, since it would apply 'independently of a mandate by the data subject.'

For the sake of completeness, it should be noted that the GDPR does not take into account the motive of the 'data subject' in connection with an activity that is ultimately relevant under data protection law. Against this background, the actions of the complainant as well as of NOYB are legally beyond doubt.

For the Federal Administrative Court - just as for the DSB previously - there are no doubts as to the validity of the power of attorney. The arguments put forward in the contested decision (as well as in the case file) could not be convincingly refuted in the present complaint."

62. *The considerations of the Austrian Federal Administrative Court can be applied to the present case, as the factual circumstances are similar. The fact that NOYB has been mandated to represent the complainant in the present matter is also undisputed.*

63. *If the AT SA rejects the present complaint – following a final decision taken by the BE SA – on the basis of Article 57(4) GDPR it is very likely that the BVwG will quash this decision.*

64. *Beyond that, the following considerations further support the position of the AT SA:*

65. *According to the European Court of Justice, the 'abuse clause" of Article 57(4) GDPR reflects the Court's settled jurisprudence, according to which there is, in EU law, a general legal principle that EU law may not be relied upon for abusive or fraudulent ends. Furthermore, it is stated that a finding of abusive intent may be made if a person has lodged complaints in circumstances where it was not objectively necessary to do so in order to protect his or her rights under that Regulation (see ECJ, C-416/23, 9 January 2025, para. 49 et seq.).*

66. *On that basis, the Austrian Supreme Administrative Court (Verwaltungsgerichtshof, VwGH) has held that abusive intent exists if the decisive reasons for the complainant's submission of a large number of data protection complaints do not lie in the pursuit of the rights conferred upon him or her by the GDPR, and if the complainant would not have lodged this large number of complaints without those extraneous motives (see VwGH, 29 January 2025, Ra 2023/04/0002-11).*

67. *In one case, for example, the AT SA affirmed the existence of abusive intent and dismissed the complaint pursuant to Article 57(4) GDPR, because the complainant had previously informed the controller that he would demand the payment of EUR 2.900 in order to refrain from lodging a complaint (see AT SA, 21 February 2023, 2023-0.137.735).*

68. *In the present case, however, no such purposes unrelated to data protection are pursued by exercising the right to lodge a complaint under Article 77 GDPR:*

69. *As is apparent from Article 80(1) GDPR, organisations such as NOYB are intended to be established precisely for the purpose of acting in the field of the protection of data subjects' rights and freedoms with regard to the protection of their personal data.*

70. *Where a Member State – as in the case of Austria – has not made use for the option under Article 80(2) GDPR, NOYB has hardly any other possibility than to systematically investigate certain infringements in advance and subsequently lodge complaints. This also stems from the fact that during a complaint procedure, certain evidence must be provided by the complainant, despite the principle of accountability under Article 5(2) and Article 24(1) GDPR. In the context of a website visit, such evidence can only be submitted if screenshots and logfiles are created at the very time of visiting the website.*

71. *The fact that Article 80(2) GDPR allows submissions to Supervisory Authorities regardless of a mandate does not lead to the conclusion that representation under Article 80(1) GDPR cannot systematically take place and be organized according to specific thematic areas – in the present case, the 'Cookie Banner Complaints".*

72. *Furthermore, notwithstanding the fact that NOYB may have given a certain 'encouragement" to take the role of complainant in a complaint procedure, this does not change the fact that the data subject is adversely affected:*

73. *The consent request (the 'Cookie Banner") at the time the website was accessed by the data subject was not in compliance with the GDPR, as there was no equivalent option to 'Reject all Cookies" or to close the cookie banner without making a selection, alongside the 'Accept all Cookies" button (see Report of the work undertaken by the Cookie Banner Taskforce, adopted on 17 January 2023).*

74. *While the behaviour of the data subject may be a reason why, due to the 'deliberate access to the website," no right to compensation under Article 82 GDPR arises, the objective infringement of the GDPR – namely, that the conditions for a valid consent under data protection law and, consequently, the lawfulness of the processing, were not met – nevertheless remains.*

75. *Therefore, the objection fulfils the criterion of being 'reasoned" pursuant to Article 4(24) GDPR.*

[section c)] Envisaged result of Objection 1

76. *The BE SA shall issue a decision on the merits and not to dismiss the complaint on formal grounds, specifically on the basis of 'apparent abuse of law."*

77. *In addition, the BE SA shall deal with the complaint and the submissions made to the appropriate extent, in accordance with Article 57(1)(f) and Recital 141 GDPR see ECJ, C-416/23, 9 January 2025, para. 25)."*(end text)

78. Following the submission of this RRO, the Belgian DPA communicated to the DSB as well as all concerned supervisory authorities that it intended to reject the RRO of the DSB in

accordance with Article 60.4 GDPR, which would activate the dispute resolution procedure under Article 65 GDPR ("Article 65-procedure").

79. In accordance with the Rules of Procedure of the European Data Protection Board ("EDPB"), the parties were informed by letter on 21 October 2025 about this procedural development and were invited to submit their positions prior to the initiation of the Article 65-procedure with the EDPB.[43]

80. NOYB confirmed the reception of the letter of 21 October 2025 and did not submit any comments at that time.

81. The defendant submitted its position in a timely manner on 19 November 2025. This position is presented below. To enhance the readability of the present decision, the paragraph numbering of the text of the defendant's position continues in line with the present decision, but the text of the position is presented in dark purple and *italics* and is enclosed between the markers '(begin text)' and '(end text)'.

82. (begin text) "*Since NOYB determined all aspects of the Complaint independently, without any mandate from a data subject, before creating the circumstances that gave rise to the Complaint, and then filed the Complaint, NOYB was the actual complainant.*

83. *However, since NOYB did not have the right to file complaints independently of a mandate from a data subject pursuant to Article 80.2 GDPR, it used Complainant as an instrument to file the Complaint pursuant to Article 80.1 GDPR.*

84. *Thus, NOYB attempted to manufacture legal standing in the present proceedings by improperly invoking Article 80.1 GDPR in circumstances that, de facto, fall within the ambit of Article 80.2 GDPR.*

85. *NOYB's conduct represents a clear abuse of law, as it seeks to circumvent the procedural and substantive requirements established by the GDPR for representative actions.*

86. *Therefore, the Complaint should indeed be dismissed, as proposed by the BE SA.*

87. *Below, it will be demonstrated with objectively ascertainable facts that:*

88. *(i) NOYB had coordinated the generation of the Complaint in advance based on criteria it established to achieve a predetermined objective, meaning the mandate Complainant formally gave to NOYB was neither free nor could it be, especially since Complainant was working as an intern at NOYB at the time the circumstances for the Complaint were created; and*

[43] Specifically article 11.2.f of the EDPB Rules of Procedure, available at: https://www.edpb.europa.eu/system/files/2022-04/edpb_rules_of_procedure_version_8_adopted_20220406_en.pdf.

89. *(ii) NOYB attempts to artificially create a right it does not possess under Article 80(2) GDPR by abusing the procedure under Article 80(1) GDPR with exactly the same purpose and modus operandi, thereby completely undermining both letter and spirit of the GDPR.*

[Section A.] ***The Complaint was artificially created by NOYB as part of a NOYB project***

90. *As indicated in the Draft Decision, the Complaint is part of NOYB's 'Cookie Banners"-project.*

91. *As NOYB explains on its website*[..], *NOYB 'has developed a mass scanning system". It is, thus, NOYB that determines the criteria for the websites that will become part of this NOYB project.*

92. *Furthermore it is NOYB that, based on its own criteria, 'creates" complaints like the Complaint. [Screenshot in the position of the defendant]*

In order to tackle these problems, *noyb*

- is investigating the way cookie banners are implemented online and whether the choices users make are respected in practice,
- has developed a mass scanning system to automatically detect unlawful cookie banners and create complaints which are sent to the companies, giving them a grace period to adjust their cookie banner before the complaint is submitted to the responsible authority,
- developed a proposal for a standard that would manage preferences, because we believe the real answer to this issue is user-centered privacy and to create simple solutions for consumers and
- is aware of the problem that newspapers and magazines are looking for avenues to survive in the digital world but narrow profits at the expense of their readers' fundamental right to data protection will not be the solution for structural financial problems.

Filter by Controller: DPG Media | Filter | Reset

Case	Controller	DPA	Status	Duration
C037-10311	DPG Media Magazines B.V.	DSB (Austria), AP (The Netherlands)	Pending (4 years and more)	Filed: 10.08.2021
C037-10335	DPG Media Magazines B.V.	DSB (Austria), AP (The Netherlands)	Pending (4 years and more)	Filed: 10.08.2021
C037-10635	DPG Media Magazines B.V.	AP (The Netherlands), DSB (Austria)	Pending (4 years and more)	Filed: 10.08.2021
C037-10693	DPG Media Magazines B.V.	AP (The Netherlands), DSB (Austria)	Pending (4 years and more)	Filed: 10.08.2021
C037-10737	DPG Media Magazines B.V.	DSB (Austria), AP (The Netherlands)	Pending (4 years and more)	Filed: 10.08.2021
C037-10755	DPG Media Magazines B.V.	AP (The Netherlands), DSB (Austria)	Pending (4 years and more)	Filed: 10.08.2021
C037-11215	DPG Media (Netherlands)	AP (The Netherlands), DSB (Austria)	Pending (4 years and more)	Filed: 10.08.2021
C037-11264	DPG Media Magazines B.V.	APD/GBA (Belgium), AP (The Netherlands), DSB (Austria)	Pending (4 years and more)	Filed: 10.08.2021
C037-11522	DPG Media Magazines B.V.	AP (The Netherlands), DSB (Austria)	Pending (4 years and more)	Filed: 10.08.2021
C037-11933	DPG Media Magazines B.V.	AP (The Netherlands), DSB (Austria)	Pending (4 years and more)	Filed: 10.08.2021
C037-12454	DPG Media (Belgium)	APD/GBA (Belgium)	Withdrawn (Strategic Reasons)	Filed: 10.08.2021

93. *Both the objective facts and NOYB's own public statements indisputably show that NOYB determines the purposes and the means of its actions independently of any mandate from a data subject.*

94. *There is therefore no doubt: the Complaint is de facto a complaint of NOYB, and not of Complainant.*

95. *Furthermore, Complainant was a legal trainee at NOYB when she received NOYB's instructions to visit the website of Defendant and when she formally mandated NOYB to submit the Complaint.*

96. *The objective facts of this case also reveal the artificial nature of the situation – at no point did Complainant have the independent intention to review the content of the website of Defendant. Indeed, her alleged visit of the website of Defendant was less than a minute, and her assignment consisted solely of taking screenshots of the website and the cookie banner.*

97. *Thus, Complainant was merely an instrument for achieving NOYB's own objectives.*

98. *[section B]* ***Since NOYB does not have the right in Austria or Belgium to lodge a complaint independently of a data subject's mandate with the competent supervisory authority, it abuses the procedure under Article 80(1) GDPR to circumvent the lack of a right under Article 80(2) GDPR, which constitutes an abuse of law.***

99. *Article 80(2) GDPR provides the following (Defendant's emphasis):*

    'Member States may provide that any body, organisation or association referred to in paragraph 1 of this Article, <u>independently of a data subject's mandate</u>, has the right to lodge, in that Member State, a complaint with the supervisory authority which is competent pursuant to Article 77 and to exercise the rights referred to in Articles 78 and 79 if it considers that the rights of a data subject under this Regulation have been infringed as a result of the processing."

100. *Belgium and Austria have <u>not</u> included such a provision in their legislation.*

101. *Therefore, NOYB does <u>not</u> have the right to 'independently of a data subject's mandate" lodge a complaint with the AT SA or the BE SA.*

102. *Since NOYB could not rely on Article 80(2) GDPR, the Complaint was filed by NOYB 'under Article 80(1) GDPR."*

103. *However, based on the objectively ascertainable facts demonstrated by the BE SA and referred to above, the Complaint is de facto a complaint under Article 80(2) GDPR, as it was created and lodged independently of any data subject's mandate.*

104. *Article 80(1) GDPR provides the following (Defendant's emphasis):*

'The data subject shall have the right to mandate a not-for-profit body, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest, and is active in the field of the protection of data subjects' rights and freedoms with regard to the protection of their personal data to lodge the complaint on his or her behalf, to exercise the rights referred to in Articles 77, 78 and 79 on his or her behalf, and to exercise the right to receive compensation referred to in Article 82 on his or her behalf where provided for by Member State law."

105. *The EU legislator created a fundamental difference between Articles 80(1) GDPR and 80 (2) GDPR : under Article 80(1) GDPR, the initiative comes from the mandating data subject, whereas under Article 80(2) GDPR, the initiative comes from a body, organization or association, independently of a data subject.*

106. *Furthermore, the EU legislator created another fundamental difference between Articles 80(1) GDPR and 80(2) GDPR: a mandate under Article 80(1) GDPR does not require any further legislative initiative of any kind, whereas a complaint under Article 80(2) GDPR needs to be specifically provided for by the corresponding Member State.*

107. *NOYB seeks to circumvent these fundamental differences established by the European legislator through a democratic process.*

108. *Indeed, as objectively demonstrated in this matter, the situation at hand was undisputably an Article 80(2) GDPR-situation – a situation not specifically provided for by the corresponding Member State.*

109. *Since it had to, but could not, rely on Article 80(2) GDPR, NOYB artificially created an Article 80(1) GDPR-situation.*

110. *This conduct by NOYB constitutes an abuse of law.*

111. *It is a general principle of EU law that EU law cannot be relied on for abusive ends.[…]*

112. *Furthermore, the general principle that abusive practices are prohibited must be relied on against a person where that person invokes certain rules of EU law providing for an advantage in a manner which is not consistent with the objectives of those rules[…]*

113. *The circumstances giving rise to the Complaint were artificially created, and the Complaint was filed in a manner that is not consistent with the objectives of the right to lodge a complaint.*

114. *The right to lodge a complaint is intended to protect the rights and freedoms of data subjects, not to serve as a means to further NOYB's own objectives.*

115. *The following statement of the AT SA is therefore highly questionable from a legal and procedural perspective:*

'Where a Member State – as in the case of Austria – has not made use for the option under Article 80(2) GDPR, NOYB has hardly any other possibility than to systematically investigate certain infringements in advance and subsequently lodge complaints."

116. *So, the AT SA is very well aware that NOYB artificially creates the complaints and is fully cognizant that NOYB abuses Article 80(1) GDPR only because it cannot rely on Article 80(2) GDPR as a consequence of the fact that the Austrian legislator has not taken the steps required by Article 80(2) GDPR to be able to rely on it in Austria.*

117. *In other words, the AT SA publicly endorses NOYB's strategic circumvention of the law, demonstrating a complete disregard for both the European and Austrian legislators.*

118. *The AT SA puts itself at the level of the European legislator by asserting that the fundamental difference between Article 80(1) and Article 80(2) GDPR ought not to exist, while the European legislator decided that it does have to exist.*

119. *The AT SA's position is fundamentally inconsistent with both the letter and the spirit of the GDPR and, as such, should not be adopted or endorsed.*

120. ***Therefore**,*

121. *Without prejudice to all rights and without any adverse admission,*

122. *[defendant] respectfully requests the BE SA to maintain its position to dismiss the Complaint and to reject the RRO."*(end text)

123. On **24 November 2025,** a few days after the defendant submitted its position, NOYB contacted the Belgian DPA and stated the following:

"*Dear Madam, Dear Sir,*

The complainant is withdrawing her complaint ref. DOS-2025-00506 (noyb: C037-11264, https://www.vtwonen.be/, Austrian DPA: D130.830).

She does not wish her complaint to be pursued any further.

We also informed the Austrian Data Protection Authority of this withdrawal.

We kindly request confirmation.
Kind regards,
noyb – European Center for Digital Rights"

124. On **25 November 2025**, the DSB contacted the Belgian DPA to state that the complainant had withdrawn her complaint the day before and that the proceedings in Austria would be terminated.

II. Motivation

125. The Belgian DPA takes the position that the withdrawal of a complaint does not, *ipso facto*, terminate the proceedings that followed this complaint.[44] Instead, following such a withdrawal, it will assess whether further treatment of the case file is still appropriate. – for example in cases where the Belgian DPA has conducted an investigation via its Inspection Service that led to (separate or associated) findings.

126. Indeed, the supervisory authority in the meaning of the GDPR plays a different role than the judge in civil proceedings and could also possibly choose to initiate *ex officio* proceedings where and to the extent the national procedure allows for it.

127. In the present case, the complainant has withdrawn the complaint *after* a draft decision under Article 60.3 GDPR was submitted and *after* a relevant and reasoned objection to this draft decision under Article 60.4 GDPR was submitted. More specifically, the draft decision *and* the RRO concerned issues related to an abuse of law on the side of the representative of the complainant, which would lead – in the assessment of the Belgian DPA and as contested by the Austrian DPA – to the dismissal *c.q.* rejection of the complaint.

128. As the complainant does not wish to maintain the complaint, there is no longer any obligation to treat the complaint under Article 77 and Article 57.1.f GDPR.[45]

129. In that context, the Belgian DPA decides, for policy reasons, to discontinue further treatment of the complaint and to close the related case file.

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[44] Compare Belgian DPA, Litigation Chamber, Decision 138/2025 of 1 September 2025, available in French via: https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n0-138-2025.pdf.

[45] CJEU 26 September 2024, *Land Hessen*, C-768/21, par. 32; CJEU 7 December 2023, *Schufa*, joint cases C-26/22 en C-64/22..

III. Draft decision under the OSS mechanism pursuant to Article 60.3 of the GDPR – applicability of Article 60.8 of the GDPR

130. With the present text, the Litigation Chamber adopts a draft decision pursuant to Article 60(3) of the GDPR.

131. Accordingly, the Litigation Chamber will communicate this DD to the data protection authorities that have indicated their involvement in this complaint ("CSA's"), including the DSB to which the complaint was lodged ("complaint receiving SA").

132. This DD proposes to dismiss the complaint and the associated file as it stands within the meaning of Article 60(8) of the GDPR.

133. If this dismissal is confirmed under the cooperation procedure (Articles 60.3 to 60.6 of the GDPR), it will be up to the DSB to adopt the decision regarding the complaint.

134. There is no right of appeal within the meaning of Article 108 of the LDPA to the Belgian Market Court against this DD, as its adoption, by way of derogation from Article 60.7 of the GDPR and pursuant to Article 60.8 of the GDPR, as already mentioned, is a matter for the DSB. Therefore, no reference is made to the remedies before the Belgian Market Court.

135. As soon as the deadline mentioned in Article 60.6 of the GDPR is reached, the Belgian DPA will publish the present draft decision on its website.

FOR THESE REASONS,

the Litigation Chamber of the GBA has decided to propose to the DSB:

- Pursuant to Article 60.3 GDPR, as well as under Article 95, §1, 3° LDPA, to **dismiss the complaint**.

(Get). Hielke HIJMANS

Director of the Litigation Chamber