



Litigation Chamber

Draft Decision of 18 september 2025

Case number: DOS-2023-02694

Concerns: proposal to dismiss a complaint regarding VRT cookie banners due to abuse of law by NOYB in lodging 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:

[REDACTED]
[REDACTED] represented by NOYB – European Center for Digital Rights, which has its seat at [REDACTED]
[REDACTED], hereinafter "the complainant", and;

The defendant:

De Vlaamse Radio- en Televisieomroeporganisatie ("VRT", i.e. the Flemish public broadcaster), which has its seat at Auguste Reyerslaan 52, 1030 Schaarbeek (Belgium), with enterprise number in the Belgian Crossroad Bank for Enterprises 0244.142.664, hereinafter "the defendant";

I. Facts and proceedings

1. The subject of the complaint concerns alleged breaches in collecting consent for placing cookies on a website of the defendant (www.vtwonen.be). Specifically, the thrust of the complaint is that consent is not lawfully requested by the defendant.
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.
3. On 6 June 2023, the DSB initiated an Article 56-procedure via the European Internal Market Information System (“IMI”), in order to identify c.q. confirm the LSA-status for the Belgian DPA with regard to the controller VRT. The complaint and its annexes were also forwarded by the DSB at this time.
4. On 7 June 2024, the DSB asks the Belgian DPA for an update with regard to the case. The Belgian DPA replies on 1 July 2024 that the necessary steps in IMI are undertaken and that no further update on the progress could be provided at this stage.

II. Procedural context

5. NOYB is an association established under Austrian law.¹ 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.²
6. 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 Taskforce³ to coordinate the legal assessment of the complaints, leading to a report in 2023.⁴
7. Two factual aspects are important for the further justification of the present dismissal decision.
8. First of all, in the course of several previous investigations conducted by the GBA's Inspection Service⁵, 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".⁶
9. 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.⁷ 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.

¹ Austrian Central Register of Associations (ZVR) nr. 1354838270.

² Court of Cassation 7 October 2021, C.20.0323.N, concl. E. HERREGODTS, available via: www.juportal.be

³ 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.

⁴ 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.

⁵ 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.

⁶ 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").

⁷ 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>.

10. The Litigation Chamber further addresses both aspects below.

II.1. Previous investigations of the GBA's Inspection Service and public declarations by NOYB: findings of irregularities when complaint was lodged

11. 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 release⁸, 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."*⁹
(emphasis and underlining added by the Litigation Chamber)

This shows, within this particular project,

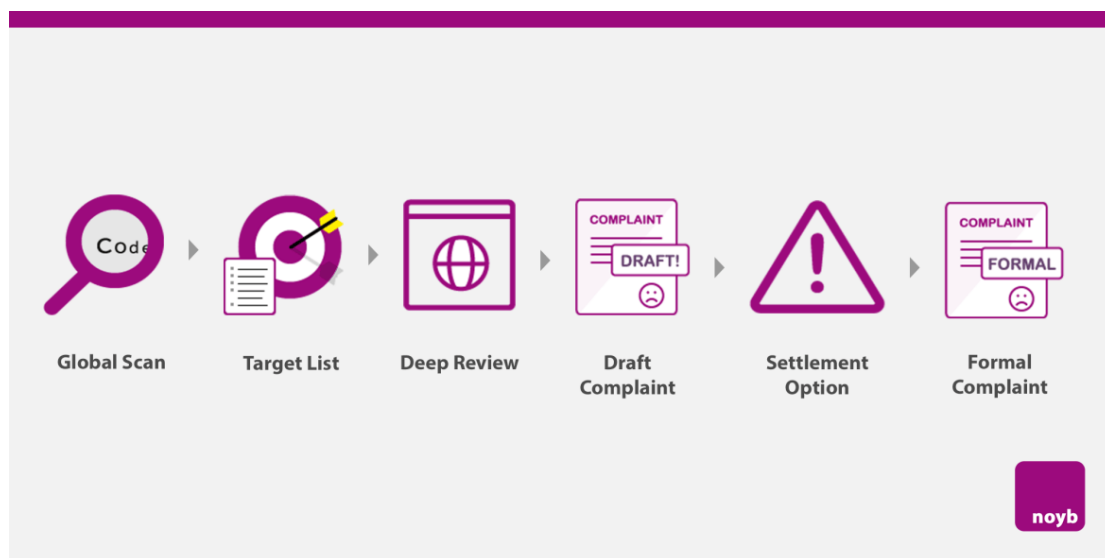
- (i) that NOYB, as an association, searches for controllers who are committing infringements, it is not at the initiative of specific data subjects with current and existing grievances within the meaning of the GDPR,
- (ii) that NOYB uses automated means in this regard, which further demonstrates the mismatch between the ultimately aggrieved Complainant and the origin of the complaint, and

⁸ 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>.

⁹ Ibid

(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* 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.***

¹⁰ 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>.

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.”¹¹

- 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.

II.2. Judgment of the Brussels Court of Appeal (section Market Court) of 19 March 2025

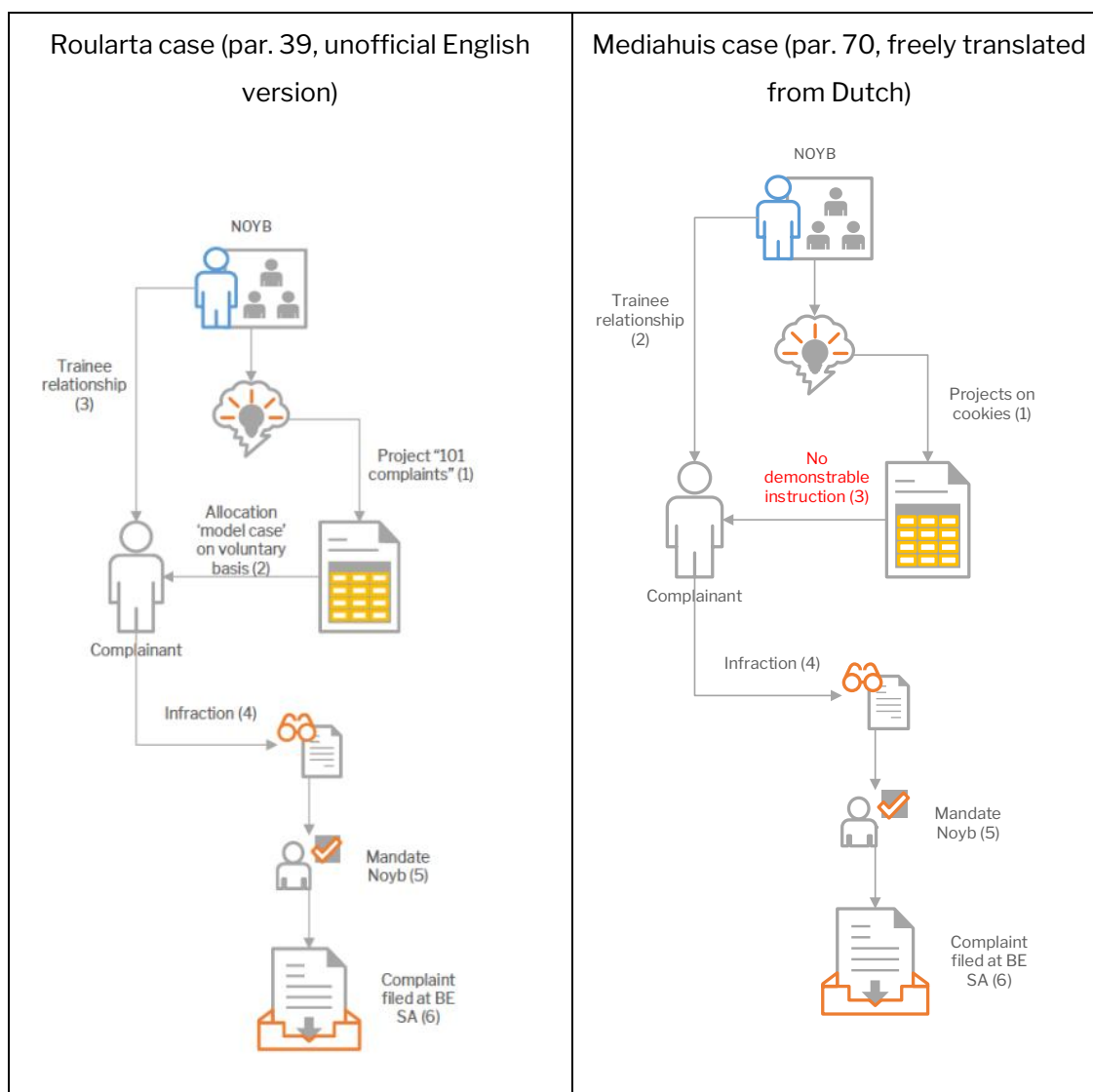
12. The Litigation Chamber had, in its decision 113/2024 of 6 September 2024, also investigated the possibility of an abuse of law on the part of NOYB. Mediahuis as defendant had in that context, among other things, referred to the fact that the complainant was an intern of NOYB at the time of the initial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

13. 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.¹²

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:

¹¹ 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.

¹² 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.



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

14. 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/1690.¹³ In these proceedings before the Court, the **complainant** in the Mediahuis case, represented **by NOYB**, intervened to **support the position of the Belgian DPA**.
15. 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]

¹³ 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."¹⁴

16. 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."¹⁵
17. Notably, the Market Court found that controllers had been "*identified (by NOYB) and assigned (to the complainant)*".¹⁶

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.¹⁷

18. 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.¹⁸
19. 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.
20. The Market Court decision was not appealed before the Belgian Court of Cassation, neither by the Belgian DPA, nor by the complainant or NOYB.

III. Reasoning

21. 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

¹⁴ Brussels Court of Appeal judgment (Chamber 19A, Market Court Section), 19 March 2025, role no 2024/AR/1690, para 33.

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 - bullet point 6.

¹⁷ 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.

¹⁸ 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.

22. 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.¹⁹
23. 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.

III.1. The EU legal principle of prohibition of abuse of law - violation

III.1.1. Context of the EU legal principle of prohibition of abuse of law

24. 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.²⁰ This principle is an integral part of the Union’s *acquis communautaire* and does not require a separate legal provision for each scenario.
25. In other words: the fact that the legal rule from which the subjective right²¹ 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.*”²²

¹⁹ Court of Cassation 7 October 2021, C.20.0323.N, concl. E. HERREGODTS, available via: www.juportal.be

²⁰ 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.

²¹ In this case, Art. 77 in conjunction with Art. 80(1) GDPR.

²² 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.

26. 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.²³
27. 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.²⁴ Here, abuse of law is based on **circumvention**, which differentiates the concept from fraud - which is based on deception.²⁵
28. 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.

III.1.2. Application to the present case: objective component of abuse of law present

29. 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**'.

²³ 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.

²⁴ 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>.

²⁵ 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:²⁶

“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 the [REDACTED] 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:²⁷

*“[...] **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)

²⁶ <https://noyb.eu/en/noyb-aims-end-cookie-banner-terror-and-issues-more-500-gdpr-complaints>

²⁷ 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.²⁸ 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** before the Litigation Chamber that five files were allocated to the person **by NOYB**.²⁹

30. 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 GDPR³⁰) 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

²⁸ Compare in this regard the Litigation Chamber's Decision 22/2024 dated 24 January 2024, §§46-52.

²⁹ 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.

³⁰ 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 beauftragen" in the German language version,

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

31. In other words: the complaints are fabricated within a fictive structure not envisioned by the legislator under Article 80(1) GDPR.
32. 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.
33. 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.'*³¹
34. The **national**³² 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 excessive³³ 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.³⁴
35. 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.³⁵ Within the European Economic Area, (well over) 100,000 complaints³⁶ are lodged annually under the complaint mechanism of the GDPR, and within all supervisory authorities, just under 4,000 staff³⁷ were

³¹ CJEU judgment, 4 May 2023, *Österreichische Post*, C-300/21, §53.

³² 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.

³³ Compare with art. 57(4) GDPR.

³⁴ 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.

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 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".

³⁷ 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. Handling 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.

36. 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.
37. 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.
38. 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.

III.1.3. Application to the present case: subjective component of abuse of law present

39. 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).
40. 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 case³⁸) 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.

³⁸ 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

III.1.4. Conclusion in the present case: violation of EU principle of prohibition of abuse of law

41. 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 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.’*³⁹

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.’*⁴⁰

42. 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.
43. 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.⁴¹

Filing a complaint without a mandate, however, is not the scenario *in casu*.

³⁹ CJEU judgment of 26 February 2019, joined cases C-115/16, C-118/16, C-119/16 and C-299/16, §110.

⁴⁰ 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.

⁴¹ 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.

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

44. With the underlying text, the Litigation Chamber adopts a draft decision pursuant to Article 60(3) of the GDPR.
45. Accordingly, the Litigation Chamber will communicate this draft decision 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”).
46. This draft decision proposes to reject the complainant's complaint as it stands within the meaning of Article 60(8) of the GDPR.
47. If this rejection 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.
48. There is no right of appeal within the meaning of Article 108 of the LDPA to the Market Court against this draft decision, 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.

FOR THESE REASONS,

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

- Pursuant to Article 60.3 GDPR, Article 60.8 GDPR as well as under Article 95, §1, 3° LDPA, to **dismiss the complaint**.

Hielke HUMANS

Chairman of the Litigation Chamber