



European
Data Protection
Board



Ref. Ares(2026)5550125 - 01/06/2026



Binding Decision 1/2026 on the dispute submitted by the Belgian SA on Vlaamse Radio- en Televisieomroeporganisatie (Art. 65 GDPR)

Adopted on 28 May 2026

Table of contents

1	Summary of the dispute	3
2	The Right to good administration	5
3	Conditions for adopting a binding decision.....	6
	3.1 Objection(s) expressed by CSA(s) in relation to the Draft Decision.....	6
	3.2 The LSA does not follow the objection(s) to the Draft Decision or is of the opinion they are not relevant or reasoned	6
	3.3 Admissibility of the case and competence of the EDPB	7
	3.4 Structure of the binding decision	9
4	On the envisaged dismissal of the complaint in the Draft Decision	10
	4.1 Analysis by the LSA in the Draft Decision	10
	4.2 Summary of the objection raised by the CSA.....	12
	4.3 Position of the LSA on the objections.....	13
	4.4 Analysis of the EDPB.....	14
	4.4.1 Assessment of whether the objection was relevant and reasoned	14
	4.4.2 Assessment on the merits.....	18
5	Binding Decision.....	24
6	Final remarks	24

The European Data Protection Board

Having regard to Article 63 and Article 65(1)(a) of the Regulation (EU) 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 (hereinafter '**GDPR**')¹,

Having regard to the European Economic Area (hereinafter '**EEA**') Agreement and in particular to Annex XI and Protocol 37 thereof, as amended by the Decision of the EEA joint Committee No 154/2018 of 6 July 2018²,

Having regard to Article 11 and Article 22 of its Rules of Procedure (hereinafter '**EDPB RoP**')³,

Whereas:

(1) It follows from Article 60 GDPR that the lead supervisory authority (hereinafter '**LSA**') shall cooperate with the other supervisory authorities concerned (hereinafter '**CSAs**') in an endeavour to reach consensus, that the LSA and CSAs shall exchange all relevant information with each other, and that the LSA shall, without delay, communicate the relevant information on the matter to the other CSAs. The LSA shall without delay submit a draft decision to the other CSAs for their opinion and take due account of their views.

(2) Where any of the CSAs expressed a reasoned and relevant objection on the draft decision in accordance with Article 4(24) and Article 60(4) GDPR and the LSA does not intend to follow the objection or considers that the objection is not relevant and reasoned, the LSA shall submit this matter to the consistency mechanism referred to in Article 63 GDPR.

(3) The main role of the European Data Protection Board (hereinafter the '**EDPB**' or the '**Board**') is to ensure the consistent application of the GDPR throughout the EEA. To this effect, pursuant to Article 65(1)(a) GDPR, the EDPB shall issue a binding decision concerning all the matters which are the subject of the relevant and reasoned objections, in particular whether there is an infringement of the GDPR.

(4) The binding decision of the EDPB shall be adopted by a two-thirds majority of the members of the EDPB, pursuant to Article 65(2) GDPR in conjunction with Article 11(4) EDPB RoP, within one month after the Chair of the EDPB and the competent supervisory authority (hereinafter, '**SA**') have decided that the file is complete. The deadline may be extended by a further month, taking into account the complexity of the subject-matter, upon decision of the Chair of the EDPB on own initiative or at the request of at least one third of the members of the EDPB.

(5) In accordance with Article 65(3) GDPR, if, in spite of such an extension, the EDPB has not been able to adopt a decision within the timeframe, it shall do so within two weeks following the expiration of the extension by a simple majority of its members.

(6) In accordance with Article 11(6) EDPB RoP, only the English text of the decision is authentic as it is the language of the EDPB adoption procedure.

¹ OJ L 119, 4.5.2016, p. 1.

² References to 'Member States' made throughout this decision should be understood as references to 'EEA Member States'.

³ EDPB Rules of Procedure, as last modified and adopted on 6 April 2022.

Has adopted the following Binding Decision:

1 Summary of the dispute

- 1 This document contains a binding decision adopted by the EDPB in accordance with Article 65(1)(a) GDPR. The decision concerns the dispute arisen following a draft decision (hereinafter, '**Draft Decision**') issued by the Belgian supervisory authority ('Autorité de protection des données' or 'Gegevensbeschermingsautoriteit', hereinafter, the '**BE SA**', also referred to in this context as the '**LSA**') and the subsequent objection expressed by the Austrian supervisory authority ('Österreichischen Datenschutzbehörde', hereinafter, the '**AT SA**').
- 2 The Draft Decision at issue relates to a complaint (hereinafter, '**Complaint**') submitted on 10 August 2021 to the AT SA on a case concerning activities carried out by the Vlaamse Radio- en Televisieomroeporganisatie, a public broadcasting company established in Brussels, Belgium (hereinafter, the '**Controller**' or '**VRT**'). On 6 June 2023, the AT SA transmitted the complaint to the BE SA as LSA⁴.
- 3 The Complaint was lodged by a data subject (hereinafter, the '**Data Subject**') who requested the non-profit noyb – "European Center for Digital Rights" (hereinafter, '**NOYB**')⁵ to represent them under Article 80 (1) GDPR (collectively hereinafter referred to as the '**Complainant**').
- 4 In particular, the Complaint concerned the compliance of VRT's processing with Article 5(1)(a), Article 6(1)(a), Article 12(1), Article 12(2) and Article 13(1)(c) GDPR and Article 5(3) ePrivacy Directive and was one of the multiple complaints lodged by NOYB with different supervisory authorities (hereinafter, '**SAs**') concerning "cookie banners". The EDPB set up a Taskforce⁶ to coordinate the response to these complaints by exchanging views among relevant SAs and streamlining communication. The work of the Taskforce led to the publication of a report in 2023⁷.
- 5 The Draft Decision envisages the dismissal of the Complaint on the ground that the general principle of EU law prohibiting abuse of law was violated due to an alleged abuse of the right to lodge a complaint under Article 77 GDPR in conjunction with Article 80(1) GDPR⁸. The Draft Decision is largely based on earlier case law of the Belgian Market Court, which had previously quashed another BE SA decision (Decision 113/2024) for not concluding on the existence of an abuse in a very similar case brought by NOYB⁹.
- 6 The following table presents a summary timeline of the events part of the procedure leading to the submission of the matter to the consistency mechanism:

4 Draft Decision, paragraph 3.

5 NOYB is an association established under Austrian law: Austrian Central Register of Associations (ZVR) nr. 1354838270.

6 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_en.

7 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.

8 Draft Decision, paragraphs 21-43 and 46 and p. 17.

9 Draft Decision, paragraphs 12-20, referring to the Judgment of the Brussels Court of Appeal (section Market Court) of 19 March 2025 (Mediahuis), nr. 2024/AR/1690.

12.08.2025	The BE SA shared a preliminary draft decision (hereinafter, the ' Preliminary Draft Decision ') regarding VRT.
01.09.2025	The AT SA provided comments on the Preliminary Draft Decision of August 2025 stating it will likely have to file an objection if the Preliminary Draft Decision is to be broadcasted as draft decision under Article 60(3) GDPR ¹⁰ .
18.09.2025	The BE SA shared its Draft Decision with the CSAs in accordance with Article 60(3) GDPR, triggering the four-week deadline to submit relevant and reasoned objections pursuant to Article 60(4) GDPR.
23.09.2025	The AT SA raised an objection to the Draft Decision (hereinafter, ' AT SA Objection ') in accordance with Article 60(4) GDPR ¹¹ .
17.10.2025	The BE SA informed the CSAs that it will hear the parties before initiating the potential Article 65 GDPR procedure, in accordance with Article 11(2)(f) EDPB RoP ¹² .
21.10.2025	The BE SA expressed to the Controller and the Complainant its intention to initiate the dispute resolution procedure and invited them to make written submissions prior to a potential Article 65 GDPR procedure ¹³ .
01.12.2025	VRT provided its submissions (hereinafter, ' VRT's Article 65 submissions of 1 December 2025 ').
12.01.2026	NOYB provided its submissions, including 12 Annexes (hereinafter, ' NOYB's Article 65 submissions of 12 January 2026 ').
19.01.2026	VRT provided additional written submissions (hereinafter, ' VRT's Article 65 submissions of 19 January 2026 ').

- 7 Following the facts set out above, on 28 January 2026, the BE SA submitted the dispute to the EDPB in accordance with Article 60(4) GDPR, thus initiating the dispute resolution procedure under Article 65(1)(a) GDPR using the Internal Market Information system (hereinafter, '**IMI**').
- 8 The EDPB Secretariat assessed the completeness of the file on behalf of the Chair of the EDPB in line with Article 11(2) EDPB RoP. The EDPB Secretariat contacted the BE SA on 10 February 2026 to seek clarifications as to which documents had been shared with the parties prior to the submission of the dispute to the EDPB. On 10 February 2026 and

¹⁰ Article 11(2) of the EDPB RoP provides that 'the lead supervisory authority shall submit the matter to the secretariat via the information and communication system mentioned in Article 17 of these Rules of Procedure. In case of Article 65 (1) (a) GDPR, the lead supervisory authority when submitting the matter to the secretariat shall include: ... b) a summary of the relevant facts and grounds'. The BE SA provided its Referral memo to the EDPB on 20 February 2026, summarising the main facts of the case and their views on the AT SA Objection (hereinafter, 'Referral by the BE SA to the EDPB'). This document does not bring any new factual or legal elements to be relied on by the EDPB in the context of this Binding Decision), Referral by the BE SA to the EDPB, p.7.

¹¹ AT SA Objection dated 22 September 2025.

¹² As mentioned in the Referral by the BE SA to the EDPB, p. 7.

¹³ BE SA letter to VRT and NOYB, dated 21 October 2025.

20 February 2026, the BE SA provided such clarifications and uploaded on IMI additional documents.

- 9 In the context of the assessment of the completeness of the file, the EDPB Secretariat translated certain documents into English in line with the EDPB RoP¹⁴.
- 10 A matter of particular importance that was scrutinised by the EDPB Secretariat was the right to be heard, as required by Article 41(2)(a) of the Charter of Fundamental Rights of the European Union (hereinafter the '**Charter**' or '**CFR**'). Further details on this are provided in Section 2 of this Binding Decision.
- 11 On 31 March 2026, the decision on the completeness of the file was then taken by the Chair of the EDPB and by the BE SA, in line with Article 11 (2) EDPB RoP. The file was circulated by the EDPB Secretariat to all the members of the EDPB on 31 March 2026.
- 12 The Chair of the EDPB decided, in compliance with Article 65(3) GDPR in conjunction with Article 11(4) EDPB RoP, to extend the default timeline for adoption of one month by a further month on account of the complexity of the subject-matter.

2 The Right to good administration

- 13 The EDPB is subject to the Charter, in particular Article 41 (right to good administration). This is also reflected in Article 11(1) EDPB RoP. Further details were provided in the EDPB Guidelines on Article 65(1)(a) GDPR¹⁵.
- 14 The EDPB assessed whether all documents received containing the matters of facts and law used by the EDPB to take its decision in this procedure had previously been shared with the Controller and the Complainant, and whether they were given the opportunity to exercise their right to be heard in relation to the procedure led by the BE SA and the subject matter of the dispute to be resolved by the EDPB. In respect of the Complainant, the EDPB underlines in particular that the Complainant may potentially be adversely affected by the outcome of this specific procedure as the dispute pertains to the dismissal of the Complaint.
- 15 The EDPB takes the view that both the Controller and the Complainant had received the opportunity to exercise their right to be heard with regard to the documents containing the matters of fact and law considered and addressed by the EDPB to solve the dispute in the context of this Binding Decision. Their written observations were shared with the EDPB by the BE SA¹⁶.

14 Art. 11(2) EDPB RoP provides that '[w]hen necessary, the documents submitted by the competent authority will be translated into English by the secretariat' and that the 'competent authority' needs to agree on the translation. Among the annexes to NOYB's Article 65 submissions of 12 January 2026, there were some decisions adopted by SAs that were not available in English. These decisions were provided in Italian, Spanish, German and French. The translation of the documents was proofread and validated by the SAs who issued such decisions or who had the language of the decision as official language (IT SA, ES SA, AT SA, and BE SA). Following the validation of the translations, the translated documents were added to the file by the EDPB Secretariat on 23 March 2026.

15 EDPB Guidelines 3/2021 on the application of Article 65(1)(a) GDPR, adopted on 24 May 2023 (version after public consultation) (hereinafter, '**EDPB Guidelines on Article 65(1)(a) GDPR V2.0**') paragraphs 93-107 and EDPB Guidelines 3/2021 on the application of Article 65(1)(a) GDPR, adopted on 13 April 2021 (version for public consultation) (hereinafter, '**EDPB Guidelines on Article 65(1)(a) GDPR V1.0**'), paragraphs 94-108 (both hereinafter referred to as, '**EDPB Article 65 (1)(a) Guidelines**').

16 As mentioned above in paragraph 6 of this Binding Decision, on 21 October 2025, the BE SA invited the Controller and the Complainant to submit their positions prior to a potential Article 65 GDPR procedure and therefore in the context of that procedure. The Controller provided written submissions on 1 December 2025 and 19 January 2026. The Complainant provided written submissions on 12 January 2026.

- 16 However, for reasons of transparency, VRT and NOYB were provided with specific documents which they had not previously received, via the EDPB Chair's letters of 12 March 2026¹⁷. These specific documents did not bring any new factual or legal elements to be relied on by the EDPB in the context of this Binding Decision. VRT and NOYB were thereby offered the opportunity to share further observations they might have. These written observations were provided by VRT and NOYB on 26 March 2026 and were subsequently added to the file (hereinafter, '**VRT's Submissions to the EDPB of 26 March 2026**' and '**NOYB's Submissions to the EDPB of 26 March 2026**' respectively).
- 17 Therefore, the EDPB notes that both VRT and NOYB received the opportunity to make their views known regarding all the legal and factual elements used by the EDPB to take this decision.

3 Conditions for adopting a binding decision

- 18 The general conditions for the adoption of a binding decision by the EDPB are set forth in Article 60(4) and Article 65(1)(a) GDPR¹⁸.

3.1 Objection(s) expressed by CSA(s) in relation to the Draft Decision

- 19 The EDPB notes that the AT SA raised an objection to the Draft Decision via IMI pursuant to Article 60(4) GDPR¹⁹.

3.2 The LSA does not follow the objection(s) to the Draft Decision or is of the opinion they are not relevant or reasoned

- 20 On 17 October 2025, the BE SA provided CSAs with its analysis of the objection raised by the AT SA. The BE SA clarified that it deems the objection raised by the AT SA *prima facie* to be relevant and reasoned, and believes the referral is admissible under the dispute resolution procedure mechanism, as the matter concerns the interpretation of a general principle of EU law on provisions related to the GDPR's complaint mechanism, notably Article 77 GDPR in conjunction with Article 80(1) GDPR²⁰. However, the BE SA concluded that it would not follow the AT SA Objection because of the divergent national case law in Belgium and Austria with regard to this matter²¹.

3.3 Admissibility of the case and competence of the EDPB

17 In particular, the Referral by the BE SA to the EDPB and the Preliminary Draft Decision were shared with the Complainant and VRT - see Letters of the EDPB Chair to VRT and to NOYB of 12 March 2026.

18 According to Art. 65(1)(a) GDPR, the Board will issue a binding decision when a supervisory authority has raised a relevant and reasoned objection to a draft decision of the LSA and the LSA has not followed the objection or the LSA has rejected such an objection as being not relevant or reasoned.

19 AT SA Objection, dated 22 September 2025.

20 The analysis of the BE SA was initially provided via IMI (the IT platform to support cooperation and consistency procedures under the GDPR), but its content is the same as the one provided to the EDPB in the context of the Article 65 GDPR procedure in the Referral by the BE SA to the EDPB, p.8.

21 Referral by the BE SA to the EDPB, p.8.

- 21 The case at issue fulfils, *prima facie*, all the elements listed by Article 65(1)(a) GDPR, since the AT SA raised an objection to the Draft Decision of the BE SA within the deadline provided by Article 60(4) GDPR, and the BE SA has not followed the objection.
- 22 Considering the above, in particular that the conditions of Article 65(1)(a) GDPR are met, the EDPB is competent to adopt a binding decision, which shall concern all the matters which are the subject of the relevant and reasoned objection, in particular whether there is an infringement of the GDPR or whether the envisaged action in relation to the controller or processor complies with the GDPR²².
- 23 The EDPB recalls that its current decision is without any prejudice to any assessments the EDPB may be called upon to make in other cases, including with the same parties, taking into account the contents of the relevant Draft Decision and the objection raised by the CSA.
- 24 VRT argues that the concerned matter falls outside of the EDPB's competence²³, for two main reasons.
- 25 First, VRT puts forward that the EDPB has no authority regarding a dispute on a draft decision that does not concern a GDPR infringement.²⁴ According to VRT, the fact that this dispute does not in itself concern whether the controller has infringed the GDPR brings the dispute outside of the EDPB's remit²⁵. VRT also argues that all previous EDPB decisions have always concerned infringements of the GDPR by a controller²⁶.
- 26 With respect to this first argument, the EDPB recalls that, pursuant to Article 65(1) GDPR and Article 70(1)(a) GDPR, the dispute resolution mechanism is indeed meant to ensure the correct and consistent application of the GDPR in cases involving cross-border processing of personal data.
- 27 However, for a matter to concern the application of the GDPR, it does not necessarily have to concern whether the controller committed an infringement of the GDPR. The wording of the relevant provisions clearly shows that the EDPB is competent to resolve disputes among SAs under Article 65(1)(a) GDPR also on other questions, i.e., '*whether envisaged action in relation to the controller or processor complies with [the GDPR]*'²⁷. Moreover, according to Article 65(1)(a) GDPR, the binding decisions of the EDPB 'shall concern *all the matters* which are the subject of the relevant and reasoned objection, *in particular* whether there is an infringement of [the GDPR]' (emphasis added). Recital 136 GDPR also explains that the Board is 'empowered to adopt legally binding decisions [...] where there are conflicting views among supervisory authorities, in particular in the cooperation mechanism between the lead

22 Art. 65(1)(a) GDPR and Art. 4(24) GDPR.

23 VRT's Article 65 submissions of 1 December 2025 paragraphs 8-14 and VRT's Article 65 submissions of 19 January 2026 paragraphs 8-14 and paragraph 37.

24 VRT's Article 65 submissions of 1 December 2025 paragraphs 8-9, p. 7, VRT's Article 65 submissions of 19 January 2026 paragraphs 8-9, p. 7 and VRT's Submissions to the EDPB of 26 March 2026, Section 2, p.3. According to VRT, the EDPB's authority to adopt a binding decision in accordance with Article 65(1)(a) GDPR is 'purpose-related' - it seeks to 'ensure the correct and consistent application of GDPR' and this is in particular regarding 'whether there is an infringement of this Regulation' - an aspect emphasised by Article 65(1)(a) [GDPR], Article 70(1)(a) GDPR, as well as by recital 136 GDPR, VRT's Article 65 submissions of 1 December 2025, p. 6, paragraph 8 and VRT's Article 65 submissions of 19 January 2026, p. 6, paragraph 8.

25 According to VRT, although "the concerned matter does indeed mention "Article 80(1) [GDPR] juncto Article 77 GDPR", the AT SA Objection does not concern the fact that one of the conditions of Article 77 GDPR or Article 80(1) GDPR would have been infringed and, in any case, "even if Article 77 [GDPR] and/or Article 80(1) GDPR would not be respected, this cannot be attributed to VRT", as these articles do not place any obligations upon a controller, VRT's Article 65 submissions of 1 December 2025 paragraph 12, p. 7 and VRT's Article 65 submissions of 19 January 2026, paragraph 12, p. 7.

26 VRT's Article 65 submissions of 1 December 2025, paragraph 9, p.7. and VRT's Article 65 submissions of 19 January 2026, paragraph 9, p.7.

27 Article 4(24) GDPR.

supervisory authority and supervisory authorities concerned on the merits of the case, *in particular* whether there is an infringement of [the GDPR]' (emphasis added).

- 28 In light of these provisions, the EDPB is competent to address the merits of all the objections that are found to be relevant and reasoned, and is competent to resolve disputes also concerning the envisaged action in relation to the controller or processor, including the envisaged corrective measures or the envisaged decision to dismiss or reject a complaint²⁸.
- 29 The AT SA expresses 'concerns regarding the legal assessment and procedural aspects'²⁹ and raises an objection which concerns 'the dismissal of the present complaint on the grounds that the case involves an apparent abuse of law in the lodging of complaint'³⁰. If such objection is deemed to be relevant and reasoned within the meaning of Article 4(24) GDPR, which is analysed below, it is then the EDPB's legal duty to consider it and to adopt a binding decision solving the dispute between the supervisory authorities.
- 30 More generally, as pointed out by NOYB, the EDPB's competence concerns the consistency of the application of the GDPR as a whole, and not just of its provisions imposing obligations on controllers and processors³¹.
- 31 Secondly, VRT argues that 'the EDPB cannot determine under what circumstances a complainant (or its representative) is abusing its rights under Article 77 [GDPR] [in combination with] Article 80(1) GDPR because abuse of rights is not a GDPR-related matter' but 'a general EU principle, as confirmed by the EU Court of Justice's settled case-law'³².
- 32 The BE SA indicates that 'the matter [of the referral] concerns the interpretation of a general principle of EU law on provisions related to the GDPR's complaint mechanism, notably Article 77 [GDPR] [in combination with] Article 80(1) GDPR'³³. However, the BE SA does not question the competence of the EDPB to address the matter.
- 33 The competence of the EDPB to address any dispute raised by a relevant and reasoned objection to a draft decision that concerns the compliance of the envisaged action with the GDPR necessarily also includes disputes on whether the relevant provisions of the GDPR were correctly applied. The dispute in this case pertains precisely to whether

28 Article 4(24) GDPR clarifies that a 'relevant and reasoned objection' is 'an objection to a draft decision as to whether there is an infringement of [the GDPR], or whether envisaged action in relation to the controller or processor complies with [the GDPR]' (emphasis added). See as well EDPB Guidelines on Article 65(1)(a) GDPR V2.0, paragraph 92 and EDPB Guidelines on Article 65(1)(a) GDPR V1.0, paragraph 92 and EDPB Guidelines 9/2020 on the concept of relevant and reasoned objection, version 2.0 (after public consultation) adopted on 9 March 2021 (hereinafter, '**EDPB Guidelines on RRO**'), paragraph 32. In past EDPB Article 65(1)(a) binding decisions, the EDPB addressed the merits of objections not only on whether the controller or processor had breached the GDPR but also of objections concerning the envisaged scope of the investigation or the corrective measures - see EDPB Binding Decision 1/2020, adopted on 9 November 2020, section 8.4.2; EDPB Binding Decision 1/2021, adopted on 28 July 2021, sections 8.4.2 and 9; EDPB Binding decision 1/2022, adopted on 15 June 2022, section 5.4.2; EDPB Binding decision 2/2022, adopted on 28 July 2022, section 7.4.2; EDPB Binding Decision 3/2022, adopted on 5 December 2022 sections 5.4.2, 8.4.2 and 9; EDPB Binding Decision 4/2022, adopted on 5 December 2022, sections 5.4.2, 8.4.2 and 9; EDPB Binding Decision 5/2022, adopted on 5 December 2022, sections 6.1.4, 8.4.2 and 9; EDPB Binding decision 1/2023, adopted on 13 April 2023, sections 4.4.2 and 5.4.2; EDPB Binding Decision 2/2023, adopted on 2 August 2023 (hereinafter section 6.4.2. In respect of Binding Decision 3/2022, Binding Decision 4/2022 and Binding Decision 5/2022 and of the validity of the instruction of the EDPB to the LSA to carry out further investigation, see the Judgment of the General Court of 29 January 2025 in Joined Cases *Data Protection Commission v European Data Protection Board*, T-70/23, T-84/23 and T-111/23, OJ C 127.

29 AT SA Objection, p.1.

30 AT SA Objection, Section I, p.2.

31 NOYB's Article 65 submissions of 12 January 2026, paragraph 104 ('Following [VRT's] argument according to which the alleged "abuse of the right" to file a complaint shall be excluded from the EDPB's competence would lead to a theoretical situation where the EDPB would not be competent to assess the admissibility of complaints but only questions of material law. This would result in reducing the competence of the EDPB to [for example] Articles 1 to 50 [GDPR], but not to Articles 51 to 77 or 80 GDPR in a such a way that it would no longer be able to ensure "the correct and consistent application of the GDPR"').

32 VRT's Article 65 submissions of 1 December 2025 paragraph 13, p.7 and VRT's Article 65 submissions of 19 January 2026, paragraph 13, p.7.

33 Referral by the BE SA to the EDPB, p.8.

Article 57(4) GDPR, Article 77 GDPR and Article 80 GDPR were correctly applied. Where necessary, this evaluation has to also take into account the general principles of EU law such as the one prohibiting abuse of rights.

- 34 According to the Court of Justice of the European Union (hereinafter, 'CJEU'), Article 57(4) GDPR reflects and is an expression of the general principle of EU law that EU law cannot be relied on for abusive or fraudulent ends³⁴. This link between Article 57(4) GDPR and the general principle of EU law prohibiting abuse of rights was also underlined by the AT SA Objection³⁵. Therefore, the subject matter of the AT SA Objection relates also to the application of Article 57(4) GDPR and of the general principle of EU law prohibiting abuse of rights in the context of submitting complaints under the GDPR, for which the EDPB is competent to adopt a binding decision.
- 35 In addition, the EDPB recalls that the General Court underlined that a relevant and reasoned objection relates to aspects the analysis of which comes within the scope of the two tasks of SAs to monitor and enforce the application of the GDPR and handle complaints to the extent appropriate under Article 57(1)(a) GDPR and Article 57(1)(f) GDPR³⁶. The dispute in the case at hand, too, pertains to the discharge of these two tasks by SAs.
- 36 In light of the above, the EDPB takes the view that the subject matter of the present dispute resolution procedure falls within the competence of the EDPB as described by Article 65(1)(a) GDPR and Article 70(1)(a) GDPR. Should the EDPB consider the objection of the AT SA as 'relevant and reasoned', it will therefore proceed with an assessment of its merits.

3.4 Structure of the binding decision

- 37 For the objection raised by the AT SA, the EDPB decides on its admissibility, by assessing first whether it can be considered as a 'relevant and reasoned objection' within the meaning of Article 4(24) GDPR as clarified in the guidelines on the concept of a relevant and reasoned objection³⁷.
- 38 Where the EDPB finds that an objection does not meet the requirements of Article 4(24) GDPR, the EDPB does not take any position on the merit of any substantial issues raised by that objection in this specific case. The EDPB will analyse the merits of the substantial issues raised by the AT SA Objection if it considers the objection to be relevant and reasoned³⁸.

4 On the envisaged dismissal of the Complaint in the Draft Decision

34 Judgment of the Court of Justice of 9 January 2025 in case *Österreichische Datenschutzbehörde v F R*, C-416/23, ECLI:EU:C:2025:3, paragraph 49 and Judgment of the Court of Justice of 19 March 2026 in case *Brillen Rottler GmbH & Co. KG v TC*, C-526/24, ECLI:EU:C:2026:216, paragraph 30.

35 AT SA Objection, p. 4 referring to Judgment of the Court of Justice of 9 January 2025 in case *Österreichische Datenschutzbehörde v F R*, C-416/23, ECLI:EU:C:2025:3, paragraphs 49 et seq.

36 Judgment of the General Court of 29 January 2025, inJoined cases *Data Protection Commission v European Data Protection Board*, T-70/23, T-84/23 and T-111/23, OJ C 127, paragraph 50.

37 EDPB Guidelines on RRO.

38 'The EDPB will assess, in relation to each objection raised, whether the objection meets the requirements of Art. 4(24) GDPR and, if so, address the merits of the objection in the binding decision.' See EDPB Guidelines on Article 65(1)(a) GDPR V2.0, paragraph 63 and EDPB Guidelines on Article 65(1)(a) GDPR V1.0, paragraph 63.

4.1 Analysis by the LSA in the Draft Decision

- 39 In its Draft Decision, the BE SA starts by recalling previous investigations carried out by the BE SA Inspection Service and public declarations made by NOYB on their website³⁹. The BE SA also refers to a previous ruling of the Belgian Market Court in the *Mediahuis* case⁴⁰, on which the Draft Decision is largely based⁴¹. More specifically, according to the Draft Decision, the Complaint should be dismissed due to an apparent abuse of the right to lodge a complaint under Article 77 GDPR in conjunction with Article 80(1) GDPR⁴².
- 40 The BE SA considers that the essential aspects of the Complaint have been identified by NOYB and not by the Data Subject, as in the BE SA's view the latter has been instructed on how to lodge the Complaint⁴³. In the BE SA's view, the Complaint pursues the NOYB's policy objectives linked to interests other than those of an individual data subject (for instance, strategic objectives of the board or the wishes of donors) and which may de facto take precedence over the mandating in this context⁴⁴.
- 41 The BE SA refers to the CJEU case law on abuse of law and takes the view that there is an abuse of law in the case at hand, given that **both the objective and the subjective components of the abuse**, as required by the CJEU case law, are present⁴⁵.
- 42 The BE SA considers that there are numerous elements proving the **objective component of the abuse**⁴⁶, i.e. 'a set of objective circumstances whereby, despite formal compliance with the conditions imposed by the [European] Union rules, the aim pursued by those rules has not been achieved'⁴⁷, namely:
- A standardised submission-in-bulk approach has been followed and an automated process for generating complaints has been used; various complaints have been drawn up and signed in the same way⁴⁸;
 - the Data Subject does not belong to the average target audience of a Belgian website in Dutch and the initiative for lodging the complaints undeniably lies with NOYB⁴⁹;
 - there was a working relationship between the Data Subject and NOYB at the time when the Complaint was submitted⁵⁰ and the Data Subject mandated NOYB after the details of the project had, been outlined and the controllers identified by NOYB⁵¹;
 - this association-led project deviates from the 'letter and spirit' of what a mandating relationship should entail under Article 80(1) GDPR, read in the light of recital 142 GDPR⁵², considering that the assignment should be one-way: from the data subject to the representative, and not the other way around⁵³; the complaints are

39 Draft Decision, Section II.1, p.4-6.

40 Judgment of the Brussels Court of Appeal (section Market Court) of 19 March 2025 (*Mediahuis*), nr. 2024/AR/1690.

41 Draft Decision, Section II.2, p. 6-7.

42 Draft Decision, "Concerns", p.1.

43 Draft Decision, Section III, paragraph 21 - according to the BE SA, these essential aspects include the claimed grievances but also the identity of the targeted controllers; the BE SA notes that NOYB has explicitly mentioned a 'target list'.

44 Draft Decision, Section III, paragraph 23.

45 Draft Decision, Section III.1, paragraphs 24-43.

46 Draft Decision, Section III.1.2, paragraphs 29-38.

47 Draft Decision, Section III.1.1, paragraph 26.

48 Draft Decision, Section III.1.2, paragraph 29(a).

49 Draft Decision, Section III.1.2, paragraph 29(b) & paragraph 29(c).

50 Draft Decision, Section III.1.2, paragraph 29(d).

51 Draft Decision, Section III.1.2, paragraph 29 (e).

52 Draft Decision, Section III.1.2, paragraphs 29(d) and 30.

53 Draft Decision, Section III.1.2, paragraph 30.

fabricated within a fictive structure not envisaged by the legislator under Article 80(1) GDPR⁵⁴;

- the intended purpose of the right to lodge a complaint by giving a mandate to an organisation, foreseen by Article 77 GDPR and Article 80(1) GDPR, is not respected in this case and there is a clear and deliberate circumvention by NOYB of the objectives of these legal provisions⁵⁵.
- in identifying the purpose of the legislator with Article 80(1) GDPR, the existence of Article 80(2) GDPR is important – the European legislator did not intend that associations could 'seek' a mandate under Article 80(1) GDPR based on their own priorities and strategies, because such 'association-driven' initiatives are precisely the intention of Article 80(2) GDPR⁵⁶. Article 80(2) GDPR enables national legislators to provide 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 processing⁵⁷. Neither the Austrian, nor the Belgian legislator availed themselves of this possibility⁵⁸.

43 The BE SA considers that the **subjective component of the abuse** is present too, namely the intention to obtain an advantage conferred by the Union rules by artificially creating the conditions under which the right to that advantage arises⁵⁹. According to the BE SA, the abuse of law is based on circumvention⁶⁰ because:

- NOYB seeks to have the power to bring proceedings before the BE SA for its 'cookie banner complaints' project⁶¹; a power to bring proceedings cannot exist without the data subject as an individual in Belgian or Austrian law (where Article 80(2) GDPR has not been implemented)⁶²;
- NOYB asks trainees or staff if they want to become data subjects in model cases to artificially fall under Article 80(1) GDPR - the incitement to create a legal pathway to the BE SA constitutes the subjective element of the abuse law on the part of NOYB⁶³.
- 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 complaints⁶⁴.

44 In light of the above, and referring to CJEU case law⁶⁵, the BE SA takes the view that it must refuse NOYB's use of the right to lodge a complaint under Article 77 GDPR in conjunction with Article 80(1) GDPR⁶⁶.

4.2 Summary of the objection raised by the CSA

54 Draft Decision, Section III.1.2, paragraph 31.

55 Draft Decision, Section III.1.2, paragraph 38.

56 Draft Decision, Section III.1.2, paragraph 32.

57 Draft Decision, Section III.1.2, paragraph 34.

58 Draft Decision, Section III.1.2, paragraph 35.

59 Draft Decision, Section III.1.2, paragraph 26.

60 Draft Decision, Section III.1.1, paragraph 27.

61 Draft Decision, Section III.1.3, paragraph 39.

62 Draft Decision, Section III.1.3, paragraph 39.

63 Draft Decision, Section III.1.3, paragraph 40.

64 Draft Decision, Section III.1.3, paragraph 40.

65 BE SA refers to the Judgment of the Court of Justice of 21 December 2023 in joint cases *VK and Others v BMW Bank GmbH and Others*, C-38/21, C-47/21 and C-232/21, ECLI:EU:C:2023:1014, paragraph 283.

66 Draft Decision, Section III.1.4, paragraph 41.

- 45 The AT SA raises an objection pursuant to Article 4(24) GDPR and Article 60(4) GDPR against the dismissal of the Complaint on the grounds that the case involves an apparent abuse of law. The AT SA requests that the BE SA issues a decision on the merits and deals with the Complaint in accordance with Article 57(1)(f) GDPR⁶⁷.
- 46 The AT SA emphasises that the Complaint forms part of the so-called ‘Cookie Banner’ complaints which NOYB lodged with various SAs and that no other supervisory authority has considered these complaints to constitute an ‘apparent abuse of law’⁶⁸. The AT SA considers, thus, that the BE SA should analyse the Complaint on its merit and not dismiss the Complaint on the grounds of apparent abuse of law⁶⁹.
- 47 To support its view, the AT SA refers to European and national case law dealing with the question of whether there has been an abuse of the right to lodge a complaint under Article 77 GDPR⁷⁰. Firstly, the AT SA relies on a previous ruling by the Austrian Federal Administrative Court: this Court held, in a similar case, that there were no doubts as to the existence of a valid power of attorney [referring to NOYB’s mandate], flagged that the non-implementation of Article 80(2) GDPR into Austrian law could not mean that employees or members of an association such as NOYB were barred from lodging individual data protection complaints in the event of alleged infringements arising from their personal activities, and highlighted 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 law⁷¹.
- 48 The AT SA also refers to CJEU case law stating that ‘there is, in EU law, a general legal principle that EU law may not be relied upon for abusive or fraudulent ends’ and 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’⁷².
- 49 The AT SA also recalls another national ruling where the Austrian Supreme Administrative Court ‘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’⁷³. In this regard, the AT SA also recalls an instance where the AT SA itself affirmed the existence of abusive intent⁷⁴.
- 50 The AT SA considers that ‘[in] the present case ... no purposes unrelated to data protection are pursued by exercising the right to lodge a complaint under Article 77 GDPR’ and that, on the contrary, ‘organisations such as NOYB are intended to be established precisely for the

67 AT SA Objection, p. 6 (also referring to Recital 141 GDPR and the Judgment of the Court of Justice of 9 January 2025 in case *Österreichische Datenschutzbehörde v FR*, C-416/23, ECLI:EU:C:2025:3, paragraph 25).

68 AT SA objection, Section III, p.2.

69 AT SA Objection, p. 6.

70 AT SA Objection, p. 4-5.

71 AT SA Objection, Section III, p.4 referring to the Austrian Federal Administrative Court (BVwG), 18 August 2020, W137 2264614-1. In this regard, the EDPB notes VRT’s observation that the reference for this latter decision appears to be incorrect as it refers to a case from 30 June 2023, and thus not 2025 or 2020 (VRT’s Article 65 submissions of 1 December 2025, paragraphs 29 and 30). For the avoidance of doubt, the EDPB relies, in its reasoning in Section 4.4.2 of this Binding Decision below, on the case law of the Court of Justice of the European Union and not on national case law.

72 AT SA Objection Section III, p.4 referring to the Judgment of the Court of Justice in case *Österreichische Datenschutzbehörde v FR*, C-416/23, ECLI:EU:C:2025:3, paragraphs 49 et seq.

73 AT SA Objection, Section III, p.5 referring to Austria’s Supreme Administrative Court (VwGH), 29 January 2025, Ra 2023/04/0002-1.

74 AT SA Objection, Section III, p. 5, referring to AT SA, 21 February 2023, 2023-0.137.735.

purpose of acting in the field of the protection of data subjects' rights and freedoms with regard to the protection of their personal data'⁷⁵.

- 51 According to the AT SA, with respect to Member States where Article 80(2) GDPR has not been transposed into national law, 'NOYB has hardly any other possibility than to systematically investigate certain infringements in advance and subsequently lodge complaints'⁷⁶. The AT SA argues that '[t]his also stems from the fact that during a complaint procedure, certain evidence must be provided by the complainant' and '[i]n 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'⁷⁷.
- 52 In the AT SA's view, the existence of Article 80(2) GDPR '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' such as the 'Cookie Banner Complaints'⁷⁸.
- 53 The AT SA further underlines its view that, regardless of NOYB's representation, the Data Subject is adversely affected as the cookie banner on the Controller's website was not in compliance with the GDPR⁷⁹. According to the AT SA, the Data Subject's behaviour may be a reason why no right to compensation under Article 82 GDPR arises, due to the deliberate access to the website, but the objective infringement of the GDPR remains because 'the conditions for a valid consent under data protection law and, consequently, the lawfulness of the processing, were not met'⁸⁰.
- 54 Moreover, the AT SA states that the consistent application of the GDPR is jeopardised if certain SAs 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 merits⁸¹.

4.3 Position of the LSA on the objection

- 55 The BE SA considers that the AT SA Objection against the dismissal of the Complaint on the grounds that the case involves an apparent abuse of law constitutes a relevant and reasoned objection in accordance with Article 4(24) GDPR⁸². The BE SA however states that it does not intend to follow the AT SA Objection because of the divergent national case law in Belgium and Austria with regard to this matter⁸³.

4.4 Analysis of the EDPB

4.4.1 Assessment of whether the objection was relevant and reasoned

- 56 The objection raised by the AT SA concerns, in a nutshell, whether the Draft Decision appropriately envisages the dismissal of the Complaint.

75 AT SA Objection, Section III, p. 5.

76 AT SA Objection, Section III, p. 5.

77 AT SA Objection Section III, p.5.

78 AT SA Objection Section III, p.5.

79 AT SA Objection Section III, p.5.

80 AT SA Objection Section III, p.5-6.

81 AT SA Objection Section III, p.3.

82 Referral by the BE SA to the EDPB, p.8.

83 Referral by the BE SA to the EDPB, p.8.

- 57 The EDPB takes note of VRT's view that the AT SA Objection does not meet the threshold set by Article 4(24) GDPR⁸⁴ and of NOYB's view that, conversely, it is 'relevant and reasoned'⁸⁵.
- 58 VRT's view is that the AT SA Objection is not relevant because it only holds abstract and broad comments that are not specifically related to the Draft Decision's facts and legal analysis⁸⁶. VRT notes that the objection only opposes the Draft Decision's outcome (i.e. the complaint's dismissal), but the AT SA does not explain why the LSA's reasoning in the Draft Decision would not be correct or why the LSA should have made another assessment of the factual circumstances stated in the Draft Decision⁸⁷. Further, in VRT's view, there is no clear demonstration of what the alleged legal or factual errors in the Draft Decision are⁸⁸. With respect to the subject matter of the AT SA Objection, VRT argues that none of the examples mentioned in the EDPB Guidelines on Article 65(1)(a) GDPR are at issue in the present case⁸⁹.
- 59 Moreover, VRT argues that the AT SA Objection is not reasoned including because the AT SA attempts to substantiate its objection with elements that are not coherent or relevant⁹⁰.
- 60 VRT also argues that the AT SA Objection does not clearly demonstrate the significance of the risks posed by the Draft Decision, as the AT SA Objection does not contain a clear statement regarding the risks and their significance⁹¹. Further, VRT claims that the fact that the Data Subject would be adversely affected due to allegedly unlawful cookie banners on VRT's website is a risk that is not substantial or plausible⁹², and that the fact that the LSA has not addressed the Complaint on its merits does not in any way lead to a significant risk for data subjects' rights and freedoms⁹³.

84 VRT's Article 65 submissions of 1 December 2025, paragraphs 15-16, p. 8, VRT's Article 65 submissions of 19 January 2026, paragraphs 15-16, p. 8 and VRT's Submissions to the EDPB of 26 March 2026, Section 2, p.4.

85 NOYB's Article 65 submissions of 12 January 2026, paragraph 14, p.4

86 VRT's Article 65 submissions of 1 December 2025 paragraph 18, p. 9 and VRT's Article 65 submissions of 19 January 2026, paragraph 18, p. 9.

87 VRT's Article 65 submissions of 1 December 2025 paragraph 18, p. 9 and VRT's Article 65 submissions of 19 January 2026, paragraph 18, p. 9.

88 VRT's Article 65 submissions of 1 December 2025 paragraph 18, p. 9 and VRT's Article 65 submissions of 19 January 2026, paragraph 18, p. 9.

89 VRT's Article 65 submissions of 1 December 2025 paragraph 21, p. 9, and VRT's Article 65 submissions of 19 January 2026, paragraph 21, p. 9. VRT considers in this regard that the AT SA Objection does not concern the existence of a given infringement of the GDPR nor the existence of additional or alternative infringements of the GDPR, as no infringement by VRT has been established. Additionally, VRT notes that the AT SA Objection does not concern gaps in the Draft Decision justifying the need for further investigation and does not indicate that the Draft Decision would hold insufficient factual information or reasoning. Lastly, VRT contends that the AT SA Objection does not dispute the Draft Decision because the LSA would have insufficiently investigated the facts, neither the AT SA Objection is related to the specific action envisaged by the Draft Decision as no sanction (within the meaning of Article 58(2) GDPR) was imposed on VRT.

90 According to VRT, the fact that abuse of rights was not addressed in the report from the EDPB Cookie Banner Taskforce in no way excludes that complaints filed by NOYB on behalf of a complainant may constitute abuse of rights; also, it is incorrect to derive from the EDPB Cookie Banner Taskforce's report that a data subject may exercise his/her complaint right and/or may be represented by an organisation in violation of the prohibition of abuse of right; moreover, VRT considers that the Austrian decisions mentioned in the AT SA Objection cannot support the AT SA's position as they are not relevant for the case at hand, and certain case law is incorrectly referenced. VRT also considers that the concerned matter is not related to Article 80(2) GDPR and therefore the arguments about this provision are not relevant, VRT's Article 65 submissions of 1 December 2025, p. 10-12, paragraphs 26-31 and VRT's Article 65 submissions of 19 January 2026, p. 10-12, paragraphs 26-31.

91 VRT's Article 65 submissions of 1 December 2025, paragraph 25, p. 10 and VRT's Article 65 submissions of 19 January 2026, paragraph 25, p. 10.

Moreover, in VRT's view the precise significance for rights and freedoms of data subjects and/or the free flow of data are not put in a clear, precise and detailed manner in the objection. The same applies to the link between the envisaged consequences of the Draft Decision and the significance of the anticipated risks that have not been established or demonstrated.

92 VRT's Article 65 submissions of 1 December 2025, paragraph 32, p.12 and VRT's Article 65 submissions of 19 January 2026, paragraph 32, p. 12. In VRT's view, the Draft Decision does not address the merits of the Complaint and therefore has not (yet) investigated whether the concerned cookie banner from VRT would actually infringe the GDPR.

93 VRT's Article 65 submissions of 1 December 2025, paragraph 33, p. 12 and VRT's Article 65 submissions of 19 January 2026 paragraph 33, p. 12.

- 61 In NOYB's view, the AT SA Objection is relevant. NOYB considers that the substance of the Draft Decision is correctly identified in the AT SA Objection⁹⁴ and the AT SA Objection clearly identifies how if followed, it would entail a change leading to a different conclusion and more precisely that the BE SA shall not dismiss the Complaint based on an apparent abuse of law and instead issue a decision on the merits. Further, NOYB considers that the AT SA Objection concerns the specific legal question of abuse of law in the complaint lodged by NOYB on behalf of the Data Subject⁹⁵. With respect to the subject matter of the objection, NOYB considers that the AT SA disagreed on the action envisaged towards VRT by the BE SA (i.e. the dismissal of the complaints) and suggests that instead a decision on the merits should be taken⁹⁶.
- 62 Moreover, NOYB considers the AT SA Objection is reasoned because the AT SA Objection provides ample legal arguments for an amendment of the Draft Decision⁹⁷.
- 63 NOYB also argues that the AT SA Objection sufficiently proves the risks posed by the Draft Decision because as outlined in the AT SA Objection the Draft Decision leads to a fragmented interpretation of the admissibility of similar cookie complaints across the Union⁹⁸. According to NOYB, this would undermine the aim of a consistent GDPR application across the E[uropean] U[nion] resulting in data subjects being granted different rights depending on the SA where they lodge their complaints and thus affecting the free flow of data.
- 64 In order to analyse whether the AT SA Objection is 'relevant', in line with Article 4(24) GDPR, the EDPB notes, contrary to VRT's position, that the AT SA Objection has a direct connection with the Draft Decision and makes many references to its factual and legal content⁹⁹. The AT SA Objection, if followed, would entail a change leading to a different conclusion¹⁰⁰ since taking it on board would mean assessing the case on its merits and not dismissing the Complaint. The AT SA also points out that if the AT SA rejects the Complaint following a final decision taken by the BE SA, it is very likely that the Austrian Courts will quash this decision¹⁰¹.
- 65 The EDPB further considers the objection to concern whether the envisaged action in relation to the controller or processor complies with the GDPR, in line with Article 4(24) GDPR. The EDPB recalls that 'the decision to reject or dismiss a complaint, in whole or in part, also constitutes an envisaged action capable of being subject of a relevant and reasoned objection'¹⁰². Indeed, the AT SA Objection relies upon the content of the Draft Decision to highlight whether the envisaged action complies with the GDPR and more precisely the specific legal question of the dismissal of the Complaint on the basis of 'apparent abuse of law'¹⁰³. The AT SA requests in its objection that the BE SA 'issue a decision on the merits' and 'deal with the [C]omplaint and the submissions made to appropriate extent, in accordance with Article 57(1)(f) [GDPR] and Recital 141 GDPR'¹⁰⁴.
- 66 In consequence, the EDPB finds the objection of the AT SA to be **relevant**.

94 NOYB's Submissions to the EDPB of 26 March 2026, paragraph 24, p. 6.

95 NOYB's Submissions to the EDPB of 26 March 2026, paragraph 34, p. 7.

96 NOYB's Submissions to the EDPB of 26 March 2026, paragraph 26, p. 6.

97 NOYB's Submissions to the EDPB of 26 March 2026, paragraph 51, p. 9.

98 NOYB's Submissions to the EDPB of 26 March 2026, paragraph 60, p. 10.

99 EDPB Guidelines on RRO, paragraphs 12 and 14.

100 EDPB Guidelines on RRO, paragraph 13.

101 AT SA Objection, Section III, p. 5.

102 EDPB Guidelines on Article 65(1)(a) GDPR V2.0, paragraph 92 and EDPB Guidelines on Article 65(1)(a) GDPR V1.0, paragraph 92. This was also argued in NOYB's Submissions to the EDPB of 26 March 2026, paragraph 26, p. 6.

103 AT SA Objection, p. 2.

104 AT SA Objection, p. 6.

- 67 The EDPB assesses in the following paragraphs if the AT SA Objection meets the threshold of being ‘reasoned’ in accordance with Article 4(24) GDPR. With respect to whether an objection is ‘reasoned’ or not, the EDPB recalls that the objection needs to include clarifications and arguments (i.e. the legal / factual mistakes of the LSA’s draft decision) as to why an amendment of the decision is proposed.¹⁰⁵
- 68 The EDPB considers that the AT SA puts forward several legal and factual arguments in its objection in order to demonstrate why the Draft Decision of the BE SA should be amended¹⁰⁶.
- 69 First, the AT SA indicates that the Draft Decision wrongfully concludes that the conditions for an abuse of the right to lodge a complaint are met¹⁰⁷. To strengthen its argumentation, the AT SA refers to CJEU case-law on abuse of law¹⁰⁸ and to Austrian national case law dealing with whether there was an abuse of the right to lodge a complaint in analogous cases¹⁰⁹. Moreover, the AT SA recalled different cases where the AT SA affirmed the existence of abusive intent and dismissed the complaint pursuant to Article 57(4) GDPR, underlining that in the case at hand, instead, *‘no [...] purposes unrelated to data protection are pursued by exercising the right to lodge a complaint under Article 77 GDPR’*¹¹⁰.
- 70 Secondly, the AT SA recalls that all other relevant SAs have decided on the merits in comparable cases and none of them has considered any of the complaints discussed in the context of the EDPB Cookie Banner Taskforce as constituting an abuse of law¹¹¹. In this regard, the AT SA underlines that SAs and the EDPB are required to contribute to the consistent application of the GDPR, in light of Article 57(1)(a) and Article 70(1) GDPR, and this consistency would be jeopardised if certain SAs were to dismiss a complaint on the grounds of apparent abuse of law while others examine similar or identical complaints on their merits¹¹².
- 71 Lastly, the AT SA also considers in its objection that the purpose of Article 80 GDPR has been wrongfully interpreted in the Draft Decision recalling that *‘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. 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.’*¹¹³
- 72 Finally, the AT SA clearly indicates how its requested change would leave to a different conclusion, i.e. the AT SA asks the BE SA to issue a decision on the merits and not to dismiss the Complaint on formal grounds, specifically on the basis of ‘apparent abuse of law.’¹¹⁴
- 73 In consequence, the EDPB finds the AT SA Objection to be **reasoned**.

105 EDPB Guidelines on RRO, paragraph 16.

106 EDPB Guidelines on RRO, paragraph 33. This was also argued in NOYB’s Submissions to the EDPB of 26 March 2026, paragraph 44, p. 8.

107 AT SA Objection, p. 3.

108 AT SA Objection, p. 4, referring to the Judgment of the Court of Justice of 9 January 2025 in case *Österreichische Datenschutzbehörde v F R*, C-416/23, ECLI:EU:C:2025:3, paragraphs 49 et seq.

109 AT SA Objection, p. 3-4 (specifying that the Austrian court ruled there was no abuse of law in these cases and providing an excerpt of the court ruling).

110 AT SA Objection, p. 5.

111 AT SA Objection, p. 2-3.

112 AT SA Objection, p. 3.

113 AT SA Objection, Section III, p.5.

114 AT SA Objection, Section III, p.6.

- 74 In order for an objection to meet the threshold set by Article 4(24) GDPR, it also needs to ‘clearly demonstrate the significance of the risks posed by the Draft Decision as regards the fundamental rights and freedoms of data subjects and, where applicable, the free flow of personal data within the Union’¹¹⁵.
- 75 The EDPB finds that the AT SA Objection sufficiently demonstrates the significance of the risks for the fundamental rights and freedoms of data subjects posed by the Draft Decision. In particular, the AT SA Objection notes that the ‘[D]ata [S]ubject is adversely affected’¹¹⁶ by the [C]ontroller’s alleged infringement and then goes on to set out the harm which the AT SA claims would follow if the Draft Decision were to be accepted. Further, the AT SA Objection explicitly notes that, following Article 80(1) GDPR, organisations such as NOYB are specifically established for ‘acting in the field of the protection of data subjects’ rights and freedoms with respect to the protection of their personal data’ and makes it clear that the Draft Decision threatens their ability to do so in countries such as Austria, to the risk of data subjects’ rights and freedoms¹¹⁷.
- 76 Finally, the AT SA has clearly and explicitly demonstrated the existence of national case law which, the AT SA Objection alleges, says that the Complaint should be held as admissible¹¹⁸. The EDPB considers that it is clear from the AT SA Objection that the improper rejection of a complaint on procedural grounds would have a significant risk for the fundamental rights and freedoms of data subjects whose rights are the subject of that complaint. There is, therefore, a specific and substantiated reason to find that the objection clearly demonstrates the risks for data subjects and is therefore within the scope of Article 4(24) GDPR.
- 77 In addition, the AT SA objection also clearly demonstrates the significance of the risks posed by the Draft Decision for the free flow of personal data within the Union. This risk can arise ‘when unjustifiably different decisions are issued by SAs in situations that are identical or similar’¹¹⁹. The AT SA Objection underlines, as mentioned, that no SA has considered any of the complaints discussed in the context of the EDPB Cookie Banner Taskforce as constituting an abuse of law¹²⁰, and that consistency would therefore be jeopardised¹²¹.
- 78 In light of the above, the EDPB considers that the AT SA’s position regarding the significance of the risk is clear and self-evident from the AT SA Objection.
- 79 As a conclusion, the EDPB finds that the objection of the AT SA is **relevant and reasoned** pursuant to Article 4(24) GDPR.

4.4.2 Assessment on the merits

- 80 In accordance with Article 65(1)(a) GDPR, the EDPB shall take a binding decision concerning all the matters which are the subject of the relevant and reasoned objection. The EDPB considers that the AT SA Objection found to be relevant and reasoned requires an

¹¹⁵ Art. 4(24) GDPR.

¹¹⁶ AT SA Objection, Section III, p.5.

¹¹⁷ AT SA Objection, Section III, p.5.

¹¹⁸ AT SA Objection, Section III, pp 4.5.

¹¹⁹ EDPB Guidelines on RRO, paragraph 48.

¹²⁰ AT SA Objection, p. 2-3.

¹²¹ AT SA Objection, p. 3. In this regard, the EDPB also takes note of NOYB’s argument that the Draft Decision would undermine the consistency of the application of the GDPR. NOYB’s Submissions to the EDPB of 26 March 2026, p. 10, paragraph 60. According to NOYB, this would undermine the aim of a consistent GDPR application across the EU resulting in data subjects being granted different rights depending on the Supervisory Authority where they lodge their complaints and thus affecting the free flow of data.

assessment of whether the Draft Decision needs to be changed in respect of the envisaged dismissal of the Complaint.

- 81 More specifically, the EDPB needs to assess whether, on the basis of the information available in the case at hand, the dismissal can be justified on the grounds of abuse by the Complainant of the right to lodge a complaint under Article 77 GDPR and of the possibility of being represented by an organisation based on Article 80(1) GDPR, consisting in a violation of the general EU law principle prohibiting abuse of rights.
- 82 The EDPB deems it appropriate to start its analysis by first recalling the CJEU case law on abuse of rights.
- 83 The prohibition of abuse of rights is a long-standing principle under EU law, which was gradually developed by the Court of Justice¹²², and which requires national authorities and courts to refuse to grant entitlement to rights conferred by provisions of EU law in situations where these provisions are invoked for fraudulent or abusive ends¹²³.
- 84 More specifically, as pointed out by the BE SA in the Draft Decision¹²⁴, the Court of Justice of the European Union has clarified: ‘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.’¹²⁵
- 85 The EDPB notes that the AT SA in its objection states that ‘[a]ccording 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’¹²⁶. The CJEU has indeed underlined that, where a

122 See for example Judgment of the Court of Justice of 14 December 2000 in case *Emsland-Stärke*, C-110/99, EU:C:2000:695; Judgment of the Court of Justice of 12 March 2014, in case *O. and B.*, C-456/12, EU:C:2014:135; Judgment of the Court of Justice of 22 November 2017, in case *Cussens and Others*, C-251/16; OJ C 22 Judgment of the Court of Justice of 26 February 2019, in case *T Danmark and Y Denmark*, C-116/16 and C-117/16, EU:C:2019:135 ; Judgment of the Court of Justice of 9 September 2021, in case *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, OJ C 462; Judgment of the Court of Justice of 21 December 2023 in joint cases *VK and Others v BMW Bank GmbH and Others*, , C-38/21, C-47/21 and C-232/21; ECLI:EU:C:2023:1014, Judgment of the Court of Justice of 19 March 2026 in case *Brillen Rottler GmbH & Co. KG v TC*, C-526/24, ECLI:EU:C:2026:216 . It is to be noted that in certain rulings the Court of Justice of the European Union refers to ‘abuse’, in others to ‘abusive practice’, ‘abuse of rights’ or ‘abuse of law’ depending on the context but the core idea and the assessment remain the same.

123 Judgment of the Court of Justice of 26 February 2019 in case *T Danmark and Y Denmark*, C-116/16 and C-117/16, EU:C:2019:135, paragraph 83, also referred to by the BE SA in paragraph 41 of the Draft Decision. For example, the Court of Justice of the European Union has recognised that, taking into account all the circumstances of the case, an abuse could be established where there was a purely formal dispatch of goods from Community territory with the sole purpose of benefiting from export refunds and an intention on the part of the Community exporter to benefit from an advantage as a result of the application of the Community rules by artificially creating the conditions for obtaining it (Judgment of the Court of Justice of the European Union 14 December 2000, in case *Emsland-Stärke*, C 110/99, EU:C:2000:695, paragraphs 30 and 55); where, there were facts showing that economic operators have carried out purely formal or artificial transactions devoid of any economic and commercial justification, with the essential aim of benefiting improperly from the exemption from withholding tax provided for in Article 5 of Directive 90/435 (Judgment of the Court of Justice of 26 February 2019, in case *T Danmark and Y Denmark*, C 116/16 and C 117/16, EU:C:2019:135, paragraph 108); and where the data subject has made a request for access under Article 15 GDPR for the purpose of artificially creating the conditions laid down for obtaining compensation from the controller under Article 82 GDPR (Judgment of the Court of Justice of 19 March 2026 in case *Brillen Rottler GmbH & Co. KG v TC*, C-526/24, ECLI:EU:C:2026:216, paragraph 41).

124 Draft Decision, paragraph 41.

125 Judgment of the Court of Justice of 21 December 2023, in joint cases *VK and Others v BMW Bank GmbH and Others*, , C-38/21, C-47/21 and C-232/21; ECLI:EU:C:2023:1014, paragraph 283

126 AT SA Objection, p.4, referring to the Judgment of the Court of Justice of 9 January 2025 in case *Österreichische Datenschutzbehörde v F R*, C-416/23, ECLI:EU:C:2025:3, paragraphs 49 and following; See also paragraph 34 of this Binding Decision.

supervisory authority seeks to make use of the possibility under Article 57(4) GDPR and classify a complaint as ‘excessive’, it is required to demonstrate the existence of an abusive intention on the part of the person submitting the request¹²⁷.

- 86 The EDPB underlines that the assessment of the abuse requires a comprehensive approach, in line with the test for the establishment of an alleged abuse developed by the CJEU, which requires **the existence of both an objective and a subjective component**. In this regard, the EDPB recalls the Court of Justice’s settled case law that ‘*proof of an abusive practice requires, first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by the EU rules, the purpose of those rules has not been achieved and, second, a subjective element consisting in the intention to obtain an advantage from the EU rules by artificially creating the conditions laid down for obtaining it*’¹²⁸. This is also recognised by the BE SA in the Draft Decision¹²⁹.
- 87 Furthermore, the EDPB highlights that in the *Brillen Rottler* ruling¹³⁰, building on its previous case law¹³¹, the Court clarified the reasoning to be followed for the assessment of the abuse specifically in the context of the right of access under Article 15 GDPR. With regard to the objective component of the abuse, which requires to verify whether the purpose of the legal provisions at stake has been achieved, the Court explained, in summary, that the aim of Article 15 GDPR is to confer on a data subject the right of access to personal data which have been collected concerning him or her and to exercise that right easily and at reasonable intervals¹³². On the basis of this, the Court held that, ‘formally speaking, request for access submitted by the data subjects could constitute an implementation of this right in order to achieve the purpose of those rules’¹³³ and therefore considered that the objective component of the abuse did not seem to be present. However, the Court’s reasoning went on to state that ‘formal observance of the conditions for applying Article 15 of the GDPR does not, in itself, make it possible to rule out the existence of an abuse of rights’¹³⁴.
- 88 The Court therefore moved on with the assessment of the subjective component of the abuse. In line with its previous case law¹³⁵, the Court reiterated in the *Brillen Rottler* ruling¹³⁶ that, in order to be able to characterise a request for access as ‘excessive’ in line with Article 12(5) GDPR, the controller must establish, having regard to all the relevant

127 Judgment of the Court of Justice of 9 January 2025, in case *Österreichische Datenschutzbehörde v F R*, C-416/23, ECLI:EU:C:2025:3, paragraphs 50 and 59.

128 See for example Judgment of the Court of Justice of 14 December 2000 in case *Emsland-Stärke GmbH v Hauptzollamt Hamburg-Jonas*, C-110/99, ECLI:EU:C:2000:695, paragraphs 52-53; Judgment of the Court of Justice of 26 February 2019, in case *T Danmark and Y Denmark*, C-116/16 and C-117/16, EU:C:2019:135, paragraph 97; Judgment of the Court of Justice of 9 September 2021 in case *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, ECLI:EU:C:2021:736, paragraph 122; Judgment of the Court of Justice of 21 December 2023 in joint cases *VK and Others v BMW Bank GmbH and Others*, C-38/21, C-47/21 and C-232/21; ECLI:EU:C:2023:1014, paragraph 285.

129 Draft Decision, paragraph 26.

130 Judgment of the Court of Justice of 19 March 2026 in case *Brillen Rottler GmbH & Co. KG v TC*, C-526/24, ECLI:EU:C:2026:216.

131 See footnote 130 of this Binding Decision.

132 Judgment of the Court of Justice of 19 March 2026 in case *Brillen Rottler GmbH & Co. KG v TC*, C-526/24, ECLI:EU:C:2026:216, paragraph 38.

133 Judgment of the Court of Justice of 19 March 2026, in case *Brillen Rottler GmbH & Co. KG v TC*, C-526/24, ECLI:EU:C:2026:216, paragraph 38.

134 Judgment of the Court of Justice of 19 March 2026 in case *Brillen Rottler GmbH & Co. KG v TC*, C-526/24, ECLI:EU:C:2026:216, paragraph 39.

135 Judgment of the Court of Justice of 9 January 2025 in case *Österreichische Datenschutzbehörde v F R*, C-416/23, ECLI:EU:C:2025:3, paragraphs 49, 50 and 56.

136 Judgment of the Court of Justice of 19 March 2026 in case, *Brillen Rottler GmbH & Co. KG v TC*, C-526/24, ECLI:EU:C:2026:216.

circumstances of each case, that there has been an abusive intention on the part of the data subject¹³⁷.

- 89 It is against this legal framework that the EDPB is called to assess the circumstances at stake in this case. The EDPB considers that there is clear guidance provided by the CJEU with regard to the reasoning that should be followed when assessing the existence of an alleged abuse of rights within the meaning of the general EU law principle prohibiting such abuse.
- 90 In this respect, the EDPB notes that the BE SA's reasoning in the Draft Decision is supported by the **Controller** who argues that there was indeed an abuse of rights¹³⁸. According to VRT, the Complaint does not concern a data subject pursuing their own interests as a user of the VRT website who believes their personal data have been processed unlawfully and would therefore have contacted NOYB to be represented by them¹³⁹. It also argues that the findings regarding VRT's cookie banner stated in the Complaint were carried out on behalf of and under the instructions of NOYB and are therefore directly attributable to NOYB¹⁴⁰.
- 91 In VRT's view, NOYB has been given a very general and broad mandate by the Data Subject to represent them pursuing complaints before SAs regarding the subject matter of 'illegal processing activities because of an unlawful consent banner' which makes no reference to the VRT website¹⁴¹.
- 92 VRT also points out that the Data Subject is [REDACTED] native speaker with residence [REDACTED], consulting the website in Dutch from Austria while conducting a traineeship on behalf of NOYB and considers it highly questionable if this person would have a genuine interest in consulting the website¹⁴².
- 93 The EDPB also takes note of the submissions of the **Complainant**, who supports the objection raised by the AT SA and underlines that the Complaint was filed with an SA to raise a violation of the GDPR, which is the core purpose of Article 77 GDPR. This would mean the objective element of an abuse of law is therefore not given in relation to Article 77 GDPR because Article 77 GDPR is used for the exact purpose it was drafted for¹⁴³.
- 94 NOYB puts forward that there is no abusive intention but only the intention to bring a GDPR infringement to the attention of the SA¹⁴⁴ and claims that there is no 'other purpose, unconnected with the protection of those [GDPR] rights' in the case of the Complainant¹⁴⁵.
- 95 NOYB argues that neither the Data Subject nor NOYB obtain an advantage from the EU rules (such as tax reduction, subvention, leniency, possibility to return a product) by complaining about an infringement¹⁴⁶. They consider that pursuing general policy interests cannot reasonably be considered as an advantage, as it is rather an attempt to put an end to a violation of the fundamental right to data protection of the data subject, and a decision favourable to the Complainant is rather the expected result of the GDPR being properly

137 Judgment of the Court of Justice of 19 March 2026 in case *Brillen Rottler GmbH & Co. KG v TC*, C-526/24, ECLI:EU:C:2026:216, paragraph 40.

138 VRT's Article 65 submissions of 1 December 2025, p.4 and VRT's Article 65 submissions of 19 January 2026, p.4.

139 VRT's Article 65 submissions of 1 December 2025, p.4 and VRT's Article 65 submissions of 19 January 2026, p.4.

140 VRT's Article 65 submissions of 1 December 2025, p.4 and VRT's Article 65 submissions of 19 January 2026, p.4.

141 VRT's Article 65 submissions of 1 December 2025, p.5 and VRT's Article 65 submissions of 19 January 2026, p.5.

142 VRT's Article 65 submissions of 1 December 2025, p.6 and VRT's Article 65 submissions of 19 January 2026, p.6.

143 NOYB's Article 65 submissions of 12 January 2026, paragraph 163.

144 NOYB's Article 65 submissions of 12 January 2026, paragraph 166.

145 NOYB's Article 65 submissions of 12 January 2026, paragraph 167.

146 NOYB's Article 65 submissions of 12 January 2026, paragraph 168.

enforced. In their view, compliance with the law cannot be considered an advantage under the rule of law¹⁴⁷.

- 96 Next, NOYB argues in essence that the Data Subject should not be required to justify why they visited the Controller's publicly available website, as this would lead to a reversal of the burden of proof where the Data Subject would only have rights if they visited the website for a 'correct' reason¹⁴⁸. NOYB also points out that there is no general European law principle that 'test or model cases' are unlawful and considers that none of the constitutive elements of the abuse of right are fulfilled¹⁴⁹.
- 97 On a preliminary note, the EDPB highlights that, if applied too broadly, the general EU law principle prohibiting abuse of rights can have the effect of unduly restricting the application of rights conferred by EU law, including of the fundamental right to data protection enshrined in Article 8 CFR which finds a concrete expression in, among others, the right to lodge a complaint under Articles 77 and 80 GDPR. Mindful of the need to balance the principle of prohibition of abuse against other general principles of EU law, such as the principle of legal certainty and the protection of legitimate expectations¹⁵⁰, the EDPB considers that it has to be subject to a strict interpretation and meet the threshold set out in the CJEU case law, including in terms of burden of proof and evidential requirements.
- 98 Taking into account the CJEU case law explained above, in order to assess the existence of the alleged abuse of rights, the EDPB deems it appropriate to check both the objective and the subjective components of such abuse.
- 99 First, in so far as the **objective component** of the alleged abuse is concerned, the EDPB notes that the relevant EU law provisions to take into account for the assessment of the alleged abuse are Article 77 GDPR and Article 80(1) GDPR. This is also explicitly stated by the BE SA in the Draft Decision¹⁵¹ and recognised by the AT SA Objection¹⁵². The main purpose of these provisions is, first, to enable a data subject to lodge a complaint with a supervisory authority where they consider that the processing of their personal data infringes the GDPR; and, secondly, to allow a data subject, where they consider that their rights under the GDPR are infringed, to mandate a representative meeting the conditions of Article 80(1) GDPR to lodge the complaint on their behalf.
- 100 The EDPB also takes note of the BE SA's view that there are sufficient elements to conclude that the objective element of the alleged abuse is present due to the 'artificial construction of the complaint' and the fact that the initiative for lodging the complaint lied with NOYB¹⁵³. The EDPB considers that it is, indeed, obvious from the information publicly shared by NOYB, as well as from their written submissions¹⁵⁴, that there has been an organised process of drafting and filing of complaints as part of a project where NOYB played a leading role and which

147 NOYB's Article 65 submissions of 12 January 2026, paragraph 168.

148 NOYB's Article 65 submissions of 12 January 2026, paragraph 170.

149 NOYB's Article 65 submissions of 12 January 2026, p. 31, paragraph 172.

150 Opinion of AG POIARES MADURO of 7 April 2005 in Case C-255/02 Halifax, paragraph 84.

151 Draft Decision, paragraphs 27, 30, 38 and 41; see also Draft Decision, footnote 21.

152 AT SA Objection, p.3

153 Draft Decision, paragraph 29.

154 NOYB's Article 65 submissions of 12 January 2026, paragraphs 46 and 47 where NOYB explains that they have brought complaints via volunteers working with them to ensure that 'procedures are stable, professionally run and [...] just see the light of day' and that these cases came from 'walk-in' complaints or public outrage.

consisted of targeting controllers on the basis of pre-defined criteria and the use of automated means¹⁵⁵.

- 101 However, considering that, in the present case, the Data Subject has successfully mandated an organisation under Article 80(1) GDPR to file a complaint on their behalf under Article 77 GDPR¹⁵⁶, the EDPB takes the view that the objective component of the abuse is absent since not only have the conditions laid down by the EU rules been formally observed, but the aim pursued by these rules also appears to have been fulfilled.
- 102 In the second place, the EDPB examines the subjective element of the alleged abuse, i.e. an abusive intention to obtain an advantage other than fulfilling the purpose of the legal provisions at stake.
- 103 In order to assess the subjective element of the alleged abuse, the EDPB needs to assess whether by filing the complaint under Article 77 GDPR in conjunction with Article 80(1) GDPR, the Complainant sought to rely on these provisions not with a view to achieving their objectives, but with the aim of obtaining an undue advantage from them.
- 104 The EDPB notes that the BE SA in the Draft Decision makes a clear distinction between the objectives pursued by the Data Subject and the objectives pursued by their representative (NOYB) and takes the view that the ‘actor’ of the alleged abuse is NOYB¹⁵⁷. The EDPB also notes that VRT shares the BE SA’s view¹⁵⁸.
- 105 However, given that Article 77 GDPR and Article 80(1) GDPR are both phrased to refer to a right of *the data subject*, the EDPB takes the view that the objectives pursued by the Data Subject should not be distinguished from that of NOYB, considering that NOYB acts on behalf of the Data Subject. In this regard, the EDPB also takes into account that the Data Subject explicitly submitted on 7 January 2026 that they ‘personally consider [their] data protection rights to have been violated’ and are ‘seeking redress for the violation of these rights’, and that the ‘page visit and the complaint [...] were based on [their] decision’¹⁵⁹.
- 106 In addition, the EDPB recalls that, in line with the CJEU case law, in order for an SA to be able to refuse the benefit of a right conferred by EU law due to an alleged abuse of rights, it should be able to sufficiently demonstrate the existence of such abuse, since it bears the burden of proof¹⁶⁰.
- 107 The EDPB takes note of the BE SA’s view that NOYB’s policy objectives are linked to interests other than those of the individual Data Subject, such as strategic objectives of the board or the wishes of donors¹⁶¹ but finds no concrete evidence supporting this view. The EDPB notes NOYB’s position on this matter which argues that ‘the [NOYB] board is not involved in any day-to-day litigation’, that ‘almost all cases are typically run by the [NOYB] legal team alone’¹⁶²

155 Draft Decision, p.5; See also NOYB’s Article 65 submissions of 12 January 2026, paragraph 73 where NOYB explains that the Data Subject (being ██████ native speaker) likely looked at the ‘most visited’ list ██████ Belgian Websites’ and NOYB’s Article 65 submissions of 12 January 2026, paragraphs 97 and 197 where NOYB explains the use of NOYB’s software by the Data Subject, which pre-scanned websites and collected evidence of the visit, but the Data Subject was the one taking all crucial acts.

156 The EDPB underlines that in the present case the validity of the mandate was not disputed in itself. The EDPB also recalls the need for SAs to assess the validity of the mandate in light of Art. 80(1) GDPR and relevant national law.

157 Draft Decision, paragraphs 39-40.

158 See paragraph 91 of this Binding Decision

160 See for example Judgment of the Court of Justice of 9 January 2025 in case *Österreichische Datenschutzbehörde v F R*, C-416/23, ECLI:EU:C:2025:3, paragraph 50; By analogy, see also Art. 57(4) GDPR.

161 Draft Decision, paragraph 22.

162 NOYB’s Article 65 submissions of 12 January 2026, paragraph 68.

and that ‘having a personal interest in furthering the cause of [NOYB] is a precondition to be a volunteer with [NOYB]’¹⁶³.

- 108 It appears, on the basis of the information available to the EDPB, including the submissions of the Complainant, that the interest in filing the Complaint was to bring the alleged infringement by the Controller to the attention of the competent SA, provide it with sufficient evidence thereof and put an end to this alleged infringement. In this regard, the EDPB finds it particularly relevant that – as underlined by the AT SA - during a complaint procedure, certain evidence must be provided by the complainant and 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 website¹⁶⁴. The EDPB considers that some complainants may have an interest in requiring technical assistance to provide such evidence¹⁶⁵.
- 109 The EDPB agrees with the AT SA’s view that it is apparent from Article 80(1) GDPR that organisations like NOYB are established precisely for the purpose of contributing to the effective protection of individuals’ personal data¹⁶⁶.
- 110 Based on the documents available to the EDPB, there are insufficient elements to conclude that NOYB has pursued its own interests and not those of the Data Subject, or that the Data Subject has been ‘instructed’ on how to act without being part of the initiative behind the complaint.
- 111 The ability to file a complaint with professional assistance and representation by NOYB fits with the intended purpose of Article 77 GDPR and Article 80(1) GDPR, and nothing demonstrates that it allows the Complainant to obtain an undue benefit beyond achieving that purpose. More specifically, neither the BE SA nor the Controller demonstrate that a compensation under Article 82 GDPR or any other financial benefit has been sought.
- 112 For all these reasons and on the basis of the information available¹⁶⁷, the EDPB considers that, in this case, the Complainant did not abuse their right to lodge a complaint under Article 77 GDPR and their right to representation under Article 80(1) GDPR.
- 113 Therefore, the EDPB decides that the BE SA should not dismiss the Complaint on the basis of abuse of law, and orders the BE SA to assess the Complaint on its merits with a view to submitting, in accordance with Article 60(3) GDPR, a new draft decision to the CSAs.
- 114 Consequently, the EDPB instructs the BE SA to inform the controller about the outcome of this dispute resolution procedure and about the envisaged next steps¹⁶⁸ within one month from the notification of this Binding Decision¹⁶⁹. The same communication has to be sent to the Complainant by the AT SA¹⁷⁰.

5 Binding Decision

163 NOYB’s Article 65 Submissions of 12 January 2026 , paragraph 77.

164 AT SA Objection, p.5.

165 This was also argued in NOYB’s Submissions to the EDPB of 26 March 2026, p. 2, paragraph 5.

166 AT SA Objection, p. 5.

167 Which does not include evidence justifying a different conclusion.

168 See also Judgment of the General Court of 29 January 2025, in Joined cases *Data Protection Commission v European Data Protection Board*, T-70/23, T-84/23 and T-111/23, OJ C 127 paragraphs 36 and 45. The EDPB considers that, in the present case, a partial decision, which would be limited to the conclusion that the Complaint is not dismissed on the basis of abuse of law, would not be strictly necessary, without prejudice to national law and practice.

169 Art. 65(6) GDPR.

170 Art. 77(2) GDPR.

115 In light of the above, and in accordance with the task of the EDPB under Article 70(1)(t) GDPR to issue binding decisions pursuant to Article 65 GDPR, the EDPB issues the following Binding Decision in accordance with Article 65(1)(a) GDPR.

116 The EDPB addresses this Binding Decision to the LSA in this case (the BE SA) and to all the CSAs, in accordance with Article 65(2) GDPR.

On the objection of the AT SA concerning whether the Complaint should be dismissed based on an abuse of Article 77 GDPR and Article 80(1) GDPR

117 The EDPB decides that the objection of the AT SA meets the requirements of Article 4(24) GDPR.

118 The EDPB instructs the BE SA not to dismiss the Complaint due to an abuse of Article 77 GDPR and Article 80(1) GDPR.

6 Final remarks

119 The EDPB reiterates that its current decision is without any prejudice to any assessments the EDPB may be called upon to make in other cases, including with the same parties, taking into account the contents of the relevant draft decision and the objections raised by the CSAs.

120 The BE SA and the AT SA shall inform the Board of the date when the communication or partial decision specifying that the Complaint will be assessed on the merits¹⁷¹ is notified to the Controller and to the Complainant¹⁷². This Binding Decision will be made public pursuant to Article 65(5) GDPR without delay after this information¹⁷³.

121 The BE SA and/or the AT SA, as the case may be, will communicate its final decision to the Board¹⁷⁴. Pursuant to Article 70(1)(y) GDPR, the BE SA's/AT SA's final decision communicated to the EDPB will be included in the register of decisions which have been subject to the consistency mechanism.

For the European Data Protection Board

The Chair

(Anu Talus)

¹⁷¹ See footnote 168.

¹⁷² Art. 65(6) and 77(2) GDPR.

¹⁷³ Art. 65(5) and (6) GDPR.

¹⁷⁴ This refers to the final decision on the merits, adopted pursuant to Art. 60(7), 60(8) and 60(9) GDPR.