



noyb - European Centre for Digital Rights
Goldschlagstrasse 172/4/3/2
1140 Vienna
AUSTRIA

Autoriteit Persoonsgegevens

P.O. Box 93374
2509 AJ The Hague
The Netherlands

Vienna, 14 December 2023

noyb Case-No:



Complainant:



Represented under
Article 80 GDPR by:

noyb - European Center for Digital Rights
Goldschlagstr. 172/4/3/2, 1140 Vienna, Austria

Respondent:

Twitter International Unlimited Company (hereinafter: "X")
One Cumberland Place, Fenian Street
Dublin 2, D02 AX07 Ireland

Concerning:

Articles 9(1) and 5(1)(a) GDPR

COMPLAINT UNDER ARTICLE 77 GDPR

1. REPRESENTATION

1. *noyb* - European Center for Digital Rights is a not-for-profit organisation active in the field of protection of the rights and freedoms of data subjects, located at Goldschlagstraße 172/4/3/2, 1140 Vienna, Austria, registration number ZVR: 1354838270 (hereinafter: "*noyb*") (**Annex 1**).
2. *noyb* represents the complainant under Article 80(1) GDPR (**Annex 2**).

2. FACTS OF THE CASE

3. On [REDACTED], while visiting the online platform "X" (until recently known as Twitter), the complainant was shown an advertisement commissioned by the European Commission DG Migration & Home Affairs (hereinafter "European Commission"), via their @EUHomeAffairs account on X.¹ (**Annex 3**, line 159426)
4. This ad contained the following text on the proposed EU Child Sexual Abuse Regulation (Chat control regulation):

"Abusers hide behind their screens while children suffer in silence. It is high time to end child sexual abuse #online Majority of citizens support the proposal #EUvsChildSexuelAbuse And you? Read here!"

5. A 47-second video was part of this ad and contained the following text:

"Did you know? 95% of Dutch people say detection of child abuse is more important or as important as the right to online privacy. 84% of Dutch people support automatic detection by internet companies of photos and videos of child sexual abuse and cases of grooming in online messages, even those sent with end-to-end encryption (80%). In the Netherlands, 78% support the EU legislative proposal to prevent and combat child sexual abuse. We need an EU law now, time is running out #EuvsChildSexualAbuse European Commission DG Migration & Home Affairs ec.europa.eu/eu-vs-child-sexual-abuse ©European Union 2023"

6. The complainant downloaded an archive of his personal data on the platform X, via the "Download an archive of your data" functionality (**Annex 3a**). This archive contains information about the ads shown to the complainant (in a file called ad-engagements.js), it follows from that information that the complainant saw the ad as described above and that the complainant was therefore targeted by the European Commission's ad campaign on X (**Annex 3**).²
7. The complete ad the complainant saw, with tweet ID 1703693679297220882, can still be viewed at this link: <https://twitter.com/EUHomeAffairs/status/1703693679297220882>. **Image 1** is a screenshot of the ad shown to the complainant. Image 1 is also attached to this complaint as **Annex 4**.

¹ <https://twitter.com/EUHomeAffairs>.

² The cryptographic SHA256 hash related to the ad-engagements.js file is:



Image 1.

8. A general ads report downloaded from X's Ads repository - *"where you can search for advertisers and see the ad details including all creatives, targeting information, and reach"*³ - shows that the European Commission's ad campaign on the platform X targeted X users from the Netherlands during the last quarter (**Annex 5**) ("general ads report").
9. This general ads report shows that with this ad campaign on the Chat control regulation, the European Commission, between 18 September 2023 and 27 September 2023, targeted X users from the Netherlands who spoke Dutch and were 18 years of age or older (column F "Targeted Segments" in **Annex 5**). In addition, 44 "targeting segments" were explicitly excluded by the European Commission (column G "Excluded Targeting Segments" in **Annex 5**). Of these 44 "Excluded Targeting Segments", 36 segments refer to political parties (such as AfD, Vox, Sinn Féin and English Defence League), politicians (such as Viktor Orbán, Marine Le Pen and Giorgia Meloni) or terminology related to euroscepticism and/or nationalist political views (such as brexit, nexit and #EUCorruption), and 6 segments refer to religious beliefs (such as Christian, FEMYSO and anti-Christian). The complainant has listed these "Excluded Targeting Segments" in **Annex 6**. The ads were shown more than 600,000 times in total (column H "Impressions" in **Annex 5**).

³ <https://ads.twitter.com/ads-repository>.

10. In addition to being shown to the complainant on [REDACTED] on platform X, ads from the same ad campaign were shown to the complainant at least thirteen more times via X, in both Dutch and English:

Date and time:	Line in Annex 3:	Dutch or English:
[REDACTED]	158114	English
[REDACTED]	170059	Dutch
[REDACTED]	191042	English
[REDACTED]	220540	Dutch
[REDACTED]	221346	Dutch
[REDACTED]	235159	English
[REDACTED]	235842	Dutch
[REDACTED]	246982	English
[REDACTED]	251278	Dutch
[REDACTED]	256423	English
[REDACTED]	264898	Dutch
[REDACTED]	270361	English
[REDACTED]	320288	Dutch

3. CONTEXT: ONLINE MICROTARGETING

11. X offers its clients several options for targeted advertising, including "*Keyword targeting*". According to X, "*Keyword targeting*" entails the following:

*"Keyword targeting allows you to reach people on X based on keywords in their search queries, recent posts, and posts they recently engaged with. This targeting option puts you in the best position to reach the most relevant people, drive engagements, and increase conversions."*⁴

12. Advertisers - like the European Commission - can select target audiences for their ads on X, by adding "keywords" (the "Targeted Segments" in **Annex 5**) or excluding "keywords" (the "Excluded Targeting Segments" in **Annex 5**).

⁴ <https://business.twitter.com/en/help/campaign-setup/campaign-targeting/keyword-targeting.html> (**Annex 7**).

13. According to X, excluding such "targeting segments" works in two ways: "1. It prevents your campaign from serving to users who have engaged with the excluded word(s). 2. It prevents your campaign from serving in Search results for excluded word(s)."⁵
14. X uses: "[...] signals such as link clicks, expands, likes, replies, and more to consider someone having interacted with a keyword, as well as searches containing the keyword."⁶
15. This makes it possible to show targeted ads to X users, based on certain individual characteristics, such as behaviour. This is called microtargeting.⁷
16. Microtargeting makes it possible, among other things, to advertise political views that match the interests of the individuals targeted by the ads. Such as, for example, a political call for more scholarships for students.⁸ Indirect identification of individual persons is also possible through microtargeting.⁹
17. For example, microtargeting was reportedly used by Cambridge Analytica during the 2016 presidential election in America, facilitating Donald Trump's narrow victory in several US states.¹⁰ After the Brexit referendum in the UK, microtargeting was investigated by the UK *Information Commissioner's Office* and several companies and parties were sanctioned.¹¹
18. Because of such controversy, targeted advertising based on special categories of personal data such as "*Political affiliation and/or beliefs*" or "*Religious or philosophical affiliation and/or beliefs*" is also prohibited under X's own advertising policy.¹² This is also evident from X's keyword targeting FAQ: "*Are there any prohibited keywords? Yes. Per our Ads Policies, advertisers will be prohibited from targeting keywords that involve sensitive categories.*"¹³
19. In 2018 the European Commission also highlighted that microtargeting techniques pose:
- "[...] a serious threat to a fair, democratic electoral process and has the potential to undermine open debate, fairness and transparency which are essential in a democracy. The Commission considers that it is of utmost importance to address this issue to restore public trust in the fairness of the electoral process. [...] [The GDPR] provides the Union with the tools necessary to address instances of unlawful*

⁵ <https://business.twitter.com/en/help/campaign-setup/campaign-targeting/keyword-targeting.html> (Annex 7).

⁶ <https://business.twitter.com/en/help/campaign-setup/campaign-targeting/keyword-targeting.html> (Annex 7).

⁷ Frederik Zuiderveen Borgesius et. al, 'Online Political Microtargeting: Promises and Threats for Democracy', 2018, *Utrecht Law Review*, Vol. 14, Issue 1, pp. 82-96, p. 82, accessed 19 October 2023 at <https://doi.org/10.18352/ulr.420>.

⁸ Frederik Zuiderveen Borgesius et. al, 'Online Political Microtargeting: Promises and Threats for Democracy', 2018, *Utrecht Law Review*, Vol. 14, Issue 1, pp. 82-96, p. 83, accessed 19 October 2023 at <https://doi.org/10.18352/ulr.420>.

⁹ José González Cabañas, Ángel Cuevas, Rubén Cuevas, 'Facebook Use of Sensitive Data for Advertising in Europe', 2018, p. 1 & p. 12, accessed 19 October 2023 at <https://doi.org/10.48550/arXiv.1802.05030>.

¹⁰ Channel 4, 'Exposed: Undercover secrets of Trump's data firm', 2018, accessed 19 October 2023 at <https://www.channel4.com/news/exposed-undercover-secrets-of-donald-trump-data-firm-cambridge-analytica>.

¹¹ Information Commissioner's Office (ICO), 'Investigation into the use of data analytics in political campaigns', 2018, pp. 7-12, accessed 19 October 2023 at <https://ico.org.uk/media/action-weve-taken/2260271/investigation-into-the-use-of-data-analytics-in-political-campaigns-final-20181105.pdf>.

¹² <https://business.twitter.com/en/help/ads-policies/campaign-considerations/targeting-of-sensitive-categories.html> (Annex 8).

¹³ <https://business.twitter.com/en/help/campaign-setup/campaign-targeting/keyword-targeting.html> (Annex 7).

use of personal data in the electoral context. However, only a firm and consistent application of the rules will help to protect the integrity of democratic politics.”¹⁴

20. In 2021, the European Commission also explicitly proposed banning the use of targeting techniques in political advertising that involve the processing of special categories of personal data. The proposed article reads as follows:

“Targeting or amplification techniques that involve the processing of personal data referred to in Article 9(1) of Regulation (EU) 2016/679 and Article 10(1) of Regulation (EU) 2018/1725 in the context of political advertising are prohibited.”¹⁵

21. In the press release of the Council of the EU of the 7th of November 2023 about this regulation proposal, is written:

„[...] there will be a blanket ban on profiling using special categories of personal data, such as data revealing racial or ethnic origin or political opinions.”¹⁶

22. Given the above, it is striking that X enabled a microtargeting ad campaign of the European Commission who tried to influence the public opinion in relation to a legislative process.

23. On top of this, the microtargeting ad campaign in question seeks to influence users in favour of the controversial Chat control regulation. Many stakeholders have expressed serious concerns about the current proposal in terms of incompatibility with European fundamental rights, including (among others) the EDPB and the EDPS, the Council of the EU and the LIBE Committee of the EP.^{17,18} National governments and parlements have also been critical of the proposal, including Dutch MPs.¹⁹

4. SUPERVISORY AUTHORITY AND COOPERATION

24. The complainant is a [REDACTED]. Therefore, this complaint is addressed to the Dutch Supervisory Authority.

¹⁴ European Commission, 'Commission guidance on the application of Union data protection law in the electoral context A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018', 2018, COM/2018/638 final, accessed 19 October 2023 at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0638>.

¹⁵ Article 12(1) of EC proposal COM/2021/731 final, 25 November 2021; cf. Autoriteit Persoonsgegevens, 'Brief microtargeting verkiezingen', 1 november 2023, [link](#), p. 2.

¹⁶ <https://www.consilium.europa.eu/en/press/press-releases/2023/11/07/transparency-and-targeting-of-political-advertising-eu-co-legislators-strike-deal-on-new-regulation/>.

¹⁷ EDPB-EDPS, Joint Opinion 04/2022 on the Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse, [link](#); Council of the EU, 'Opinion of the Legal Service - Proposal for a Regulation laying down rules to prevent and combat child sexual abuse - detection orders in interpersonal communications - Articles 7 and 8 of the Charter of Fundamental Rights - Right to privacy and protection of personal data - proportionality', 8787/23, [link](#); EPRS (requested by LIBE committee), 'Proposal for a regulation laying down the rules to prevent and combat child sexual abuse - Complementary impact assessment', [link](#); see also <https://edri.org/our-work/most-criticised-eu-law-of-all-time/>.

¹⁸ <https://www.volkskrant.nl/columns-opinie/opinie-europese-commissie-misleidt-burgers-met-desinformatiecampagne-en-illegale-advertenties~b86cae2c/>.

¹⁹ <https://www.tweedekamer.nl/kamerstukken/moties/detail?id=2023Z07239&did=2023D17019>.

25. The complainant also filed a separate complaint against the responsible Directorate General of the European Commission with the EDPS for the facts described in paragraph 2 of this complaint. The complainant will inform the EDPS of this complaint.

26. The exact modalities of cooperation between the EDPS and other (national) data protection authorities, such as the Autoriteit Persoonsgegevens, are still unclear. This also follows from the recent EDPB-EDPS joint opinion 01/2023:

*"[...] data protection authorities ('DPAs') have encountered several obstacles to efficient cooperation and enforcement. Such obstacles have resulted, in particular, from a lack of clarity on the terms of cooperation between the EDPS and national SAs. Moreover, the current legal framework governing cooperation between the national SAs and the EDPS is fragmented, and national SAs and the EDPS are currently not able to use the same IT tools to securely exchange information."*²⁰

27. This complaint can serve as an example of good and sincere cooperation between the Autoriteit Persoonsgegevens and the EDPS.

5. GROUNDS FOR THE COMPLAINT

5.1. Violations

28. X breached the GDPR as follows:

- (a) X processed special categories of personal data of the complainant in violation of Article 9 GDPR.
- (b) X unlawfully processed the complainant's data in breach of Article 5(1)(a) GDPR.

5.2. Unlawful processing of special categories personal data (Article 9 GDPR)

5.2.1. X processed special categories of personal data

29. Article 9(1) GDPR prohibits "*Processing of personal data revealing [...] political opinions, religious or philosophical beliefs [...].*" Consequently, the data mentioned in this article are special categories of personal data.

30. Special categories of personal data derived from other information also fall within the scope of Article 9 GDPR. The EDPB emphasises:

*"If a social media provider or a targeter uses observed data to categorise users as having certain religious, philosophical or political beliefs - regardless of whether or not this categorisation is correct/true - this categorisation of the users must obviously be seen as processing special category of personal data in this context."*²¹ (emphasis added)

²⁰ EDPB-EDPS, Joint opinion 01/2023 on the Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679, para. 184, [link](#).

²¹ EDPB, Guidelines 8/2020 on the targeting of social media users, para. 123.

31. Your authority itself also states the following:

*"The increasing amount of personal data available in society can be used to profile individuals, classify them into groups and provide them with highly targeted (political) messages. [...]. The AP points out a risk in this. The more personal characteristics are combined, the sooner a political opinion can be derived from them. If you make use of the possibilities outlined, the chance of processing special personal data is soon present. As mentioned, it is in principle prohibited to process special personal data and you run the risk of violating the GDPR."*²² (emphasis added)

32. The CJEU also confirmed that the processing of personal data that indirectly involves sensitive information about an individual (so-called "proxy data") constitutes processing of special categories of personal data.²³

33. Accordingly, a derived interest - i.e. calculated or extrapolated from other information - in a particular political trend or religious movement should be considered as special categories of personal data.²⁴ For example, the classification of a user under "interested in euroscepticism", resulting from repeated visits to websites dedicated to the topic of brexit, is a processing of special category personal data. Establishing such correlations is a common way of generating data about data subjects. Inferring from a user's online behaviour that he is "not interested in euroscepticism" is also a classification that amounts to processing special category personal data. Indeed, in both cases, the assessment of a user's political opinion is a prior requirement for the subsequent categorisation. The same applies to religious beliefs.²⁵

34. Moreover, the term "political opinion" should also be interpreted broadly, as data "revealing" these opinions also fall within the scope of Article 9(1) GDPR:

*"Die Kategorie der ‚Daten, aus denen politische Meinungen hervorgehen‘ will jegliche Form von Informationsgrundlage privilegieren, die einen Rückschluss auf die politische Einstellung einer Person zulässt - dies umfasst sowohl die Zustimmung als auch die Ablehnung einer politischen Idee [...]."*²⁶

[Translation: The category "data revealing political opinions" seeks to privilege any form of information base from which conclusions can be drawn about a person's political views - this includes both approval and disapproval of a political idea. [...].]

*"In Zweifelsfällen ist ein weites Verständnis des Begriffs ‚politische Meinung‘ angezeigt, um die Grundlagen der politischen Meinungsbildung nicht zu gefährden."*²⁷

[Translation: When in doubt, a broad understanding of the term "political opinion" is indicated in order not to jeopardise the foundations of political opinion-forming].

35. Therefore, the use of the 36 segments referring to political parties, politicians or political terms and the 6 segments referring to religious beliefs to display a targeted advertisement

²² Autoriteit Persoonsgegevens, 'Brief microtargeting verkiezingen', 1 November 2023, [link](#), p. 2.

²³ CJEU 1 August 2022, C-184/20 (*OT/Vyriausioji tarnybinės etikos komisija*).

²⁴ Cf. EDPB, Guidelines 8/2020 on the targeting of social media users, para. 125 and Example 13.

²⁵ Cf. EDPB, Guidelines 8/2020 on the targeting of social media users, Example 11.

²⁶ Albers/Veit in BeckOK DatenschutzR, 42nd Ed. 1.11.2021, DS-GVO Art. 9, margin number 36.

²⁷ Schiff in Ehmman/Selmayr, 2nd Ed. 2018, DS-GVO Art. 9, margin number 19.

based on the complainant's political views and religious beliefs constitutes processing of the complainant's special personal data (cf. **Annex 6**).

36. As the personal data processed relate to the complainant and were processed in the context of a microtargeting campaign related to his X account, personal data of an identified natural person were processed (Article 4(1) GDPR).

5.2.2. X is a controller

37. Under Article 4(7) GDPR, a "controller" is a "natural or legal person, public authority, agency or any other body which, alone or jointly with others, determines the purposes and means of the processing of personal data. [...]".

38. According to the CJEU, Facebook as a platform provider was a joint data controller with the operator of a fan page on Facebook:

*"In the present case, Facebook Inc. and, as far as the Union is concerned, Facebook Ireland are to be considered as those who primarily determine the purposes and means of processing the personal data of Facebook users and those who visit Facebook fan pages and thus fall within the notion of 'controller' within the meaning of Article 2(d) of Directive 95/46, which is not in doubt in this case."*²⁸

The Court of Justice issued a similar decision in *Fashion ID* regarding a Facebook like-button.²⁹

39. The EDPB also confirmed that targeted advertising on social media based on the interests of social media users creates a situation of joint controllership for both the social media provider and the advertiser.³⁰

40. This also follows from X's Privacy Policy³¹ and the Twitter for Business FAQ. This FAQ includes:

*"Is Twitter a data controller or a data processor? In general, Twitter is the controller of data we use as part of our advertising services or data that we share with you as a supplier. Additionally, Twitter is the data controller for data derived from activity on Twitter. Where Twitter is the controller, we use that data in accordance with our Privacy Policy and the terms of our data protection agreements."*³²

41. In the present case, X determined the functions of its platform and in particular the so-called "keyword targeting" as a part of its advertising services. By doing so, the respondent determined the purpose of the personal data processing, which, among other aspects, serves its own business goals. If it was not for this purpose, the platform of X would not offer such a function to process personal data.³³

²⁸ CJEU 5 June 2018, C-210/16 (*Wirtschaftsakademie*), para. 30; cf. EDPB Guidelines 08/2020 on the targeting of social media users, para. 35.

²⁹ CJEU 29 July 2019, C-40/17 (*Fashion ID*), para. 84.

³⁰ EDPB Guidelines 08/2020 on the targeting of social media users, para. 22 and 81.

³¹ <https://twitter.com/en/privacy> (**Annex 9**).

³² <https://gdpr.twitter.com/en/faq.html> (**Annex 10**).

³³ Additionally, the CJEU requires that social media providers, such as X, check, when processing personal data, if such personal data could be special category personal data. The intention to process special category data or not is irrelevant. See CJEU 4 July 2023, C252/21 (*Bundeskartellamt*), para. 68-70.

42. X further determined the means of such data processing, as is logical when it is X's platform that is used for such processing. Without the X platform and X's "advertising service" the contested data processing could not have taken place.³⁴
43. Based on the foregoing, X is to be considered a controller for the processing of special categories of personal data of the complainant.
44. The role of the European Commission is irrelevant here, as this complaint is directed against X only.

5.2.3. Conditions of Article 9(2) GDPR are not met

45. In principle, Article 9(1) GDPR prohibits the processing of special categories of personal data. The processing of such data is only allowed in case of an exceptional circumstance pursuant to Article 9(2) GDPR.
46. However, none of the relevant exemptions under Article 9(2) GDPR are met in this case. In detail:
- No explicit consent was obtained from the complainant for this specific use of their special category personal data (Article 9(2)(a) GDPR).
 - The complainant has not manifestly made his political opinion or religious beliefs public (Article 9(2)(e) GDPR), as the intention to make such information public is not explicitly evidenced by any active conduct on the part of the complainant.^{35,36,37}
47. The other exceptions in Article 9(2) GDPR do not apply either.
48. Consequently, X violated Article 9(1) GDPR.

5.3. Unlawful data processing (Article 5(1)(a) GDPR)

49. Under Article 5(1)(a) GDPR, personal data must be "*processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency')*".
50. X processed special categories of personal data of the complainant without meeting any of the conditions of Article 9(2) GDPR and the processing was therefore unlawful (see section 5.2.3 of this complaint).
51. Furthermore, under Article 26(3) of the Digital Services Act (Regulation (EU) 2022/2065) ("DSA"), X as an online platform provider shall not display advertisements to the complainant "*on the basis of profiling as defined in Article 4(4) of Regulation (EU) 2016/679 using special categories of personal data as referred to in Article 9(1) of Regulation (EU) 2016/679.*"

³⁴ Cf. <https://business.twitter.com/en/help/campaign-setup/campaign-targeting/keyword-targeting.html> (Annex 7).

³⁵ Cf. Autoriteit Persoonsgegevens, 'Brief microtargeting verkiezingen', 1 November 2023, [link](#), p. 3.

³⁶ EDPB, Statement 2/2019 on the use of personal data in the course of political campaigns, p. 2, footnote 1.

³⁷ This may also be derived *a sensu contratio* from CJEU 4 July 2023, C-252/21 (*Bundeskartellamt*), para. 85.

52. It already follows from section 5.2 of this complaint that advertisements based on special categories of personal data were presented to the complainant on X. This also involved the use of profiling, within the meaning of Article 4(4) GDPR:

"any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;"

53. That the respondent engages in profiling for advertising purposes is also confirmed, among other things, by the following text on X's website explaining how "keyword targeting" works:

*"The keyword targeting feature serves ads to users that have historically posted about or engaged with specific keywords or topics on X. This feature should be used when trying to target people based on their past behaviour on X and general interests (e.g. car enthusiasts, athletes, sports fans, gamers, etc.)."*³⁸

54. Correspondingly, X violated Article 26(3) DSA.

55. As X violated Article 9(2) GDPR and Article 26(3) DSA, the personal data processing is also in violation of the lawfulness principle under Article 5(1)(a) GDPR.³⁹

5.4. Burden of proof

56. A controller, such as X, has the burden of proof regarding the lawfulness of data processing.⁴⁰ This already follows from the general accountability principle of Article 5(2) GDPR.⁴¹

57. In addition, this also follows from the general principles on burden of proof.⁴² According to these principles, the party bears the burden of proof for aspects that are part of a legal norm that are favorable to them. Article 9(1) GDPR contains a prohibition on the processing of special categories of personal data. An exception to this prohibition can only be made if one of the conditions in Article 9(2) GDPR is met. In this respect, the exceptions favour X and it is therefore for X to prove that the requirements of such an exception are met.

6. REQUESTS AND SUGGESTIONS

6.1. Request for a comprehensive investigation

58. In view of the above, the complainant requests the competent authority to fully investigate this complaint in accordance with the powers granted to it under Article 58(1) GDPR.

³⁸ <https://business.twitter.com/en/help/campaign-setup/campaign-targeting/keyword-targeting.html> (Annex 7).

³⁹ Cf. CJEU 7 December 2023 (*SCHUFA I*), C-634/21, para. 67.

⁴⁰ Schantz in BeckOK DatenschutzR, 42nd Ed. 1.11.2021, DS-GVO Art. 5, margin number 39.

⁴¹ Cf. CJEU 7 December 2023 (*SCHUFA I*), C-634/21, para. 67.

⁴² Schulz in Gola/Heckmann, 3rd Ed. 2022, DS-GVO Art. 7, margin number 63.

6.2. Request for declaratory decision and exercise of corrective powers

59. In view of the above, the complainant asks the competent authority to find that X:

- (a) breached Article 9(1) GDPR by processing special categories of personal data of the complainant without meeting any of the conditions of Article 9(2) GDPR.
- (b) breached Article 5(1)(a) GDPR by unlawfully processing special categories of personal data of the complainant.

60. The complainant further requests that X be prohibited from further processing special categories of personal data of the complainant for advertising purposes under Article 58(2)(f) GDPR.

6.3. Suggestion to impose fine

61. The complainant suggests that the violations should be subject to a fine that is effective, proportionate and dissuasive, as provided for in Article 83(1) GDPR. In this regard, it should be taken into account in particular that:

- (a) the purpose of the data processing was to influence a democratic legislative process and that it involved not only unlawful data processing of the complainant, but also data processing of a large number of other individuals (Article 83(2)(a) GDPR);
- (b) special categories of personal data have been processed (Article 83(2)(g) GDPR);
- (c) other applicable legislation was violated (Article 83(2)(k) GDPR).

7. CONTACT

62. Communications between *noyb* and the competent authority in connection with this complaint may be made by e-mail, quoting the case number in the title of this complaint.

63. If you need further factual or legal information to deal with this complaint, we will be happy to assist you. In that case, please contact us at [REDACTED].