



Defend  Democracy



## Open letter: Concerns that Commission is giving privileged access to AI industry and targeting adverts using prohibited categorisation

Dear European Commission President Ursula von der Leyen,

*cc: Commissioner Thierry Breton, Commissioner Věra Jourová, Commissioner Dubravka Šuica, Commissioner Ylva Johansson, European Ombudsman Emily O'Reilly*

The European Commission has made it a priority to use its rules, standards and policies to tackle disinformation, exploitation and manipulation online, to combat illegal activities, and to fight against global threats to democracy. We welcome this priority.

**Yet, the undersigned – as a group of key civil society organisations (CSOs) working on democracy, transparency and corporate accountability - are concerned about allegations brought against the Directorate General for Migration and Home Affairs (DG HOME) Commissioner and certain staff members.**

**The allegations concern the undue and privileged access for certain stakeholders, including AI companies, to the Commissioner and staff drafting the Regulation laying down rules to prevent and combat child sexual abuse. Additional allegations have since been made that DG HOME has engaged in the unlawful and unethical micro-targeting of adverts on social media platforms in relation to this same law.**

Based on the activities uncovered by several recent media investigations, we are concerned by what seems to be a systematic failure of DG HOME to abide by Commission rules and principles around ethics, the better regulation agenda, and the protection of personal data. We are further troubled by the lack of evidence gathering and action of the European Commission to objectively and substantively investigate and respond to these allegations.

## **Potential conflicts of interest**

- On 25 September, investigative journalists published findings which suggest conflicts of interest by European Commissioner for Home Affairs, Ylva Johansson, DG HOME senior official Antonio Labrador Jimenez, and other unnamed Commission staff.<sup>1</sup> These reports allege that staff involved in the preparation of the proposed CSA regulation lack sufficient distance from lobbyists, that DG HOME may have been unduly influenced by AI companies, and may have improperly facilitated access to other EU officials for industry lobbyists and selected CSOs;
- On 7 October, an investigative journalist published further evidence, including that “not-for-profit start-up” US-based entity Thorn played a significant role in the drafting of the text of the CSA Regulation.<sup>2</sup> This article includes evidence that DG HOME officials and Thorn staff collaborated closely, and that Thorn was able to influence the draft regulation in order to fit their commercial interests.

If true, these allegations would mean that Commissioner Ylva Johansson may have violated the requirements for the “highest standards of ethical conduct” set out in the Code of Conduct for the Members of the European Commission, in the independence and integrity requirement in Articles 2.2 and 6.1. It would also constitute a violation of the Commission’s Staff Regulations by staff in DG HOME, and the requirement for “objectivity and impartiality” by DG HOME in its relations with the public, set out in the Code of Good Administrative behaviour.

This may also violate the better regulation agenda, which aims to ensure transparent and efficient decision-making processes: requirements that are closely related to the rule of law. The European Commission is equally bound by rule of law requirements, which are interlinked with the legitimacy and credibility of the EU institutions.

## **Alleged unlawful micro-targeted online advertising**

- On 12 October, new transparency research was published by an independent researcher about an advertising campaign allegedly run on X (formerly Twitter) in September and October 2023 by DG HOME. The content of these adverts has been criticised by members of the public and MEPs as emotionally manipulative and for making misleading claims about the proposed regulation;<sup>3</sup>

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1 <https://balkaninsight.com/2023/09/25/who-benefits-inside-the-eus-fight-over-scanning-for-child-sex-content/>

2 <https://www.ftm.eu/articles/ashton-kutchers-non-profit-start-up-makes-millions-from-fighting-child-abuse-online>

3 Posts by MEP Sophie in 't Veld: <https://twitter.com/SophieintVeld/status/1712720958438384099>. Members of the public have also reacted on social media in response to the adverts with which they were targeted.

- According to X's transparency disclosures under the EU Digital Services Act (DSA),<sup>4</sup> this campaign engaged in the micro-targeting of adverts to people on the basis of their religious and political views. Using highly sensitive data for targeting advertising is prohibited by the Digital Services Act Article 26 (3). This advertising campaign specifically targeted people in member states whose governments have opposed or raised concerns about the proposed regulation.

This seems to be an attempt by DG HOME to pressure EU member states' governments who have objected to the Commission's proposal, overstepping the Commission's mandate of proposing and facilitating good EU law-making. To the contrary, DG HOME seems to have attempted to obstruct the co-legislators' scrutiny of EU laws. The opaque practice of microtargeting also has an impact on both freedom of opinion and meaningful participation in the EU decision-making process, contributing to shrinking civic space within the EU.

### **Insufficient response from DG HOME**

The response from Commissioner Johansson, when challenged about the alleged targeting of people on the basis of their protected characteristics, was that this is "standard normal practice" for the Commission.<sup>5</sup> **We are extremely concerned about the prospect that the European Commission considers seeking support for EU laws through manipulative and prohibited ultra-targeted online advertising to be normal.**

In a letter to the European Parliament, Commissioner Johansson dismissed allegations of any conflict of interest, and claimed that the *only* opponents of the proposed CSA Regulation are Big Tech companies.<sup>6</sup> This is a misrepresentation of the debate and the political landscape, given that all independent EU institution opinions have warned that this proposal is disproportionate and will amount to mass surveillance.<sup>7</sup>

- In a blog on the Commission's website, the Commissioner sought to discredit those who oppose the proposal, for example comparing privacy advocates to "climate change deniers and spreaders of "Russian disinformation".<sup>8</sup> **We are deeply concerned that the Commissioner is using her power and platform to try to discredit certain civil society actors, while giving privileged status to others;**

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4 The relevant transparency reports are listed in the following blog from researcher Danny Mekić:  
<https://dannymekic.com/202310/undermining-democracy-the-european-commissions-controversial-push-for-digital-surveillance>

5 <https://twitter.com/YlvaJohansson/status/1712840885870698945>

6 [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_23\\_4763](https://ec.europa.eu/commission/presscorner/detail/en/statement_23_4763)

7 This includes European Data Protection Supervisor and Board opinion; the legal opinion of the Council; the Parliament's complementary impact assessment and the Regulatory Scrutiny Board

8 [https://commissioners.ec.europa.eu/news/setting-record-straight-2023-10-15\\_en](https://commissioners.ec.europa.eu/news/setting-record-straight-2023-10-15_en)

- The European Commission's Working Methods mandate guarantees equal participation for all stakeholders. While in her new blog, Commissioner Johansson asks that "we debate my [her] proposal on its merits", EDRI, "the biggest digital rights network in Europe", has stated that the Commissioner refused to meet with them and has consistently refused to substantively engage with their concerns about the law.<sup>9</sup> The coordinators of a now almost 500-strong network of technology and cyber-security experts also had to defend themselves when Commissioner Johansson refused to engage with their technical advice and instead publicly accused them of not caring about children.<sup>10</sup>

**The role of civil society as watchdogs for human rights and social justice is well-established in the EU Treaties and international human rights instruments.** CSOs are equal to political parties and the media press in terms of their relevance to democratic societies. These political goals are granted by Article 10 (freedom of expression) and Article 11 (freedom of association) of the European Convention on Human Rights.

The Charter of Fundamental Rights of the EU contains rights which correspond to rights guaranteed by ECHR. **The watchdog role of CSOs is reinforced in the rulings of the European Court of Human Rights and the Court of Justice of the EU.** The attempts by DG HOME to distract from legitimate criticism by targeting CSOs and academics is not befitting of the EU's rules for fair, balanced and objective policy and law-making. It furthermore poses a serious threat to the democratic process.

These allegations undermine the Commission's ability to act with objectivity, credibility and with the trust of its citizens, which is especially important ahead of the 2024 European elections.

We urgently await your response outlining the swift steps that the European Commission will take to investigate this alleged unethical and illegal behaviour by DG HOME staff and Commissioner in the presentation and negotiation of the proposed EU CSA Regulation.

Sincerely,

ARTICLE 19  
Civil Liberties Union for Europe  
Corporate Europe Observatory  
Defend Democracy,  
European Center for Not-for-profit Law (ECNL)  
Lobby Control

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<sup>9</sup> <https://edri.org/our-work/commissioner-johansson-cannot-be-trusted-with-the-eus-proposed-csa-regulation/>

<sup>10</sup> <https://www.euronews.com/2023/07/17/commissioner-johannsons-response-to-scientists-online-privacy-concerns-goes-after-straw-me>