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Advocate General's Opinion in Case C-797/23 | Meta Platforms Ireland (Fair Compensation)

Advocate General Szpunar: Member States may adopt support measures to ensure the effectiveness of the rights of press publishers provided that such measures do not undermine freedom of contract

The digital revolution has caused great upheaval in the media sector and, more particularly, the print media sector, faced with changing user habits, the expansion of online press review services and competition from new digital channels. Those transformations have brought about a drastic reduction in the revenues of publishers, jeopardising their business model and their essential role in democratic societies. In order to address this, several legislative initiatives have been taken, including EU provisions establishing new intellectual property rights for press publishers. However, those measures have been the subject of fierce criticism, as regards their effectiveness and legality.

In the present case, the Court is called upon to rule on the compatibility of the Italian legislation transposing the Directive on Copyright in the Digital Single Market ('the Directive').¹ The Directive introduces a specific related right for press publishers for the online use of their publications by information society service providers ('ISSPs'), such as the company Meta Platforms Ireland Limited (Meta).

Meta, which operates, inter alia, the social network Facebook, brought an action before the Regional Administrative Court, Lazio (Italy) seeking annulment of a decision of the Italian Communications Regulatory Authority (AGCOM). Meta challenges the compatibility of that decision and the applicable Italian legislation with EU law, in particular with the Directive and the Charter of Fundamental Rights of the European Union ('the Charter').

Considering that those questions raise doubts as to the interpretation of EU law, the Italian court decided to make a reference to the Court of Justice for a preliminary ruling. In particular, it questions the nature of the abovementioned right, the obligations imposed on ISSPs, and the role conferred on AGCOM in negotiations between publishers and platforms.

In his Opinion delivered today, Advocate General Maciej Szpunar finds that **the rights which the EU legislature intended to confer on press publishers do not have the general nature of copyright or other related rights**. Indeed, the purpose of the rights conferred is not merely to allow press publishers to oppose the use of their publications by ISSPs without any financial consideration. This would have been potentially more detrimental to publishers than to ISSPs. Rather, their purpose is to establish the conditions under which those publications are actually used, while allowing publishers to receive a fair share of the revenues derived by ISSPs from that use

The Member States therefore had to have a margin of discretion to ensure the effectiveness of those rights. Thus, **measures** such as the obligation for ISSPs to open negotiations, to provide certain information or not to reduce the visibility of publishers' content during those negotiations **are not, in principle, contrary to the Directive, since they do not require a contract to be concluded or a payment to be made without actual or intended use.**

The powers conferred on AGCOM – including the definition of benchmark criteria for determining remuneration, the resolution of disagreements and the monitoring of the obligation to provide information – are permissible if they are limited to assistance and do not deprive the parties of their contractual freedom. Those mechanisms aim to restore a balance in a market characterised by a strong imbalance between platforms and publishers.

Finally, according to the Advocate General, the limitations thus introduced do not undermine the freedom to conduct a business protected by the Charter, inasmuch as they pursue a public interest objective recognised by the EU legislature: strengthening the economic viability of the press, a key pillar of democracy.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ [Directive \(EU\) 2019/790](#) of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.