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Advocate General's Opinion in Case C-446/21 | Schrems (Communication of data to the general public)

AG Rantos: Privacy: a public statement by the user of a social network about his or her sexual orientation renders those data 'manifestly public', without, however, permitting their processing for the purposes of personalised advertising

In 2018, Meta Platforms Ireland presented new Facebook terms of service to its users in the European Union. Consent to those terms is required in order to sign up for or access the accounts and services provided by Facebook. Mr Maximilian Schrems, a Facebook user and activist in the field of data protection, accepted these terms. He claims to have regularly received advertisements directed at homosexuals and invitations to corresponding events. He argues that those advertisements are not based directly on his sexual orientation, but are based on an analysis of his particular interests. Dissatisfied with the processing of his data which he considers to be unlawful, Mr Schrems brought an action before the Austrian courts. Subsequently, on the occasion of a panel discussion, he publicly referred to his homosexuality, but did not publish anything on his Facebook profile.

The Austrian Supreme Court is uncertain as to the interpretation of the General Data Protection Regulation (GDPR) ¹. It asks the Court of Justice whether a network such as Facebook may analyse and process all the personal data available to it without restriction as to time for the purposes of targeted advertising. Moreover, the referring court asks the Court of Justice whether a statement made by a person about his or her sexual orientation as part of a panel discussion permits the processing of other data concerning that topic for the purposes of offering him or her targeted advertising.

With regard to the first question, Advocate General Athanasios Rantos proposes that the Court should rule that the GDPR **precludes the processing of personal data for the purposes of targeted advertising without restriction as to time**. The national court **must assess, based inter alia on the principle of proportionality, the extent to which the data retention period and the amount of data processed are justified having regard to the legitimate aim of processing those data for the purposes of personalised advertising**. As to the second question, the Advocate General takes the view, subject to the findings of fact to be made by the Austrian Supreme Court, that **the fact that Mr Schrems has made a statement in full awareness concerning his own sexual orientation during a panel discussion open to the public may constitute an act by which he 'manifestly made public' those data within the meaning of the GDPR**. He recalls that while data concerning sexual orientation fall into the category of data that enjoy particular protection and the processing of which is prohibited, that prohibition does not apply when the data are manifestly made public by the data subject. **Nevertheless, this position does not in itself permit the processing of those data for the purposes of personalised advertising**.

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.

Unofficial document for media use, not binding on the Court of Justice.

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

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Images of the delivery of the Opinion are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ [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 (General Data Protection Regulation).