



Opinion of the Advocate General to the Court of Justice Dean Spielmann in Case C-317/25 | Groupe Canal +

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Advocate General Spielmann: the consent given to an undertaking for 'its partners' to use personal data for the purposes of direct marketing is valid only if the identity of those partners is known

Otherwise, fresh consent must be obtained

In 2021, Groupe Canal + commissioned electronic direct marketing campaigns targeting approximately 3.9 million people. Their personal data had been collected by two internet service providers (ISPs). At the time of collection, the subscribers had consented to the use of their data for the purposes of marketing by the 'partners' of those providers, without those partners being identified.

The Commission nationale de l'informatique et des libertés (the French Data Protection Authority) (CNIL) found that Groupe Canal + did not have valid consent and imposed a fine of € 600 000 on it. Groupe Canal+ challenged that decision before the Conseil d'État (Council of State, France).

The Conseil d'État (Council of State) asked the Court of Justice whether the consent given to an ISP for data to be used by a category of recipients, such as its 'partners', allows each of those recipients to carry out commercial marketing activities without obtaining fresh consent. Assuming that such consent is sufficient, it also asks what degree of precision the concept of a 'category' of recipients must have.

According to Advocate General Dean Spielmann, that is not the case. Consent given at the time of data collection can permit such marketing only if it is freely given, specific, sufficiently informed and unambiguous. In order to be informed, consent must, in particular, enable the data subject to know the identity of the data controller.

Accordingly, the fact of having his or her data used by an ISP's 'partners' does not mean that the individual has consented to receive commercial communications from any company falling within that category. **Where the identity of the controller carrying out the marketing was not known at the time consent was obtained, fresh consent must therefore be obtained before the marketing takes place, at the latest at the time of the first communication.**

The Advocate General also considers that the possibility of unsubscribing upon receipt of the first communication does not remedy the lack of prior consent. That possibility arises after the marketing campaign has begun and cannot therefore replace the prior consent required.

Accordingly, he proposes that there is no need to answer the question concerning the degree of precision of the concept of a 'category' of recipients. However, in the event that the Court decides not to follow the above conclusion, the Advocate General has decided to provide some clarification. He considers that, if a category of recipients were sufficient to justify marketing without fresh consent, that category would have to be defined with sufficient precision for the data subject to reasonably expect to be contacted by the undertaking in question. However, in his view, the concept of 'partners' is too vague to allow for such identification.

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 General Court has jurisdiction to deal with requests for a preliminary ruling which fall exclusively within (1) the common system of value added tax (VAT), (2) excise duty, (3) the Customs Code, (4) the tariff classification of goods in the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delays or cancellation of transport services, or (6) the scheme for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to hear all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute. 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 presentation of the facts and the legal framework refers to the relevant period and is based on the case file.

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

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