COURT OF JUSTICE
OF THE EUROPEAN UNION

Opinion of the Advocate General at the Court
Laila Medina
in Case C-643/25 | Verbraucherzentrale Bundesverband ('Free' digital service)

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Advocate General Medina: A social network is not free when you pay with your data to use it

Under EU consumer protection law, the provision of personal data for commercial purposes may constitute a form of payment, even where the consumer is not required to pay a sum of money

In February 2015, the registration page of Facebook, operated in the European Union by Meta Platforms Ireland ('Meta'), displayed the statement 'Facebook is and remains free'.

The *Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband e.V.* (Federal Union of Consumer Organisations and Associations, Germany), a consumer protection association, challenged that statement. It argued that Facebook is not genuinely free since users provide their personal data and consent to their commercial use in exchange for access to the social network. The German courts dismissed its action, finding that the prohibition on describing a service as free applies only where consumers bear financial costs. The association appealed to the *Bundesgerichtshof* (Federal Court of Justice, Germany), which referred the matter to the Court of Justice.

In her Opinion, Advocate General Laila Medina proposes that the Court rule that the disclosure of personal data and consent to their commercial use constitute a form of payment under the Unfair Commercial Practices Directive. [1] Consequently, a service cannot be described as 'free' where consumers are required to provide such data for commercial use, unless the data are processed exclusively to ensure the provision of the service or comply with legal obligations.

The Advocate General observes that the wording of the directive, which prohibits describing a product or service as 'free' where consumers must pay for it, does not necessarily limit payment to money. Its different language versions must be interpreted in the light of the directive's context and objectives. Moreover, the Court has already recognised that payment for a commercial practice may take forms other than money, provided that the consideration has economic value and there is a definite link between that consideration and the commercial practice concerned.

Personal data disclosed by users, together with their consent to their commercial exploitation, have economic value for the operator of a social network. They enable the operator to generate advertising revenue and finance the service. The fact that users retain their data does not prevent their commercial use from constituting payment.

Other EU legislation, including the **Directive on contracts for the supply of digital content and digital services** [2] and the **Consumer Rights Directive**, [3] recognises business models in which consumers obtain digital services in exchange for personal data rather than money. Although some of those instruments were adopted after 2015 and do not change the meaning of the rule at issue, they illustrate how the EU legislature characterises such arrangements. It would be inconsistent to regard such arrangements as involving consideration under those rules while allowing the same services to be presented as free under the Unfair Commercial Practices Directive.

Furthermore, **limiting payment to money would undermine consumer protection**, particularly in the digital economy, where users may be unaware of the economic value of their data or the extent of their exploitation for advertising. The

Advocate General recalls that practices prohibited in all circumstances under the directive, including describing a service as 'free' when payment is required, **do not entail an individual assessment of whether the average consumer was actually misled**.

The Advocate General rejects the arguments put forward by Meta. First, the Advocate General argues that although the list of practices prohibited in all circumstances is exhaustive, only the legislature can change which practices appear on it. That does not mean the terms used to describe those practices must be read narrowly. Second, the Advocate General considers that the **General Data Protection Regulation (GDPR)** [4] does not preclude the application of the Unfair Commercial Practices Directive. The GDPR governs the lawful and transparent processing of personal data, while the directive governs the accuracy of commercial representations, and both apply cumulatively. Third, the proposed interpretation does not restrict the freedom to conduct a business or provide services. **Businesses remain free to offer services in exchange for personal data, but cannot describe them as 'free' where such consideration is required**.

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

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, 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 context 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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Images of the delivery of the Opinion are available on 'Curia Web TV' and on 'European Broadcasting Service' ✆ (+32) 2 2964106.

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[1] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive').

[2] Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

[3] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights ('Consumer Rights Directive').

[4] 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 ('General Data Protection Regulation' or 'GDPR').