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ECJ Opinion: Personal Data as payment for the use of social networks?

In her Opinion of today, Advocate General Laila Medina concludes that 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 certain sum of money.

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In February 2015, the registration page of Facebook, operated in the European Union by Meta Platforms Ireland, 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 European Court of Justice (ECJ).

In her Opinion, Advocate General Laila Medina suggests the ECJ rule that the disclosure of personal data and consent to their commercial use constitute a form of payment under the Unfair Commercial Practices Directive. 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 AG goes on to state:

Personal data disclosed by users, together with their consent to their commercial exploitation, have economic value for the operator of a social network.

Other EU legislation, including the Directive on contracts for the supply of digital content and digital services and the Consumer Rights Directive, recognizes business models in which consumers obtain digital services in exchange for personal data rather than money.

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 ECJ press release No. 169/26 re. case C-643/25 *Verbraucherzentrale Bundesverband (Service numérique “ gratuity”* to be found **here** (containing the direct link to the Opinion).

Keywords

Personal data, consumer protection, networking