

EU regulatory developments and evolution of the "Consent or Pay" models

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IAB Europe

IAB Europe is the European-level association for the digital marketing and advertising ecosystem. Through its membership of national IABs and media, technology and marketing companies, its mission is to lead political representation and promote industry collaboration to deliver frameworks, standards and industry programmes that enable business to thrive in the European market.





Agenda

1. Meta vs Bundeskartellamt Case C-252/21
 2. EDPB activity regarding the Consent or Pay Models
 3. IAB Europe's Survey on the Consequences of the EDPB Ongoing Work on "Consent or Pay" models
 4. Approach of the Data Protection Authorities around Europe
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What triggered this regulatory attention?

Meta vs Bundeskartellamt Case C-252/21

- Date: 4 July 2023
- Key Ruling: Antitrust regulators can scrutinize GDPR compliance
- Primarily a competition case, not data protection case per se

Key Takeaways

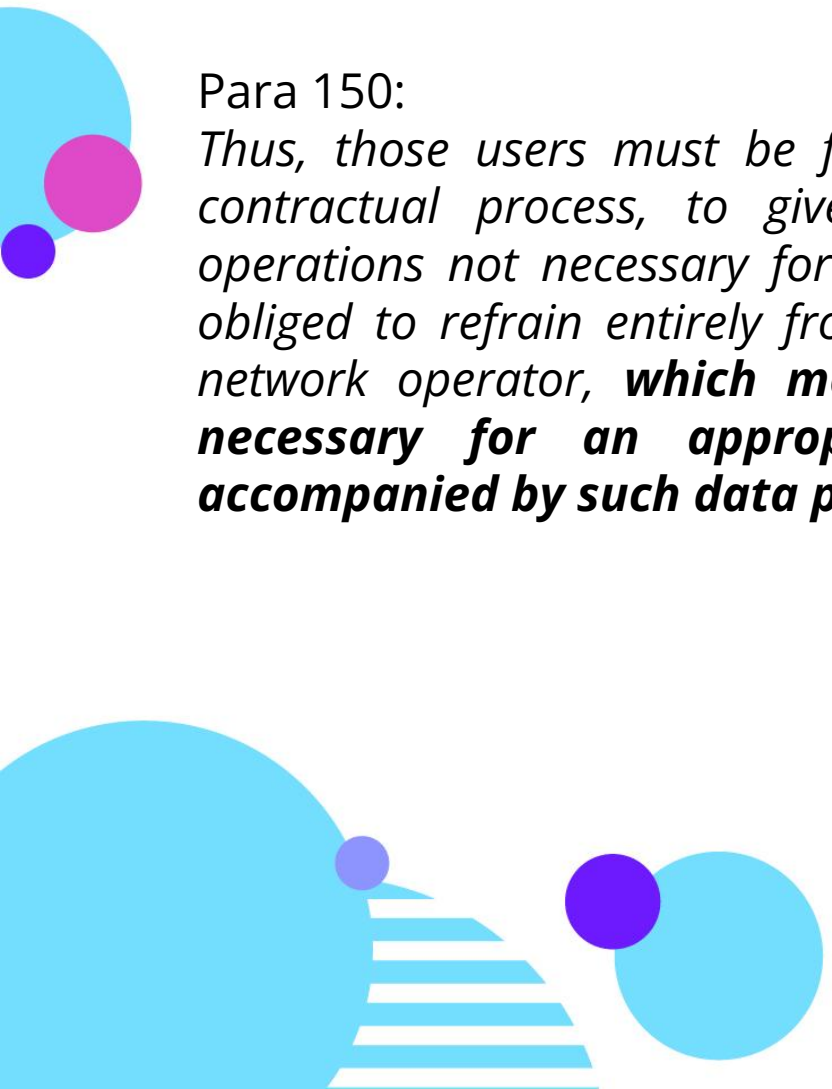
- **Legal Basis for Data Use:**
 - Data processing must be “objectively indispensable” to the contract.
- **Competition Authorities & GDPR:**
 - National competition regulators can investigate GDPR violations if linked to market dominance.
- **Data Processing Restrictions:**
 - Limits on using off-Facebook data for personalization.
 - Stricter requirements for lawful consent and legitimate interests.



Meta vs Bundeskartellamt Case C-252/21

Para 150:

*Thus, those users must be free to refuse individually, in the context of the contractual process, to give their consent to particular data processing operations not necessary for the performance of the contract, without being obliged to refrain entirely from using the service offered by the online social network operator, **which means that those users are to be offered, if necessary for an appropriate fee, an equivalent alternative not accompanied by such data processing operations.***



How have the authorities reacted?

EDPB Opinion 08/2024 on Valid Consent in the Context of “Consent or Pay” Models Implemented by Large Online Platforms

- Date: 17 April 2024
- On the request of the Dutch, Norwegian & Hamburg Data Protection Authorities based on Article 64(2) GDPR
- Scope: “large online platforms” - new concept
- **Main issues from the Opinion:**
 - EDPB recommends large online platforms to provide three versions of the service, including one without behavioral ads (e.g. with contextual advertising only);
 - Fee treated largely as “paying for privacy rights”
 - It suggests that power imbalances or detriment are present in most “Consent or Pay” (CorP) cases and as a result, consent cannot be considered usually freely given under these models;
 - Portrays behavioural advertising as impossible to reconcile with fairness and minimization principle.

EDPB Opinion 08/2024 on Valid Consent in the Context of “Consent or Pay” Models Implemented by Large Online Platforms

Possible implications:

- Requiring a third alternative without the behavioral advertising as a new standard, not only from the ‘large online platforms’;
 - Difficulties in setting a price that would meet the requirements from the Opinion ensuring also viability for publishers;
 - More content behind the paywalls;
 - Difficulties in proving that the consent in the CorP model meets the criteria for a freely given consent as CorP models are misleadingly framed as violating GDPR;
 - Legal uncertainty considering the guidelines of local DPAs and ruling of the CJEU recognizing this model legal in comparison to what EDPB seems to suggest.
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- IAB Europe sent a [Position Paper to the EDPB on the ‘Consent or Pay’ Model](#) in July, 2024 indicating the main concerns

EDPB stakeholders event on upcoming guidelines on “Consent or Pay” models

- EDPB is going to issue guidelines on the application of data protection legislation in the context of “Consent or Pay” models with a broader scope of application (most likely H2, 2025)
- In order to gather the input from different groups of stakeholders, a remote event was organized in November 2024
- Main arguments raised against the CorP models:
 - User is coerced in this model to provide the consent;
 - Freedom to conduct the business is less relevant than the right to data protection as the former is a “freedom” and the later is a “right”.
- IAB Europe sent a [feedback paper](#) after the event in January 2025 rebutting the allegation, supporting it by the results of our research regarding the CorP models

IAB Europe survey on the Consequences of the EDPB Ongoing Work on the Topic of 'Consent or Pay' Models

Survey on the Consequences of the EDPB Ongoing Work on “Consent or Pay” models

- Between October and November 2024, IAB Europe has conducted a survey to estimate the practical and economic implications of the EDPB’s position on online services, specifically regarding the requirement to implement a free alternative without personalized advertising.

General information:

- We have received **51** responses from different publishers across Europe;
- The majority of respondents were the news publishers (**45%**);
- **86%** of respondents use the advertising to fund/partially fund their services, **where for 58,8% of respondents personalized advertising constitutes more than 50% of their revenues.**

Survey on the Consequences of the EDPB Ongoing Work on 'Consent or Pay' models

Contextual advertising:

- Around **63%** of respondents indicated that if they were supposed to switch solely to the contextual advertising, it would significantly decrease their revenues from online ads;
- Around **75%** of respondents are not so confident or not confident at all in the effectiveness of contextual ads compared to personalized ads.

Use of the "Consent or Pay" models:

- Around **59%** of respondents currently use the model on their online services;
- Around **47%** of respondents plan to move towards this model in the next 12 months and around **27%** of respondents preferred not to answer.

[The Economic Value of User-Tracking for Publishers; René Laub, Klaus M. Miller, Bernd Skiera April 14, 2024](#)

How does it look around Europe?

Approach of the Data Protection Authorities around Europe

Country	Approach
Austria	Case-by-case basis, in particular the publishers must not be a public body/have a monopoly position in the market & a fair priced alternative must be provided
Denmark	Case-by-case basis, in particular a fair priced alternative must be provided
France	Case-by-case basis, in particular according to the nature/business model of the publisher & a fair priced alternative must be provided
Germany	In principle allowed - also assessed on a case-by-case basis in particular no bundled consent for multiple purposes at once & a fair priced alternative must be provided.

Approach of the Data Protection Authorities around Europe

Country	Approach
Spain	Case-by-case basis, in particular an equivalent alternative should be provided. The AEPD has also been looking into this practice and consulted with local publishers but has not published any guidance yet.
Norway	In the Grinder's appeal the Norwegian Data Protection Board (not the Data Protection Authority) said this type of business model is allowed but no further guidelines.
The Netherlands	In principle allowed, if a user rejects non-necessary cookies it should be still possible to enter the website for instance, if she/he pays
UK (January 2025)	In principle allowed, detailed guidelines indicating when such a model is compliant with the law, most relevant factor is to document that the consent was freely given. <u>As an example, the guidelines indicate that an alternative option could be supported by contextual advertising.</u>

Approach of the Data Protection Authorities around Europe

Countries where “cookie walls” are not permitted but there is no clarification on whether a payment alternative would be appropriate:

- Czech Republic
- Luxembourg
- Greece
- Belgium

Thank you for your attention!

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