

Contact: Pauline Constant: press@beuc.eu
Date: 13/10/2022
Reference: BEUC-PR-2022-043

Consumers' right to compensation for privacy damages under threat

An Advocate General of the highest European court (CJEU) last week issued a troubling [opinion](#) calling into question the GDPR's enforceability by individuals if they have suffered non-material damages, such as psychological distress.

The case before the court sees the Austrian postal service accused of unlawfully processing data from its customers and extrapolating voter preferences which the postal service then put up for sale. The complainant was profiled without his consent by the Austrian postal service as likely to vote for a far-right party based on statistical calculations. The complainant claimed €1,000 compensation because he found the political affinity he was attributed was insulting, damaged his reputation and caused him great upset.

According to the Advocate General only 'genuine' non-material damages are eligible for compensation. This conclusion begs the question as to which non-material damages are considered 'genuine'. The Advocate General's opinion casts doubt as to the scope and enforceability of data subjects' rights to compensation under the GDPR.

Although Advocate Generals' opinions are not binding, the court often follows them in its rulings.

Ursula Pahl, Deputy Director General of the European Consumer Organisation (BEUC), said:

"If the court follows this opinion, it is going to restrict consumers' right to compensation when their fundamental rights to data protection and privacy have been infringed. It would hamper the possibilities to seek compensation when an individual has suffered non-material damages, such as reputational damages or emotional distress.

"This approach would weaken the GDPR, which does not establish any minimum thresholds with regards to how significant those damages must be. No matter how big or small the damage, the individual has a right to claim compensation."

ENDS

If you would like to be removed from our mailing list, please let us know.