BEUC The European Consumer Organisation

The Consumer Voice in Europe

Ms Věra Jourová
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Values and Transparency
European Commission
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By email

Ref.: BEUC-X-2024-022/MGO/UPA/cc

Brussels, 29 February 2024

Subject: European consumer groups take action against Meta for breaches of GDPR

Dear Vice President Jourová,

Today, several BEUC members[1] with the co-ordination of BEUC have launched a coordinated GDPR enforcement action against Meta.

Meta has a business model that relies on the mass collection and processing of personal data at scale. The company has been in the limelight for its data processing practices for many years. In a series of decisions in 2022 and 2023, it has become clear that Meta has been operating without a valid legal basis for processing massive amounts of personal data relating to hundreds of millions of European consumers.

After being forced by regulators to comply with the GDPR, Meta has started, in November 2023, to ask Facebook and Instagram users to give their consent to the processing of their personal data for advertising purposes or pay a fee of up to € 311 per year.[2]

While public discussions revolve around this 'pay-or-consent' model, Meta carries on with its privacy-invasive business model. Every time regulators have confirmed that the legal basis Meta relied on was invalid, the company simply made changes to its privacy policy but continued its wide-ranging surveillance of consumers.

After analysing Meta's practices, BEUC and its members have found that Meta processes personal data in a way that is fundamentally incompatible with European data protection law. Our legal analysis (please see the attached complaint) shows that Meta has unlawfully processed personal data on several counts:

…/…

[1] The BEUC members participating in this action are dTest (Czech Republic), Forbrugerrådet Tænk (Denmark), EKPIZO (Greece), UFC-Que Choisir (France), Forbrukerrådet (Norway), Spoločnosť ochrany spotrebiteľov (S.O.S.) Poprad (Slovakia), Zveza Potrošnikov Slovenije – ZPS (Slovenia) and CECU (Spain). Consumentenbond (Netherlands) will be sending a letter to the Dutch data protection authority.

[2] The monthly fee for one account is 12.99 € when subscribing via the mobile version of Facebook/Instagram, or 9.99 € when subscribing via the desktop version. Each additional account costs 8 € or 6 € respectively, but only if the consumer links these accounts in Meta's 'Account Center', which entails additional processing of personal data across Meta's services. A consumer using one Facebook and one Instagram account on a mobile device, and not wishing to have their personal data combined and used across these accounts, must pay 25.98 € per month, or 311.76 € per year.

- Meta's personal data processing for advertising purposes lacks a valid legal basis because it relies on consent which has not been validly collected in compliance with the GDPR;
- Some of Meta's processing for advertising purposes appears to rely invalidly on contract;
- Meta cannot account for the lawfulness of its processing for content personalisation since it is not clear – and there is no way to verify – that all of Meta's profiling for that purpose is (a) necessary for the relevant contract and (b) consistent with the principle of data minimisation;
- It is not clear – and there is no way to verify – that all of Meta's profiling for advertising purposes is necessary for that purpose and therefore consistent with the principle of data minimisation;
- Meta's processing in general is not consistent with the principles of transparency and purpose limitation; and
- Meta's lack of transparency, unexpected processing, use of its dominant position to force consent, and switching of legal bases in ways which frustrate the exercise of data subject rights, are not consistent with the principle of fairness.

Based on this legal analysis, BEUC's members have filed complaints with their national DPAs in Czech Republic, Denmark, France, Greece, Norway, Slovakia, Slovenia and Spain. These GDPR complaints come on top of the breaches of European consumer law, as Meta's untransparent and forced pay-or-consent choice also amounts to both misleading and aggressive practices. BEUC and members filed a complaint about this already in November 2023 with the Consumer Protection Cooperation (CPC) network.

We urge the Commission to:

- ensure that the recently proposed Regulation on the cross-border enforcement of the GDPR obliges data protection authorities to handle complaints and investigations diligently within reasonable timeframes and a high standard of procedural rights for complainants, and
- in the context of the Commission's powers under the Digital Markets Act (DMA), assess Meta's compliance with art. 5.2 DMA, as soon as the DMA obligations enter info force.

Please be informed that we have also addressed a similar letter to Executive Vice-President Vestager, Commissioner Reynders, and Commissioner Breton as well as the European Data Protection Supervisor Wiewiórowski and European Data Protection Board Chair Talus.

We remain at your disposal to answer any questions you may have.

Yours sincerely,

Monique Goyens
Director General

Ursula Pachl
Deputy Director General