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Advocate General's Opinion in Case C-492/23 | Russmedia Digital and Inform Media Press

Electronic commerce and the GDPR: Advocate General Szpunar clarifies the responsibilities of the operator of an online marketplace

In 2018, an advertisement was published on Publi24.ro (a website of Russmedia), an online marketplace, stating that a person (X) was offering sexual services. The advertisement contained photos and a telephone number taken from the victim's accounts on social networking sites, used without her consent. Russmedia quickly deleted the advertisement, but it was reproduced on other websites. X brought an action against Russmedia.

The Court of Appeal, Cluj (Romania) referred the matter to the Court of Justice of the European Union, seeking clarification regarding the responsibilities of the operator of an online marketplace in this case.

In his Opinion, Advocate General Maciej Szpunar analyses the link between the Directive on electronic commerce ¹ and the General Data Protection Regulation (GDPR) ² in order to answer the questions referred for a preliminary ruling by the referring court.

As regards the Directive on electronic commerce, he points out that **the operator of an online marketplace**, such as Russmedia, **can be considered eligible for an exemption from liability in respect of the content of advertisements published on its marketplace provided that its role remains neutral and purely technical**. That protection is not to apply in the event that that operator is actively involved in the management, modification or promotion of content.

As regards the GDPR, he specifies that **the operator of an online marketplace acts as a processor of the personal data contained in advertisements**. As a result, it **is not obliged to check the content of those advertisements systematically before publication**. However, it must adopt organisational and technical measures to protect those data. By contrast, the Advocate General takes the view that, as regards the personal data of user advertisers registered on that online marketplace, the operator of that marketplace acts as a controller and, in that context, must verify the identity of the user advertisers.

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 about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, 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 [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ [Directive 2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').

² [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, and repealing Directive 95/46/EC (General Data Protection Regulation).