



Press and Information

Court of Justice of the European Union

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Judgment in Case C-673/17

Bundesverband der Verbraucherzentralen und Verbraucherverbände –
Verbraucherzentrale Bundesverband eV v Planet49 GmbH

Storing cookies requires internet users' active consent

A pre-ticked checkbox is therefore insufficient

The German Federation of Consumer Organisations has challenged before the German courts the use by the German company, Planet49, of a pre-ticked checkbox in connection with online promotional games, by which internet users wishing to participate consent to the storage of cookies.¹ The cookies in question aim to collect information for the purposes of advertising Planet49's partners' products.

The Bundesgerichtshof (Federal Court of Justice, Germany) asked the Court of Justice to interpret the EU law on the protection of electronic communications privacy.²

In today's judgment, the Court decides that the consent which a website user must give to the storage of and access to cookies on his or her equipment is not validly constituted by way of a pre-checked checkbox which that user must deselect to refuse his or her consent.

That decision is unaffected by whether or not the information stored or accessed on the user's equipment is personal data. EU law aims to protect the user from any interference with his or her private life, in particular, from the risk that hidden identifiers and other similar devices enter those users' terminal equipment without their knowledge.

The Court notes that consent must be specific so that the fact that a user selects the button to participate in a promotional lottery is not sufficient for it to be concluded that the user validly gave his or her consent to the storage of cookies.

Furthermore, according to the Court, the information that the service provider must give to a user includes the duration of the operation of cookies and whether or not third parties may have access to those cookies.

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 European Union law or the validity of a European Union 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.

¹ Cookies are files which the provider of a website stores on the website user's computer which that website provider can access again when the user visits the website on a further occasion, in order to facilitate navigation on the internet or transactions, or to access information about user behaviour.

² Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 11), read in conjunction with Article 2(h) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31), and of Article 6(1)(a) of 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 (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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