

Copenhagen Business School

Synopsis

Datafication: Regulation, Governance, Security, Privacy and Ethics

**Is Meta's 'pay-or-consent' model compatible with
the GDPR's consent standard, or is it a form of
coercion that undermines data protection as a
fundamental right?**

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1 Introduction

Digitalisation has made it possible to share information on a global scale, enabling individuals to connect across borders more effortlessly than ever before. At the same time, the companies that operate these digital platforms routinely collect and process significant amounts of user data, often for purposes that primarily serve their own commercial interests (Draper et al., 2023).

However, the European Union (EU) has recognised the potential risks and dangers of exploitation and malicious use of the data that consumers and users of digital technologies provide while interacting with these platforms. Therefore, the EU established a new data privacy and security law, the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679, 2016), which came into effect in 2018 (European Commission, n.d.). The purpose of this regulation is to protect natural people from companies and other organisations by governing the processing of their personal data and, in doing so, safeguarding their fundamental right to privacy in the EU.

One of these companies is Meta Platforms, Inc. (formerly known as Facebook). Since Meta Platforms, Inc. launched in 2004 (Meta Platforms, Inc, n.d.), Facebook has grown into the largest social media platform in the world, with more than 3.07 billion users globally (Statista, 2025). Besides Facebook, Meta now includes several other major social media platforms such as WhatsApp, Instagram, and several additional ventures (Meta, n.d.). Meta is not unfamiliar with the GDPR; in 2023, they were fined €1.2 billion by the European Data Protection Board (EDPB) for transferring personal data from the EU to the United States (U.S.) (EDPB, 2023), thereby being found guilty of breaching Article 44 and Article 46(1) of the GDPR (Regulation (EU) 2016/679, 2016, Arts. 44, 46(1)).

However, with Meta's new "pay or consent" business model, they are once again under scrutiny for possibly breaching the GDPR (Regulation (EU) 2016/679, 2016). The "pay or consent" model forces users of Facebook and Instagram in Europe to either subscribe to the platform or consent to personalised ads targeted based on their data. This model is currently being scrutinized as critics argue that users are not given a genuine choice but rather coerced into accepting the processing of their personal data- fundamentally violating the requirement for freely given consent under Article 4(11) and Article 7(4) (Regulation (EU) 2016/679, 2016, Arts. 4(11), 7(4)). This is why this synopsis seeks to answer the question: *Is Meta's “pay-or-consent” model compatible with the GDPR's consent standard, or is it a form of coercion that undermines data protection as a fundamental right?*

2. Legal Question, Data Collection and Legal Bases

2.1 What is the main legal question?

The central legal issue is whether the consent obtained through Meta Platforms, Inc.'s "pay-or-consent" model satisfies the GDPR's standards for valid and freely given consent. This requires examining

Meta's role as a data controller under Article 4(7) GDPR, assessing the validity of consent as a legal basis for processing under Article 6(1)(a), and determining whether the model respects the requirement of "freely given" consent within the meaning of Articles 4(11) and 7(4) GDPR (Regulation (EU) 2016/679, Arts. 4(7), 6(1)(a), 4(11), 7(4)).

2.2 What data does Meta actually collect, and how is it used?

As of 2025, Meta's privacy policy states that the company collects a wide range of information, including identifiers, user activity, device information, and off-platform behavioural data, for purposes such as improving its products and enabling partners who use or integrate Meta's products to advertise their services or products (Meta Platforms, Inc., 2025a). Since Article 4(1) GDPR defines personal data as information relating to an identified or identifiable natural person (Regulation (EU) 2016/679, Art. 4(1)), Meta's data-collection practices clearly involve the processing of personal data and therefore fall within the material scope of the GDPR. Accordingly, Meta Platforms, Inc. qualifies as a data controller under Article 4(7), which describes a controller as "[...] the natural or legal person, public authority, agency or other body which alone or jointly with others determines the purposes and means of the processing of personal data [...]" (Regulation (EU) 2016/679, Art. 4(7)).

Meta's privacy policy, which is publicly accessible and applies to users of both Facebook and Instagram, outlines how information is collected, used, and shared, and it specifies the rights of data subjects as well as the products and services covered by the policy (Meta Platforms, Inc., 2025a). In doing so, Meta seeks to comply with Article 5(1)(a) by processing personal data lawfully, fairly, and transparently, and with Article 5(2), which establishes the controller's accountability obligations (Regulation (EU) 2016/679, Arts. 5(1)(a), 5(2)). Meta's articulation of the purposes for which personal data is processed is also relevant under Article 5(1)(b), which requires that data be collected for specified, explicit, and legitimate purposes. The privacy policy presents consent-relevant information in clear and accessible language and states that users may withdraw consent at any time, in accordance with Articles 7(2) and 7(3) GDPR (Regulation (EU) 2016/679, Arts. 7(2), 7(3)).

However, it is in Meta's Terms of Service that the "pay-or-consent" model is set out (Meta Platforms, Inc., 2025b). Although the pay-or-consent mechanism is framed contractually within the Terms of Service, its legal assessment must be conducted under the GDPR's standard for consent. According to Meta, users may choose to pay a subscription fee to prevent their personal data from being collected and used for personalised advertising, otherwise defined as profiling under Article 4(4) GDPR (Regulation (EU) 2016/679, Art. 4(4)). This reflects Meta's approach to obtaining consent under Article 6(1)(a) GDPR (Regulation (EU) 2016/679, Art. 6(1)(a)) and to comply with Article 7(1), which requires that the controller be able to demonstrate that the data subject has consented to such processing (Regulation (EU) 2016/679, Art. 7(1)). Whether the consent obtained through this model meets the substantive GDPR requirement of being "freely given" will be examined in the following section.

3. Legal Bases for Processing and Why Meta's Pay-or-Consent Model Violates GDPR

3.1 Can Meta Use Other Legal Bases for This Processing?

Once it is established what types of data Meta collects and how they process it, the subsequent step involves determining which lawful bases under Article 6 of the GDPR (Regulation 2016/679) could justify its behavioural advertising practices as Article 6 sets out the six legal grounds that must exist for any personal data processing to be lawful. In actuality, only three legal bases are relevant in this context: contractual necessity (Article 6(1)(b)), legitimate interests (Article 6(1)(f)), and consent (Article 6(1)(a)), as these were the only grounds Meta invoked, and the only ones examined by the CJEU in Case C-252/21.

In *Meta v Bundeskartellamt* (Case C-252/21), Meta argued that personalised advertising forms part of its core service of Facebook and Instagram and is therefore necessary for performing its contract with users under Article 6(1)(b) GDPR. The underlying rationale was that without targeted advertisements, the company cannot sustain its services. However, the CJEU rejected this position. The Court emphasized, in line with Recital 44 GDPR, that Article 6(1)(b) must be interpreted strictly, applying only where processing is objectively necessary to provide the service the user has requested. Meta's behavioral advertising relies on extensive profiling within the meaning of Article 4(4) GDPR, involving analysis of user behavior, interests, and interactions. A social network can function effectively without such profiling, including cross-service data combination and off-platform tracking. This is further underscored by the data-minimization principle in Article 5(1)(c) GDPR, which requires that only data strictly necessary for the specified purpose be processed. Meta's profiling-based advertising practices clearly exceed what is necessary for providing a social networking service. As these activities serve commercial targeting rather than enabling fundamental platform functionality, CJEU established that Meta cannot rely on Article 6(1)(b) as its lawful basis.

Consequently, Meta shifted their approach to legitimate interests under Article 6(1)(f), asserting that targeted advertising serves a legitimate commercial interest that is utilised to maintain a free service. For this legal basis to be applicable, three conditions must be satisfied: (1) The existence of a legitimate interest. (2) The necessity of the processing for that interest. (3) Balancing test demonstrating that the interest does not override users' rights and freedoms. In line with recital 47 GDPR, which states "The legitimate interests of a controller [...], may provide legal basis for processing [...], taking into consideration the reasonable expectations of data subjects based on their relationship with the controller", the CJEU determined in Case C-252/21 that Meta's commercial interest does not outweigh the significant intrusion caused by large-scale profiling as defined in article 4(4) GDPR. The Court examined several factors: the sensitivity of the inferences being generated, the absence of meaningful

user control, and the structural power imbalance between Meta and individual users. The necessity test also fails because less intrusive alternatives, such as contextual advertising or non-tracking subscription models, are demonstrably available. EDPB binding decisions from 2022-23 (EDPB, 2022) and the Norwegian Datatilsynet's interim ban (Datatilsynet, 2023) reached the same conclusion: legitimate interests cannot justify Meta's behavioural advertising practices. Therefore, Article 6(1)(f) is not available as a legal basis.

Per Recital 40 GDPR, each processing operation must rely on one specific lawful basis, identified in advance, and controllers may not combine or cumulate multiple legal grounds to legitimize the same processing activity. Article 6(1) reinforces that processing is lawful only where one of the listed legal bases applies, and a controller may not retroactively fall back on another basis if the original ground proves invalid. This principle is particularly relevant to Meta's behavioral advertising: the company cannot simultaneously invoke contractual necessity, legitimate interests, and consent for the same underlying profiling, nor switch between them depending on regulatory scrutiny. Since Articles 6(1)(b) and 6(1)(f) are unavailable, consent under Article 6(1)(a) is the only possible remaining basis..

3.2 Why Meta's Pay-or-Consent Model Breaks GDPR?

The CJEU's ruling in Case C-252/21 establishes that behavioural advertising is not necessary for providing Facebook's core service. The Court held that Facebook's essential function is enabling social interaction, not advertisement targeting. Users can reasonably expect to utilise a social network without being subjected to cross-site tracking. The judgment further emphasised that companies cannot expand the definition of "necessary for contract performance" by referencing their chosen business model. Consequently, Meta cannot justify their extensive behavioural tracking by asserting it is required to fund a free service.

The legitimate-interest route is also effectively precluded. Both the CJEU and the EDPB emphasise that several factors render this impossible: the volume and intrusiveness of the profiling, the sensitive inferences it generates, the combination of cross-service and off-platform tracking, and the structural power imbalance between Meta and its users all demonstrate that Meta's commercial interest cannot override individuals' fundamental rights. Less intrusive alternatives exist; therefore, the processing at the core of Meta's "free with ads" model cannot be justified under Article 6(1)(f) (Regulation 2016/679).

CJEU judgments such as Planet49 (Case C-673/17) and Orange România (Case C-61/19) reinforce that consent cannot be obtained through mechanisms such as pre-ticked boxes, nudging, or attaching harmful consequences to refusal. EDPB Opinion 08/2024 specifically addresses "consent or pay" models and concludes that for large platforms and gatekeepers, consent will generally not be considered freely given unless a genuinely equivalent, free, non-tracking alternative is available. Meta's

pay-or-consent model does not offer such an option, which raises substantial doubts regarding whether the consent upon which they rely can be considered valid under the GDPR.

EDPB Opinion 08/2024 directly addresses "consent or pay" models and establishes specific conditions for valid consent. For gatekeeper platforms, consent generally will not be considered freely given if refusing tracking requires paying a significant fee. Users must be offered a free and equally effective alternative that does not involve behavioural advertising, such as contextual advertisements, and the default option cannot rely on extensive profiling.

Meta's model fails all of these criteria. The company charges €9.99 - €12.99 per month to avoid tracking, does not provide any free non-tracking version, sets behavioural advertisements as the default option, and operates as a designated gatekeeper (Regulation 2022/1925). Therefore, on every point the EDPB identifies as necessary for valid consent, Meta's model proves inadequate.

The Digital Markets Act (DMA) (Regulation 2022/1925) reinforces this assessment. The European Commission imposed fines on Meta after determining that this same model violates DMA obligations because Meta did not provide a free, less data-intensive option. The company effectively forced users to choose between accepting broad tracking or paying for privacy. Although the DMA and GDPR are separate legal regimes, they converge on an important principle: dominant platforms cannot make invasive data collection a condition for accessing core services.

When considered collectively, the GDPR rules on legal bases and consent, CJEU case law (including Case C-252/21, Case C-673/17, and Case C-61/19), EDPB opinions and binding decisions, and DMA enforcement, then the evidence demonstrates that Meta's pay-or-consent model is incompatible with the GDPR requirement that consent be freely given, without financial, structural, or social pressure.

3.3 Why Meta's Pay-or-Consent Model Constitutes Coercion?

Having established that Meta cannot rely on contractual necessity or legitimate interests, and that consent must be freely given to be valid, the critical question becomes whether Meta's pay-or-consent model truly allows for voluntary consent or whether it operates as a mechanism of coercion.

The coercive nature of Meta's model manifests through three interconnected dimensions: economic pressure, social dependency, and structural market dominance. Each dimension independently undermines voluntariness, but their combined effect renders the notion of "free choice" largely illusory.

From an economic perspective, Meta's subscription pricing of €9.99-€12.99 per month per account creates a direct financial penalty for exercising data protection rights. For users managing multiple accounts or families with several members, this cost becomes prohibitive. The pricing structure transforms what the GDPR defines as a fundamental right into a commodity available

primarily to those with sufficient financial resources. The monetisation of privacy fundamentally contradicts the principle that data protection rights cannot be made conditional upon payment.

Beyond financial considerations, Meta's platforms serve as essential digital infrastructure for contemporary social participation. Facebook and Instagram function not merely as entertainment services but as primary channels for community engagement, professional networking, and civic participation. Opting out of these platforms can result in social isolation, reduced professional opportunities, and diminished participation in public discourse. The EDPB explicitly recognizes in Opinion 08/2024 that such structural dependencies cast serious doubt on the voluntariness of consent, particularly when no genuinely equivalent alternatives exist. Meta's position as the dominant provider in social networking amplifies this dependency—users cannot simply migrate to equivalent platforms that offer similar network effects and community connections.

Meta's designation as a gatekeeper under the Digital Markets Act further intensifies the power imbalance. The company's structural dominance means that individual users face an asymmetric relationship where refusal carries disproportionate consequences. Recital 43 of the GDPR specifically addresses such imbalances, stating that consent is unlikely to be freely given when there is a "clear imbalance between the data subject and the controller." Meta's gatekeeper status exemplifies precisely this scenario—the company controls access to essential communication infrastructure while users possess minimal bargaining power.

The absence of a genuinely free, non-tracking alternative represents the model's most significant structural flaw. The EDPB Opinion 08/2024 emphasizes that for gatekeeper platforms, valid consent requires offering a free alternative that does not involve behavioral advertising. Contextual advertising—which targets advertisements based on the immediate content being viewed rather than comprehensive user profiling—provides a demonstrably feasible alternative that Meta could implement. The company's decision not to offer this option reveals that the "choice" presented to users is false: accept comprehensive tracking or lose access to essential social infrastructure.

The convergence of economic penalties, social dependency, and structural dominance creates a situation where users' autonomy is systematically constrained. While the model superficially presents a binary choice, the practical reality is that most users have little meaningful option but to accept tracking. This structural coercion transforms what should be freely given consent into a compelled acquiescence, rendering the entire legal basis invalid under Article 7(4) of the GDPR. The pay-or-consent model thus fails not merely as a matter of regulatory compliance but as a fundamental violation of the principle that data protection rights cannot be traded for access to essential services.

4. Conclusion

This analysis establishes through three interconnected dimensions that Meta's pay-or-consent model is fundamentally incompatible with the GDPR's requirements for lawful data processing.

Section 3.1 demonstrated that Meta cannot rely on contractual necessity under Article 6(1)(b) or legitimate interests under Article 6(1)(f) to justify its behavioural advertising practices. The CJEU in Case C-252/21 conclusively determined that social networking does not require cross-site tracking or extensive profiling to function—these are commercial preferences rather than technical necessities. The legitimate interests pathway is equally foreclosed: the volume and intrusiveness of Meta's profiling, combined with the company's dominant market position, means their commercial interests cannot outweigh users' fundamental rights. Both the CJEU and EDPB have established this position with unwavering clarity, confirmed through binding decisions and regulatory enforcement actions.

With contractual necessity and legitimate interests excluded, Section 3.2 examined whether Meta's model satisfies the GDPR's consent requirements under Article 6(1)(a). The evidence is unambiguous: Meta's model fails every criterion established by the GDPR, CJEU case law, and EDPB guidance. The company charges €9.99-€12.99 per month per account to avoid tracking, offers no free non-tracking alternative, sets behavioural advertising as the default option, and operates as a designated gatekeeper under the Digital Markets Act. EDPB Opinion 08/2024 explicitly addresses such "consent or pay" models and concludes that for platforms in Meta's position, consent cannot be considered freely given without a genuinely equivalent free alternative. The convergence of evidence from multiple legal sources—the CJEU's judgment in Case C-252/21, EDPB opinions and binding decisions, and European Commission DMA enforcement—demonstrates systematic non-compliance with GDPR consent standards.

Section 3.3 revealed why Meta's model constitutes coercion rather than genuine choice. The analysis identified three dimensions through which the model systematically undermines user autonomy: economic pressure that transforms fundamental rights into commodities accessible primarily to those who can afford them; social dependency arising from Facebook and Instagram's role as essential digital infrastructure for contemporary social participation; and structural market dominance whereby Meta's gatekeeper status creates profound power imbalances. These dimensions operate synergistically—their combined effect renders the notion of "free choice" illusory. Users face not a genuine binary decision but rather a constrained situation where refusing tracking carries prohibitive costs across economic, social, and practical dimensions. The absence of a free, non-tracking alternative using contextual advertising—a demonstrably feasible option that Meta deliberately chooses not to provide—exposes the false nature of the purported choice.

At its foundation, Meta's approach monetizes what the Charter of Fundamental Rights establishes as a fundamental right. The right to data protection under Article 8 of the Charter is not intended to require payment; it must be accessible to all individuals equally, regardless of financial circumstances. By conditioning privacy protection on subscription fees while maintaining behavioural tracking as the free default, Meta treats data protection as a premium feature rather than as an inalienable right. This inversion fundamentally contradicts the principles underlying EU data protection law.

The structural implications extend beyond individual consent validity. Meta's model establishes a precedent whereby dominant platforms can effectively circumvent GDPR requirements by imposing financial barriers to exercising fundamental rights. If upheld, such models would create a two-tiered system of data protection: comprehensive privacy for those who can afford it, and invasive profiling for those who cannot. This outcome would undermine the GDPR's foundational principle of universal protection and transform data rights into purchasable commodities.

The evidence examined throughout this analysis—spanning primary legislation, CJEU jurisprudence, EDPB guidance, regulatory decisions, and DMA enforcement—converges on a singular conclusion: Meta's pay-or-consent model does not offer users genuine choice as required by the GDPR. Instead, it constitutes a sophisticated form of coercion that presents structural compulsion as user autonomy. The model violates the GDPR's consent requirements under Articles 4(11) and 7(4), fails to satisfy any alternative legal basis under Article 6, and fundamentally undermines the right to data protection that EU law is designed to protect. For these reasons, Meta's pay-or-consent model must be considered incompatible with the General Data Protection Regulation and the broader framework of EU fundamental rights.

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