



PERSONAL DATA AS AN ECONOMIC ASSET: LEGAL LIMITS AND PROTECTION OF FUNDAMENTAL RIGHTS*

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ABSTRACT

Digital business models operating in the online environment are largely based on the systematic processing of personal data as a key economic asset. Models conceived in this way raise a number of fundamental legal issues in practice, particularly with regard to the alignment of the economic objectives of digital service providers with the requirements of protecting the fundamental rights and freedoms of individuals. The intensive use of personal data—characterized by automation, profiling, and cross-border data transfers—increases the risk of non-transparent and disproportionate interference with the right to privacy and the protection of personal data as guaranteed under European Union law.

This paper focuses on identifying and analysing the main practical challenges associated with the use of personal data within online business models, such as personalized advertising, platform services, and data-driven business. Particular attention is devoted to the issue of determining the lawful legal basis and purpose of personal data processing under the General Data Protection Regulation (GDPR), especially the distinction between the data subject's consent and processing based on a contract for digital content or services. The paper also reflects on the issue of conditioning access to online services on the granting of consent and the so-called "take it or leave it" approaches, which in practice raise doubts about the freely given and informed nature of consent.

The aim of the paper is not only to systematize existing practical problems related to the processing of personal data in the online environment, but also to identify the limits of the legitimate use of

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personal data for commercial purposes and to highlight situations in which the economic interests of service providers disproportionately interfere with the fundamental rights of data subjects. At the same time, it seeks to formulate interpretative and application-oriented guidelines that may contribute to greater legal certainty in practice, strengthen the effective protection of individual rights, and support the search for a balanced model of coexistence between personal data protection and the functioning of the digital economy in line with the principles of the rule of law.

Keywords: Fundamental rights, Personal data protection, Processing of personal data

1. INTRODUCTION

The digitalization of the economy has fundamentally transformed both the nature and the value of information. Personal data has now become one of the key resources of the digital economy and represents a significant economic asset that enables the development of new business models, personalized services, and targeted advertising strategies. Platform services, online marketplaces, and technology companies systematically utilize large volumes of data to analyse user behaviour, optimize products, and generate economic value. However, this development also raises fundamental legal and normative questions, particularly with regard to the limits of the commercialization of personal data and the protection of individuals' fundamental rights. The tension between the economic potential of data and the requirement to protect privacy and fundamental rights thus becomes one of the key challenges of contemporary digital law.

In the European legal framework, the protection of personal data is firmly embedded in the system of fundamental rights, primarily through the right to respect for private life and the right to the protection of personal data. At the same time, however, the economic reality of digital markets shows that personal data functions as a tradable resource with the potential to generate significant economic value. Legal regulation is therefore faced with the task of finding a balance between supporting innovation and the digital economy on the one hand, and ensuring effective protection of the individual on the other.

The present paper focuses on analysing this balance and examines the extent to which the current legal framework reflects the economic nature of personal data while at the same time preserving its human rights dimension. The aim of this article is to address the question of whether there are currently legal limits to the use of the economic value of personal data without weakening or even violating the protection of individuals' fundamental rights. It also seeks to reflect on the various practical challenges that arise at the intersection of the economic interests of digital platforms and the human rights protection of personal data. This will be achieved through the application of various scientific methods, in particular by analysing current legal regulations of different legal force not only European Unions', but also

from a Slovak environment, as well as relevant soft law instruments and academic and scientific publications in this field. The methods of deduction and synthesis of knowledge derived from the above analyses will also be applied.

Methodologically, the paper is based on a combination of classical methods of legal scholarship, in particular the methods of analysis and synthesis of legal norms, as well as systematic and teleological interpretation.

2. USE OF PERSONAL DATA IN DIGITAL BUSINESS MODELS – HUMAN RIGHTS LIMITS

Personal data in the digital economy has undoubtedly acquired significant economic value and, in many respects, exhibits the characteristics of an economic asset. Digital platforms, online services, and technology companies use data on user behaviour, preferences, and consumer habits to optimize products, personalize content, and, in particular, enable targeted advertising.¹ In this sense, personal data functions as a strategic resource that allows for profit generation, the creation of competitive advantage, and the development of data-driven business models that use such data to generate revenues, to monetise them, either by creating profiles and providing personalised advertisements themselves based on these profiles (linked to their own products or facilitating advertisements of other actors) or by selling/sharing the raw data or the profiles based on these data to other actors.²

At present, there are many online platforms that provide digital services that appear to be free of charge. When analysing such digital services, one may consider whether this type of online platform falls within the scope of e-commerce and information society services, as defined by 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 the internal market, in particular electronic commerce, as well as, following its model, the Slovak Act No. 22/2004 Coll. on Electronic Commerce. Pursuant to Section 2(a), an information society service is defined as *a service provided at a distance by electronic means, usually for remuneration and at the request of the recipient (which also includes passive browsing)*. From the attributes of this definition, particular attention is paid to the element “*usually for remunera-*

¹ Rudohradská, S.: *Abuse of a dominant position on the digital markets – case Meta vs. Bundeskartellamt*. in: Petrašević, T.; Duić, D.; Novokmet, A. (eds.), ECLIC, “EU at the Crossroads – Ways to Preserve Democracy and Rule of Law”, Osijek: Josip Juraj Strossmayer University of Osijek, 2024, ISBN: 978-95-381-0960-7, p. 478.

² Kotsios, A., *Paying with data*, A study on EU Consumer Law and the protection of personal data, Uppsala: Department of Law. ISBN: 978-91-506-2919-4, p. 24.

tion.” This raises the question of whether the provision of a consumer’s personal data can be considered a form of remuneration?

The answer to this question can be found in Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (hereinafter the “DCD”), specifically in Article 3(1).³ According to this provision, *the Directive applies to any contract under which a trader supplies or undertakes to supply digital content or a digital service to a consumer, and the consumer pays or undertakes to pay a price. The Directive also applies to situations where the trader supplies or undertakes to supply digital content or a digital service to a consumer, and the consumer provides or undertakes to provide personal data to the trader, except where the personal data provided by the consumer is processed exclusively for the purpose of supplying the digital content or digital service in accordance with the Directive, or for enabling the trader to comply with legal obligations to which the trader is subject, and the trader does not process such data for any other purposes.*⁴

The Directive, despite providing for certain exceptions, generally allows for the possibility that a consumer may provide personal data to a trader in exchange for digital content or a digital service instead of paying a monetary price.

Despite the fact that the possibility of “payment” for digital services or digital content is expressly provided for in the Directive and has become an everyday reality, the concept of personal data being regarded as a form of currency still has its critics. As Bachňáková Rózenfeldová notes, the European Data Protection Supervisor, in the *European Data Protection Opinion 4/2017 on the Proposal for a Directive*, stated in this context that “*it is indeed possible that a market for personal data exists, just as, unfortunately, there is a market for human organs; however, this does not mean that we can or should bless such a market through legislation.*”⁵

Similarly, in *Guidelines No. 2/2019 on the processing of personal data under Article 6(1)(b) of the General Data Protection Regulation in the context of providing online services to data subjects* of 9 April 2019 – Version 1.0, it is stated in point 54 that,

³ Author’s note: Article 3 has been reworded on the basis of comments from the Data Protection Supervisory Authority.

⁴ Article 3(1) of Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

⁵ Bachňáková Rózenfeldová, L., *Osobné údaje ako alternatíva peňažného plnenia v zmluvách o dodávaní digitálneho obsahu alebo digitálnych služieb*, in: Bačárová, R., et al., *Spotrebiteľia a obchodníci na digitálnom trhu. Právne a ekonomické aspekty*. 1. vydanie. Praha: Wolters Kluwer ČR, a. s., 2025, p. 80, Available at: [file:///Users/dianatrescakova/Downloads/Spotrebiteľia%2520a%2520obchodn%25C3%25AD-ci%2520na%2520digi%2520trhu_4%20(2).pdf], Accessed 10 April 2026.

*given that the protection of personal data is a fundamental right guaranteed under Article 8 of the Charter of Fundamental Rights, and given that one of the main objectives of the General Data Protection Regulation is to give data subjects control over information relating to them, personal data cannot be regarded as a tradable commodity. Although the data subject may consent to the processing of personal data, they cannot, on the basis of such an agreement, trade away their fundamental rights.*⁶

At this point, the question arises as to why legal theory and application practice take a dual approach to personal data. The answer lies in the dual nature of the conceptualisation of personal data. The first level is the understanding of personal data as a fundamental right guaranteed by the Constitution, while the second level is their perception as an economic commodity.

The duality in the understanding of personal data also stems from their classification from the perspective of private law. As Pozhodzhuk notes if we talk about ‘personal data’ as a non-property good that has no economic content and the infringement of rights in respect of which may occur through the use of personal data to the detriment of a person, then this object of civil rights cannot be the object of a contractual obligation. If we consider “personal data” as an information about an individual who can consent to the processing of such information by another person, then we should talk about an intangible good that has economic value. Accordingly, such an object of civil rights can be the object of an obligation. Moreover, this object must be commercialized, as it is a source of profit for the business entity.⁷

2.1. The Conceptualisation of Personal Data Protection as a Fundamental Right of the Individual

It is beyond doubt that the right to the protection of personal data is a fundamental right.⁸ The primary legal basis supporting this assertion is the Constitution of the Slovak Republic. Under Article 19(3) of the Constitution of the Slovak Re-

⁶ Guidelines No. 2/2019 on the processing of personal data under Article 6(1)(b) of the General Data Protection Regulation in connection with the provision of online services to data subjects of 9 April 2019 – Version 1.0.

⁷ Pozhodzhuk, R.; Pozhodzhuk, T., *Paying with data: The protection of personal data in consumer contracts in the digital age*, in: *Studia Iuridica Cassoviensia*, Vol. 16, 2026, No.1, Available at: [<https://doi.org/10.33542/SIC2026-1-05>]. [https://sic.pravo.upjs.sk/ecasopis/142026-1/05_pozhodzuk_pozhodzukova_paying_with_data.pdf]. Accessed 11 April 2026.

⁸ Rudohradská, S.; Bachňáková Rózenfeldová, L.; Hučková, R.: *When competition meets personal data protection*, in: Petrašević, T.; Duić, D.; Novokmet, A. (eds.), *ECLIC, Digitalization and green transformation of the EU: conference book of proceedings*, Vol. 7, Osijek: Josip Juraj Strossmayer University of Osijek, 2023. ISBN 978-95-381-0954-6, p. 367.

public, everyone has the right to protection against the unauthorized collection, publication, or other misuse of data concerning their person. Likewise, Article 22(1) of the Constitution of the Slovak Republic guarantees the protection of the secrecy of correspondence, the secrecy of transmitted messages and other written communications, including the protection of personal data.⁹

As Bachňáková Rózenfeldová notes, the fact that the protection of personal data belongs among fundamental rights is also confirmed by the case law of the Constitutional Court of the Slovak Republic, according to which “*the essence of the fundamental right to the protection of personal data consists in the protection of the individual, which lies in the principled inadmissibility of the collection, storage, use, or further processing of data relating to the private sphere of their life. Such an understanding of protection is a necessary precondition for the individual’s ability to decide which information concerning their private life will be disclosed, thereby ensuring, in a broader context, their ability to freely and responsibly make decisions regarding their private life.*”¹⁰

If we look beyond the borders of the Slovak Republic, the Charter of Fundamental Rights of the European Union also protects personal data in Article 8(1), stating that “*Everyone has the right to the protection of personal data concerning them.*” At the same time, paragraph 2 provides that “*such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning them, and the right to have it rectified.*”¹¹ As Custers and Malgieri state, the fact that the right to the protection of personal data is enshrined in the Charter of Fundamental Rights of the European Union the EU has created a fundamental right to the protection of personal data, unique in the world. Whereas most nations offer constitutional protection of privacy, traditionally focused on protecting personal life and family life, the EU has added a separate right to the protection of personal data. The fact that the right to personal data protection is included in the list of fundamental rights in the EU makes it an inalienable right.¹²

⁹ Article 22(1) of the Constitution of the Slovak Republic.

¹⁰ Judgement of Constitutional court of Slovak republic from 9th of December 2010, No. II. US 53/2010 In: Bachňáková Rózenfeldová, L.: *Osobné údaje ako alternatíva peňažného plnenia v zmluvách o dodávaní digitálneho obsahu alebo digitálnych služieb*, in: Bačárová, R., et al., *Spotrebiteľia a obchodníci na digitálnom trhu. Právne a ekonomické aspekty*. 1. vydanie. Praha: Wolters Kluwer ČR, a. s., 2025, p. 80., Available at: [file:///Users/dianatrescakova/Downloads/Spotrebiteľia%2520a%2520obchodn%25C3%25AD-ci%2520na%2520digi%2520trhu_4%20(2).pdf.], Accessed 27 March 2026.

¹¹ Article 8(1) Charter of fundamental rights of the European Union.

¹² Custers, B.; Malgieri, G., *Priceless data: why the EU fundamental right to data protection is at odds with trade in personal data*, in: *Computer Law & Security Review*, Vol. 45, year 2022 ISSN 2212-473X, Available at:

Similarly to the Charter of Fundamental Rights of the European Union, Article 16(1) of the Treaty on the Functioning of the European Union also provides for the protection of personal data as a fundamental right.¹³

Recital 1 of the GDPR also states that “*the protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (hereinafter the ‘Charter’) and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning them.*”¹⁴

Concerns regarding the conceptualisation of personal data as an economic asset have also been expressed by the European Data Protection Supervisor, who, in relation to the draft DCD Directive, stated that *the proposal still raises certain concerns with regard to its application in two situations: where digital content is provided in exchange for a monetary payment or in exchange for non-monetary consideration (personal data or other forms of data). The EDPS warns against any legislative provision that would equate payment with personal data to a financial transaction. Such an approach could undermine the fundamental nature of the right to the protection of personal data. Personal data should not be regarded as a tradable commodity, and fundamental rights should not be reduced merely to consumer interests.*¹⁵

The conceptualisation of personal data as a form of “payment” is also viewed sceptically by various authors; for example, Kotsios states that one of the main considerations concerning such payments is not merely related to the fairness of the exchange as such – even if we may perceive a transaction with personal data as unfair because we provide more data than we believe we actually should provide – but it is also linked to *a possible danger that personal data may be used for malevolent and/or manipulative purposes and/or a loss of privacy.*¹⁶

2.2. The Conceptualisation of Personal Data as Financial Consideration

Setting aside the expressed views rejecting the perception of personal data as financial consideration, in practice we nevertheless observe that consumers are often exposed to offers of certain benefits in exchange for providing their data. The essence

[<https://doi.org/10.1016/j.clsr.2022.105683>].

¹³ Article 16(1) of the Treaty on the Functioning of the European Union.

¹⁴ Recital 1 of the GDPR.

¹⁵ European Data Protection Supervisor Opinion 4/2017 on the Proposal for a Directive on certain aspects concerning contracts for the supply of digital content, point 17, Available at: [https://www.edps.europa.eu/sites/default/files/publication/17-03-14_opinion_digital_content_en.pdf], Accessed 10 April 2026.

¹⁶ Kotsios, A.: *Paying with data. A study on EU Consumer Law and the protection of personal data*. Uppsala: Department of Law. ISBN: 978-91-506-2919-4.

of these relationships lies in the fact that the consumer is provided with a service or access to intellectual property in a quasi-free manner, while the price for such access consists in exchanging access to the intellectual property for personal data. Subsequently, such personal data may be used by business entities or other actors for specific purposes, particularly for the purpose of generating profit.

This approach is, in a sense, “legitimised” by the DCD Directive, as its adoption has reinforced the perception of personal data as a tradable commodity. In particular, Article 3(1) of the Directive allows the consumer to provide or undertake to provide personal data as consideration for the supply of digital content or a digital service. In simple terms, this reflects the perception of personal data as a substitute for monetary payment. As Midrović notes, through this groundbreaking provision, the consumer who “pays” with personal data as consideration is placed on the same level as a consumer who pays with money.¹⁷

However, these considerations need to be taken further, as personal data often have a higher value than financial resources, meaning that the collection of consumer data in the online environment is, from an economic perspective, more advantageous for traders than monetary payment. As Metzger notes, in a relationship arising from a contract for the supply of digital services or content, the trader provides digital content or services with the expectation that the consumer will consent to the processing of their personal data, which the trader may subsequently use, for example, to profile consumers for the purposes of personalised advertising.¹⁸ As Midrović and Sekulić note personal data (e.g. name and surname, personal residence, e-mail address, etc.) is no longer valuable only to the person to whom they relate, but are also highly demanded by the companies that supply digital content and digital services to improve the quality of their services, determine the profile of their users, tailoring content to their habits and needs, advertising etc.¹⁹

¹⁷ Midrović, S.; Sekulić, M.: *A new function of personal data in the light of the contract for the supply of digital content and digital services*, in Zbornik radova Pravnog fakulteta, Novi Sad, roč. 53, č. 3, 2019, p. 1154, Available at: [https://www.researchgate.net/publication/340232777_A_NEW_FUNCTION_OF_PERSONAL_DATA_IN_THE_LIGHT_OF_THE_CONTRACT_FOR_THE_SUPPLY_OF_DIGITAL_CONTENT_AND_DIGITAL_SERVICES.], Accessed 10 April 2026.

¹⁸ Metzger, A.; Efroni, Z.; Mischau, L.; Metzger, J.: *Data-related aspects of the Digital Content Directive*. In JIPITEC 9. 2018, p. 90, in: Bachňáková Rózenfeldová, L.: Osobné údaje ako alternatíva peňažného plnenia v zmluvách o dodávaní digitálneho obsahu alebo digitálnych služieb., in: Bačárová, R. *et al.*, *Spotrebitelia a obchodníci na digitálnom trhu. Právne a ekonomické aspekty*. 1. vydanie. Praha: Wolters Kluwer ČR, a. s., 2025, p. 80 Available at: [file:///Users/dianatrescakova/Downloads/Spotrebitelia%2520a%2520obchodn%25C3%25AD-ci%2520na%2520digi%2520trhu_4%20(2).pdf.], Accessed 27 March 2026.

¹⁹ Midrović, S.; Sekulić, M., *A new function of personal data in the light of the contract for the supply of digital content and digital services*, in Zbornik radova Pravnog fakulteta, Novi Sad [online], roč. 53, č. 3, 2019, p. 1146, Available at:

The use of personal data as consideration in business models brings several advantages for the digital economy. As already noted, this includes consumer profiling and targeted advertising. The purpose of profiling and targeted advertising is not only to increase user satisfaction, but also to maximise advertising efficiency and thereby generate higher revenues from the promotion of various products and services. For this purpose, users' personal data (which, of course, also include data relating to their behaviour in the online environment) are shared in exchange for financial remuneration with entities that are able to "extract" their economic value. This also extends into the area of competition law, where consumers in digital markets are influenced through various personalised prices, offers, and similar practices.²⁰ The reality of the digital market and the way it operates was also a reason for the adoption of the DCD Directive and for allowing the provision of personal data as consideration for digital services or products.

In this regard, however, not only the tension between the conceptualisation of personal data as a form of "payment" and as a fundamental right of the individual comes to the forefront, but also the question of how the provision of personal data as consideration is legally legitimised. This raises the question of the legal basis on which providers of digital services and content process such personal data. Will it be consent, or is the legal basis the performance of a contract?

Article 3(1) of the DCD Directive provides that the *Directive applies to any contract under which a trader supplies or undertakes to supply digital content or a digital service to a consumer, and the consumer pays or undertakes to pay a price. It also applies to situations where the trader supplies or undertakes to supply digital content or a digital service to the consumer, and the consumer provides or undertakes to provide personal data to the trader.* From the wording of Article 3(1), it follows that the trader's performance is to take place on the basis of a contract for digital performance. This raises the question of whether it is necessary for the consumer to give consent to the processing of their personal data. In this context, the consent of the data subject—the consumer—may appear problematic in cases involving the supply of digital services or digital content.

As defined in Article 4(11) of the GDPR, consent of the data subject means "*any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement*

[https://www.researchgate.net/publication/340232777_A_NEW_FUNCTION_OF_PERSONAL_DATA_IN_THE_LIGHT_OF_THE_CONTRACT_FOR_THE_SUPPLY_OF_DIGITAL_CONTENT_AND_DIGITAL_SERVICES], Accessed 10 April 2026.

²⁰ Hutchinson, S. CH.; Trescakova, D.: *The challenges of personalized pricing to competition and personal data protection law*, in: European Competition Journal, No 18, Vol. 1, 2022, pp. 105-128.

to the processing of personal data relating to him or her.” Article 7(3) further provides for the possibility of withdrawing consent, stating that “*the data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject shall be informed thereof. It shall be as easy to withdraw as to give consent.*” In the case of the provision of digital content or services based on consent to the processing of personal data, the possibility of withdrawing such consent appears problematic. The question then arises as to the subsequent fate of the digital service or content provided: does the trader have the right to terminate the provision of the digital service?

In this context, it is necessary to emphasise that the different purposes for which personal data are processed must not be conflated. It is submitted that the provision of digital content or digital services between the trader and the consumer is governed by a contract for digital performance. This is also confirmed by German legal scholarship, where authors tend to support the view that the consumer’s obligation to provide personal data and the trader’s obligation to supply digital content or services are analogous to a synallagmatic (reciprocal) obligation (*do ut des*).²¹

If we were to accept the view that the provision of digital content or services is carried out on the basis of a contract, the issue of obtaining the data subject’s consent, its possible withdrawal, and the subsequent fate of the provision of the digital performance would not arise. The possibility of processing the data subject’s personal data would exist for the duration necessary for the performance of the contract.

²¹ E.g. Bräutigam, P., Das Nutzungsverhältnis bei sozialen Netzwerken – Zivilrechtlicher Austausch von IT-Leistung gegen personenbezogene Daten, MMR – Zeitschrift für IT-Recht und Recht der Digitalisierung, vol. 15, no. 10, 2012, p. 640; Metzger, A., Dienst gegen Daten: Ein synallagmatischer Vertrag, Archiv für die civilistische Praxis, vol. 216, no. 6, 2016, p. 834; Specht, L., Daten als Gegenleistung – Verlangt die Digitalisierung nach einem neuen Vertragstypus?, JuristenZeitung, vol. 72, no. 15–16, 2017, p. 763; Zoll, F., Personal Data as Remuneration in the Proposal for a Directive on Supply of Digital Content, in: Lohsse, S.; Schulze, R.; Staudenmayer, D. (eds.), Contracts for the Supply of Digital Content: Regulatory Challenges and Gaps – Münster Colloquia on EU Law and the Digital Economy II, Nomos, Baden-Baden, 2017, p. 180; Langhanke, C.; Schmidt-Kessel, M., Consumer Data as Consideration, EuCML – Journal of European Consumer and Market Law, vol. 4, no. 6, p. 221 *et seq* in: Jernej R., Personal data as means of payment for digital content or digital services in the Slovenian Implementation of the Digital content and Services Directive. [DOI: 10.3935/zpfz.74.56.9.], Available at: https://pdfs.semanticscholar.org/2b56/7a484c34775da9fcd713c2c4a8b2cddb1ed6.pdf?_gl=1*1pzf-5wy*_gcl_au*MjEwOTUyNDk5MS4xNzc0NjA3MDQy*_ga*MTUwMjE0NDM0My4xNzc0NjA3MDQy*_ga_H7P4ZT52H5*_czE3NzQ2MDcwNDIkbzEkZzAkDE3NzQ2MDcwNDIkajYw-JGwwJGgw., Accessed 7 April 2026.

3. HOW CAN THIS BE RESOLVED?

In the preceding chapters, we have highlighted certain risks arising both from the perception of personal data as an economic asset and from their provision as consideration under the DCD Directive. A significant risk also lies in the manner in which certain entities operating in the digital environment collect such data, and it may be noted that problematic issues also arise in relation to so-called adhesion contracts, which are based on the principle of “take it or leave it”. In many cases, if a consumer wishes to exist in the online environment and access digital content or digital services, they are required to provide their data, even irrespective of the fact that they may also pay for the digital service or content with monetary consideration. As already mentioned above, the issue of perceiving personal data as an economic commodity may conflict both with the protection of the individual from the perspective of fundamental rights and with the protection of the data subject under the GDPR.

In the introduction to this paper, we asked whether there are legal limits to the use of the economic value of personal data without weakening or even infringing the protection of individuals’ fundamental rights. The answer to this question lies not only in the conceptualisation of the right to the protection of personal data as a fundamental right, which we examined in the first chapter, but must also be sought in the GDPR itself, which provides the overarching framework for the protection of personal data.

A significant fact is that the DCD Directive itself, in Recital 48, expressly refers to the GDPR with regard to personal data and states that *“the processing of personal data in connection with any contract falling within the scope of this Directive should fully comply with Regulation (EU) 2016/679 or any other Union legal act on data protection. Furthermore, this Directive should be without prejudice to the rights, obligations and non-contractual remedies provided for in Regulation (EU) 2016/679. Circumstances leading to non-compliance with the requirements laid down in Regulation (EU) 2016/679, including fundamental principles such as data minimisation, privacy by design and privacy by default, may, depending on the circumstances of the case, also be considered as non-conformity of the digital content or digital service with the subjective or objective requirements of conformity laid down in this Directive.”* Similarly, Recital 37 states that *“the performance of activities falling within the scope of this Directive may also involve the processing of personal data. Union law provides a comprehensive framework for the protection of personal data. In particular, this Directive is without prejudice to Regulation (EU) 2016/679 of the European Parliament and of the Council and Directive 2002/58/EC of the European Parliament and of the Council. That framework applies to any personal data processed in connection with*

contracts covered by this Directive. Personal data should therefore be collected or otherwise processed in accordance with Regulation (EU) 2016/679 and Directive 2002/58/EC. In the event of a conflict between this Directive and Union law on data protection, Union data protection law shall prevail.”

As Bachňáková Rózenfeldová notes, this provision expressly establishes the primacy of Regulation (EU) 2016/679 over the provisions of Directive (EU) 2019/770, in view of the comprehensive nature of the regulation contained in the Regulation, which applies to any personal data processed in connection with contracts falling within the scope of that Directive.²² In simple terms, the contracting parties cannot derogate from the framework of protection provided by data protection and privacy law through different contractual arrangements to the detriment of the data subject, and the provisions of Directive (EU) 2019/770 cannot impose less stringent requirements in this regard.²³ It is also stated that, on the basis of the above, it can be concluded that a trader supplying digital content or a digital service to a consumer in exchange for consideration consisting of the provision of personal data may, in light of the fact that it determines the purposes and means of the processing of the provided personal data, be regarded as a controller within the meaning of Article 4(7) of Regulation (EU) 2016/679.

From the established relationship between the DCD Directive and the GDPR, it can be clearly inferred that even where personal data are processed as consideration, the trader acts as a controller and is obliged to comply with all obligations imposed by the GDPR and to enable the data subject to exercise the rights conferred upon them by the Regulation.

Another aspect that must be assessed is that data subjects who provide their personal data as consideration in the digital environment do not transfer ownership of those personal data, but instead grant the trader a right to use them, i.e., to process them under the strict framework of the GDPR. In this context, Custers and Malgieri state that the right to data protection is an inalienable right and that “paying” with data does not constitute a transfer of ownership of personal data,

²² Recital 37 Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

²³ Efroni, Z. Gaps and Opportunities: *The Rudimentary Protection to ‘Data-Paying Consumers’ under New EU Consumer Protection Law*. Weizenbaum Series #4. Working Paper. Weizenbaum Institute for the Networked Society –The German Internet Institute. In: Bachňáková Rózenfeldová, L.: *Osobné údaje ako alternatíva peňažného plnenia v zmluvách o dodávaní digitálneho obsahu alebo digitálnych služieb*. in: Bačárová, R. et al., *Spotrebiteľia a obchodníci na digitálnom trhu. Právne a ekonomické aspekty*. 1. vydanie. Praha: Wolters Kluwer ČR, a. s., 2025, p. 80, Available at: [file:///Users/dianatrescakova/Downloads/Spotrebiteľia%2520a%2520obchodn%25C3%25AD-ci%2520na%2520digi%2520trhu_4%20(2).pdf.], Accessed 27 March 2026.

but rather a transfer of rights in relation to personal data—namely, the granting of a right to collect and process them. They therefore reject the concept of ownership of personal data within the EU and accept their transfer only within the limits set by data protection law.²⁴ For this reason, it may be accepted that personal data can constitute a specific subject matter of an obligation and serve as a means of exchange in the digital economy, albeit in a strictly limited and, in a certain sense, temporary manner. By conceptualising personal data and their protection on the one hand, and the nature of the digital economy on the other, it is possible to acknowledge the flow of personal data within the digital economy as a valuable economic asset, while maintaining strict protection of personal data as a fundamental right of the individual, deriving primarily from the GDPR.

4. CONCLUSION

In the preceding parts of this paper, we have addressed the controversial nature of personal data from the perspective of their “tradability”. We have discussed arguments that, on the one hand, reject the idea that personal data constitute an economic commodity provided in exchange for digital content or digital services, as permitted by the DCD Directive. However, the reality of digital markets and the rationale behind the adoption of the DCD Directive present an opposing view of the nature of personal data, perceiving them as a commodity and an economic asset.

It is clear that this question cannot be definitively resolved, nor can the various theories be unified in a way that would allow us to determine with certainty whether personal data have or do not have the nature of a form of payment in the online environment. At the same time, in the current context it is not possible to clearly determine whether personal data can be the subject of an individual’s ownership right or merely of a personal right.

Despite these controversies, we must take into account the current state of the digital economy and acknowledge that there is no legislative barrier preventing a data subject acting in the position of a consumer from providing their personal data to a trader acting as a controller for further processing, the result of which may include profiling for targeted and personalised advertising, and even the creation of personalised pricing.

²⁴ Custers, B.; Malgieri, G., *Priceless data: why the EU fundamental right to data protection is at odds with trade in personal data*. In: Computer Law & Security Review, Vol. 45, year 2022 ISSN 2212-473X, Available at: [<https://doi.org/10.1016/j.clsr.2022.105683>], Accessed 27 March 2026.

We can therefore conclude that personal data undoubtedly have economic value and constitute a significant economic asset, albeit with a specific status stemming from the fact that they are inseparably linked to the identity of a natural person and form part of their private sphere. The European legal order therefore approaches personal data primarily from the perspective of the protection of fundamental rights, rather than as an object of property rights. The protection of personal data within the EU is understood as stringent, meaning that their processing is subject to the principles of lawfulness, transparency, and proportionality.

Moreover, the economic value of personal data must always be limited by the legal framework for the protection of individuals' fundamental rights and freedoms. Accordingly, the circulation and commercialisation of personal data require compliance with the applicable legal regulation and proper oversight of contractual relationships in which personal data constitute the subject matter.

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