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Abstract:

European Union's Directive 2019/770 on certain aspects of contracts for the supply of digital content and digital services extends the legal protection against non-delivery and non-conformity of digital content and digital services with the contract to consumers who do not pay the price as a counter-performance but provide the professional with a possibility to process personal data concerning them. However, objectives of personal data protection law and contract law seem to be difficult to reconcile due to their different axiology. Provisions of the former are generally aimed at safeguarding the fundamental right of protection of personal data, the latter is designed to facilitate an exchange of goods. Nevertheless, in the world of digital economy they cannot be separated.

The growing popularity of contracts concerning digital content or digital services in exchange for access and possibility to process personal data concerning a consumer poses an important questions regarding the features of obligation relationships arising from such contracts. Firstly, it has to be established whether the „supply" of personal data could be treated as actual counter-performance. The problem results from the fact that in order to determine what are the duties of a consumer concluding such a contract (as well as corresponding rights of a professional), the provisions of General Data Protection Regulation have to be taken into consideration. Their impact on the content of obligation relationship at issue is difficult to overestimate due to the fact only the GDPR shall be treated as a basis to establish whether the processing of personal data is lawful. In practice, their application vastly limits the legal protection of a professional against breach of contract by a consumer. Therefore, an obligation relationship resulting from analysed contracts is atypical one.