



M-26/25, Digital Defence Association v Cassiopeia LLC

1. Argo is one of the founding European Union Member States and is today a modern, diverse and open society. In the EU, many tech startups transfer their seat to Argo because of its friendly investment environment. Recruiting motivated young employees in Argo is particularly easy as Argo is famous for its open community and stable democracy. Fostering its historic long-standing traditions, Argo maintains a strong relationship with its former colony and third country Liliana, a wealthy country that functions as a tax haven. Liliana has a trade agreement with the EU, which includes, inter alia, a chapter on consumer protection. In addition, the European Commission has adopted a data protection adequacy decision for Liliana, recognising that Liliana ensures an essentially equivalent level of protection for personal data transferred from the Union. That decision is conditional and subject to periodic review with particular safeguards required for processing special category data within the meaning of the Regulation (EU) 2016/679 and for any access by Lilianian public authorities to personal data aligned with Article 45 Regulation (EU) 2016/679.

2. In March 2021, Beppo Claudio from Argo just finished his computer-science degree. He wanted to capitalise on his knowledge and participate in the vibrant Argonian start-up scene in the capital city of Communus. After witnessing the rise of algorithmic dating in major capitals across Europe, he conceived of the mobile application “Cassiopeia”. Cassiopeia was initially developed as a niche dating service for young professionals seeking long-term relationships. Following a seed-funding round in May 2022, he founded the limited liability company “Cassiopeia LLC”, established in Argo and governed by Argonian law. After conducting a data protection impact assessment, the Cassiopeia app was launched as a minimal viable product in July 2022. Upon registration, users must give consent for the processing of their sexual orientation and health data and accept Cassiopeia’s Terms and Conditions.

3. Initial uptake among 20 to 35-year-olds in Argo was modest with 200,000 sign-ups in the initial months after the launch. However, following a viral campaign in November 2022 promoting so-called “intimacy filters” whereby users can signal their availability for intimate conversations, the dating app’s daily active users tripled within weeks.

4. This also raised the profile of the app among venture capital investors. Ultimately, Fusi Growth Partners, an investor from Liliana, injected € 13 million into Cas-



siopeia LLC; Fusi Growth Partners stipulated the need for rapid monetisation and pressured Cassiopeia LLC to adapt the app to a full intimacy-lifestyle model targeting both adults and older teens. Research by the marketing department of Fusi Growth Partners has shown that these target groups are increasingly interested in full user experiences and intimacy networks that extend beyond simple match-making apps. In their funding negotiations, Fusi Growth Partners underlined the need for a speedy return on investment of the new model, pushing Cassiopeia LLC to do “whatever it takes” to make this legally possible.

5. In response, Cassiopeia LLC introduced new features in the Cassiopeia app in February 2023. It introduced a group function, a menstrual and reproductive health monitor and included reproductive and sexual-health educational material. It also launched “CassX”, a paid subscription tier of the Cassiopeia app. CassX unlocks ad-free AI-generated erotic image galleries, sexual-preference surveys, personalised proposition templates and private video-rendezvous rooms. Marketing materials featured social-media influencer promotions under the hashtags #SafeSpace and #OwnYourDesire, which promised to revolutionise digital intimacy while specifying that all CassX explicit features were strictly for users aged over 18 years.

6. Following these changes, Cassiopeia’s total user numbers climbed quickly and surpassed 7 million users, including approximately 290.000 users under the “CassX” subscription tier. The multi-jurisdictional success of Cassiopeia includes Argo and numerous other EU Member States but extends also to Liliانا. As Cassiopeia’s success grew, criticism emerged. In July 2023, several parents in Argo filed a complaint with the Argonian Data-protection Authority, alleging that their 15-year-old children had obtained erotic images via CassX after forging parental-consent forms.

7. A subsequent audit by the Argonian Data-protection Authority revealed an internal Cassiopeia 2023 risk memorandum warning that “thousands of minors are creating adult profiles” and that “our algorithms are harvesting at scale sensitive data pertaining to teenagers.” This memo advised either introducing manual age reviews or raising the age-threshold for explicit content to protect the brand and to comply with EU law. According to the memo, the Board of Directors, including its chairman Beppo Claudio and members from Fusi Growth Partners, rejected the proposal for manual reviews for “cost and latency reasons.” The Argonian Data-protection Authority issued a warning to Cassiopeia LLC, requesting that the company comply with both Regulation (EU) 2016/679 and Directive 2011/93/EU to avoid the imposition of corrective measures.



8. In a bid to avoid fines and on consideration of the possible impact on the rights of minors, Cassiopeia LLC added Clause 7.4 to its Terms and Conditions in January 2024. Clause 7.4 now permits registration from age 14 years (in line with the Argonian Digital Consent Act, 2021). However, it prohibits any user under 18 years from (a) activating intimacy filters, (b) subscribing to CassX, (c) sending or receiving messages containing explicit content, and (d) joining any in-app LGBTQ+ support or sexual-health groups. Clause 7.4 further provides that any account flagged by the automated age-verification system as belonging to a minor under 18 years and using the four services listed above is to be suspended immediately and all associated chat and/or group history permanently to be deleted without prior notice. Appeals are permitted only consequent on the provision of certified government-issued identity documents and carried out by manual review “within 30 working days,” although there is no binding time limit for the review. Existing users were informed of these changes through a push notification when they next opened the Cassiopeia App.

9. To provide for the smooth functioning of the new setup Cassiopeia LLC changed their company to a multi-jurisdictional architecture: the main operations continue to be run by Cassiopeia LLC, located in Argo, which *inter alia* collects and stores user profiles; CassTrust LLC, a subsidiary located in Liliانا performs fully-automated age verification, using facial-recognition with AI age estimation, together with document verification based on a scanned form and a selfie match. It further provides AI-driven content moderation.

10. On 12 April 2024, Nicola Hora, citizen of the neighbouring EU Member State Kingdom of Xaxo but resident together with her parents in the city of Communus in Argo, then 17 years, registered her profile on the Cassiopeia app. She provided her name, date of birth, photograph and digital parental authorisation, all of which CassTrust’s system approved without any human oversight. Nicola is a closeted bisexual but thinks she is ready to open up to family and friends. She is looking to exchange on LGBTQ+ topics and hopes to find a partner with similar preferences.

11. The next evening, Nicola Hora received a push notification advertising the “Argo Queer Youth Connexxt”, a popular and private support group. At 20:45, Nicola activated the intimacy filter and joined the Argo Queer Youth Connexxt. In that group, she posted several questions on coming out experiences. She spent the next three hours exchanging over 120 private messages, discussing coming-out, local LGBTQ+ events and mental-health resources available in Argo to bisexual teens.



12. Nicola developed a particular rapport with Nino Grey, a 22-year-old bisexual Argonian man. Nicola and Nino exchanged private messages with a focus on Nino's coming out story for two hours. Their conversation centred initially around Nino's difficulties as a bisexual but became more intimate in nature over time. At 00:02 on 14 April 2024, wishing to share an intimate sketch with Nino, Nicola attempted to subscribe to CassX.

13. Instantly, her screen displayed: "Account deactivated: Terms Violation (Clause 7.4)." Within seconds, her entire chat history, group posts and profile data were irretrievably erased. The only notification Nicola received cited a generic breach of Clause 7.4; no human moderator intervened.

14. At 00:15 she filed an in-app appeal, attaching her birth certificate and parental-consent form. After an automated check by CassTrust, the in-app appeal system displayed the following message at 00:16: "User remains under 18 years – appeal denied." Nicolas's follow-up emails in the coming days to support@cassiopeia.eu went unanswered.

15. On 20 May 2024, Nicola sent an email complaining about her experiences with the Cassiopeia app to the Digital Defence Association (DDA) – a non-governmental organisation (NGO) with its central office in Communus – urging it to act. The DDA is the leading non-profit consumer-rights NGO in Argo, founded under Argonian law as a registered association and recognised as a qualified entity by the Federal Ministry of Justice under Article 4 of Directive (EU) 2020/1828 and Rule 164 of the Argo Civil Procedure Act. The NGO receives no public funding and relies primarily on donations or third-party litigation funding. It promises access to justice for consumers who have suffered breaches of their rights in the digital space.

16. The DDA replied to Nicola Hora and promised legal action. It noted that the DDA had received multiple complaints over similar suspensions and deletions on the Cassiopeia app from teenagers all over Argo. Luckily, Argo has recently changed its civil procedural rules to better facilitate consumer representative actions. The Consumer Enforcement Act of 1 June 2023 introduced Rules 162 – 172 of the Argo Civil Procedure Act to transpose Directive (EU) 2020/1828, availing of the legislative leeway afforded by that directive. They contain, *inter alia*, the following rules:
 - Rule 163 of the Argo Civil Procedure Act provides that "[regarding] civil claims brought against a trader and concerning legal relationships affecting at least 30 consumers, qualified entities under Rule 164 of the Argo Civ-



il Procedure Act may bring the following representative consumer actions: a) actions for declaratory relief; b) actions for injunctive relief; c) redress actions.”

- Rule 164 of the Argo Civil Procedure Act states that “[a] registered association whose statutory tasks include the long-term representation of consumer interests shall be entered in a list of qualified consumer association upon application with the Federal Ministry of Justice.”
 - Rule 165 of the Argo Civil Procedure Act states that “[u]pon certification of the representative consumer action, notice must be provided to all identifiable, affected consumers in a manner and form approved by the court. Any consumer who does not subsequently notify the court of their express wish not to partake in the proceedings by a specified deadline is deemed to be a party to the representative consumer action and will be bound by the judgment.”
 - Under Rule 167 of the Argo Civil Procedure Act, the Communus Regional Court is the only competent court in Argo to hear representative consumer actions, with the possibility of appeal to the Supreme Court of Argo.
17. In the course of transposing Directive (EU) 2020/1828, the Argonian legislator seized the opportunity to introduce, for the first time, a comprehensive regulatory framework for third party funding of representative consumer actions, an area that was previously unregulated under Argonian law. This initiative was driven by growing concerns voiced in the Committee on Justice in the Argonian Parliament about the rapid rise of both commercial and non-commercial litigation funding in the country, which could hamper the independence of qualified entities. Lawmakers feared that the involvement of profit-oriented funders could lead to conflicts of interest, excessive control over litigation strategies and the undesirable commercialisation of justice. Discussions in the Committee on Justice highlighted structural conflicts where the funders insist on immediate financial returns leading to early settlements.
18. Particular attention was paid to the increasing participation of non-EU litigation funders in Argonian lawsuits. The legislator expressed apprehension about the sources of such funding, especially in cases involving foreign investors, potentially funded through public subsidies or state-linked vehicles in their home states, and which could exert undue influence over legal proceedings, in particular by steer-



ing sensitive test cases, exerting leverage over settlement timing, or acquiring *de facto* control of qualified entities through contractual rights. Additional risks cited included the opacity of any ultimate beneficial ownership, difficulties in enforcing court-ordered safeguards extra-territorially and possible forum shopping driven by the possibility to leverage different rules on discovery and differing data-access incentives. This, in the view of the Committee on Justice, presented risks to the integrity, impartiality and public trust in Argo’s judicial system, as well as to national sovereignty in sensitive disputes. In the parliamentary debate, alternatives to Rule 170 of the Argo Civil Procedure Act were proposed, such as the mandatory disclosure of funder identity and of beneficial ownership or *ex ante* judicial approval of funding agreements. Ultimately, and in line with the advice of the Committee on Justice, the Argonian legislator sought to balance access to justice for consumers with the need to prevent foreign interference in judicial proceedings and to protect the equity of its legal system.

19. Consequently, the new Rule 170 of the Argo Civil Procedure Act provides that “[a] representative consumer action is inadmissible if it is financed by a third party, who is: a) not domiciled nor has its statutory seat, central administration, or principle place of business in Argo or in another European Union Member State; b) dependent on the (legal) person against whom the claim is brought; c) a competitor of the (legal) person against whom the claim is brought; d) is expected to influence the conduct of the lawsuit, including decisions on settlements, to the detriment of consumers.”

20. On the basis of this new Consumer Enforcement Act system, the DDA filed a representative consumer action against Cassiopeia LLC before the Communus Regional Court on behalf of all Argonian users aged 14 – 17 years whose accounts were suspended pursuant to Clause 7.4 from January 2024. By its action filed on 18 July 2024, the DDA seeks (1) a declaration that Clause 7.4 is unlawful and unenforceable and breaches Articles 3(1), 21(1) and 24 of the EU Charter of Fundamental Rights (the ‘Charter’), as well as Article 21(3) of the Argonian Constitution, and (2) an order restoring in full the account, data and group membership of all users suspended or deleted pursuant to Clause 7.4.

21. To substantiate the claim, the DDA adduced survey data from 1 237 affected minors, showing that 82 % of minors surveyed reported acute feelings of rejection and 67 % experienced worsened mental-health symptoms. It further included expert reports from two child-psychiatrists and a data-protection scholar concluding that Clause 7.4 is over-inclusive and insufficiently-tailored to protect minors without infringing their fundamental rights. The experts underlined the relevance of the Charter and cited Article 21(3) of the Argonian Constitution, which recognises



the full autonomy of natural persons regarding their sexual orientation from age 14 years. According to the reports, LGBTQ+ minors were particularly reluctant to explore or express their sexual orientation in a safe environment.

22. To illustrate Cassiopeia’s inaccuracy and algorithmic unreliability, the DDA included in their brief leaked emails from the compliance department of Cassiopeia LLC. An email from the compliance department to the chairman, Beppo Claudio, notes “excessive false positives” of 18-year-olds whose IDs failed the automated optical character recognition process. Nevertheless, the founder instructed the compliance teams to maintain the strict age barrier to “protect brand integrity”, “help minors” and “avoid regulatory fines.” Cassiopeia responded by producing into court an internal study showing a high accuracy rate of catching users under 18 years through the automated age-verification system, which facilitates child protection. The defence also referred to a sharp decline in parental complaints after the introduction of Clause 7.4.

23. By judgment of 20 March 2025, the Communus Regional Court dismissed the action brought by the DDA on behalf of the enumerated consumers. The court concluded that Clause 7.4 pursues legitimate aims, namely the protection of minors from sexual exploitation, combats online child-pornography risks and safeguards children’s personal data. The court held that the clause is necessary and proportionate in light of the limitations on technological moderation. The DDA appealed the judgment to the Supreme Court of Argo.

24. In the meantime, the Cassiopeia app was the subject of new controversy. Argonian newspapers abounded with stories of a data protection scandal. Investigative journalists revealed that, since mid-2024, the company had sold personalised intimacy-lifestyle data, including location-based matching preferences, CassX viewing histories of high-end erotic content, and, for female users, menstrual-cycle tracking information to adult-entertainment advertisers and pharmaceutical firms without proper consent. Approximately 500,000 adult profiles and 50,000 minor profiles were affected, with roughly half of the affected users being female.

25. In the wake of the data-sale scandal, many users again reached out to the DDA. They reported fears of being among the leaked profiles and are afraid of unwanted disclosure of their sexual orientation or practices, as well as their menstruation status and of the associated consequences for their professional and family life. They were angry that Cassiopeia, which advertised its app as a safe space, is monetising their preferences and reproductive health data. Referring to the fact that the leaked information belongs to the most sensitive of personal data, the



DDA intends to file another representative consumer action seeking substantial damages for non-material harm on behalf of all users whose sensitive data have been sold, in particular female users.

26. Conscious of the significant legal and expert costs associated with complex representative consumer claims, the DDA sought external financial support to bring the present action. To that end, it reached an agreement with Secundus, a well-established civic society foundation based in Liliana, to cover the litigation expenses. Secundus is widely recognised in Liliana for its extensive experience in third-party litigation funding. Over the years, Secundus has developed special expertise in supporting various forms of legal action, and it advertises prominently on its website that it adopts a “hands-off” approach to consumer claims, allowing claimants to retain full control over the conduct of proceedings without further specification.
27. The present action would mark Secundus’ first litigation funding arrangement within the European Union. The present case would also represent a turning point for the DDA, which, for the first time, is reliant on external third-party funding from a non-EU organisation to support a consumer representative action. This decision was driven by the increased financial burden of complex digital rights litigation. The Association believes that the absence of a fully-developed Capital Markets Union within the EU has restricted access to diverse sources of litigation funding, especially for civil society organisations seeking to challenge well-resourced defendants. By partnering with Secundus – an organisation that benefits from Liliana’s favourable fiscal and financial environment, and which has transformed the country into a hub for innovative legal financing – the NGO aims to level the playing field and secure the necessary resources to pursue this complex, high-stakes claim.
28. The litigation funding agreement between the DDA and Secundus states that should the envisaged claim be successful, Secundus would receive 20 percent of any award. Otherwise, the agreement provides full autonomy to the DDA for the agreement of settlements or the withdrawal of claims.
29. With the financial backing of Secundus, on 10 April 2025, the DDA filed a new representative consumer action against Cassiopeia LLC before the Communus Regional Court on behalf of all the users whose sensitive data had been sold without full and proper consent. Relying on Article 82 Regulation (EU) 2016/679, it seeks a fixed per-capita award of € 200 for adult victims and € 500 for minor victims, reflecting the greater vulnerability of minors. For female consumers affected by



the leak of menstrual data, it seeks a fixed per-capita award of € 500 for adult victims and € 1000 for minor victims. The legal department of the DDA based their pro rata awards on a comparative legal study of typical awards for non-material damages for various data protection infringements awarded by national courts across the Member States.

30. In the written pleadings, Cassiopeia LLC argued that in today's digital landscape it is normal to "pay" for non-monetary (app) services with data that is subsequently sold to advertisers. It contended that, under Argonian law, damages for non-material harm must be proven individually and quantified individually, which the DDA did not do. They further argued that the exact number of harmed users is unclear and unproven by the NGO. Cassiopeia further states that the use of fixed awards would, in any event, render the claim inadmissible. This is because, in such a scenario, third-party litigation funding would no longer be necessary and would merely result in the undue influence of an external party on the proceedings because expert reports to calculate individual harm would no longer be required.
31. The DDA, on the other hand, put forward that representative actions should allow per-head fixed awards without the need to produce individual proof for non-material harm. Otherwise, such claims would not be viable when brought as representative opt-out actions. It further underlined the necessity of litigation funding for this case due to the complexity of representing different types of consumers.
32. By judgment of 5 June 2025, the Communus Regional Court dismissed the claim as inadmissible due to an infringement of Rule 170 of the Argo Civil Procedure Act. In its judgment, the Communus Regional Court noted that, as an alternative ground for dismissal, the action was inadmissible because the DDA failed to notify all identifiable affected consumers within the timeframe required by Rule 165 of the Argo Civil Procedure Act, rendering the representative action procedurally flawed. The DDA believes that it had notified all identifiable affected consumers and that Rule 170 of the Argo Civil Procedure Act infringes its EU right to obtain capital from third countries and prevents the introduction of actions, such as the one at hand. It has therefore appealed the matter to the Supreme Court of Argo.
33. The Supreme Court of Argo joined both representative consumer actions of the DDA against Cassiopeia LLC under Argonian civil procedural law. The Supreme Court of Argo identified several unresolved questions of Union law and considered that certain core EU rights might be at stake. It also expressed doubts about the compatibility of Rule 170 of the Argo Civil Procedure Act with EU law and about the resulting inadmissibility of the action. However, the Supreme Court of Argo did



not address any procedural defect relating to Rule 165 of the Argo Civil Procedure Act. On 19 August 2025, the Supreme Court of Argo stayed all proceedings and referred the following questions to the Court of Justice of the European Union for a preliminary ruling on the grounds of Article 267 of the Treaty on the Functioning of the European Union:

- 1) Must Articles 3(1), 21(1), 24, and 51(1) of the Charter of Fundamental Rights of the European Union be understood as having horizontal direct effect for a private company not only when it is implementing Union law (in particular Regulation (EU) 2016/679 and Directive 2011/93/EU) but also in private contractual relations, thereby allowing a national court to disapply or interpret contractual terms that prevent minors aged 14 – 17 years from exercising their right to sexual self-determination, to receive necessary protection and care, and to express freely their sexual orientation?**

 - 2) Do Article 82 of Regulation (EU) 2016/679 and Article 21(1) of the Charter of Fundamental Rights of the European Union permit national courts hearing representative actions concerning data protection breaches involving the sale of personalised sexual-lifestyle and menstruation data, to grant fixed per-capita awards that differentiate between adult and minor data subjects of different genders?**

 - 3) In circumstances such as those in the main proceedings, does Article 63 TFEU preclude the legislation of a Member State that permits only entities domiciled, or having their statutory seat, central administration, or principal place of business in that Member State or in another EU Member State, to provide third-party litigation funding?**
34. The reference for a preliminary ruling was received by the Registry of the Court in Luxembourg, which assigned to it case number M-26/25. In accordance with Article 23 of the Statute of the Court of Justice, the Registrar has notified the Digital Defence Association (as applicant) and Cassiopeia LLC (as defendant), inviting them to submit written observations to the Moot Court, in conformity to its Rules of procedure, by November 25th 2025 at 23:59 CET.