

The Hamburg Commissioner for Data Protection and Freedom of Information

5 June 2018

ECJ confirms the position of data protection authorities in Schleswig Holstein and Hamburg to Facebook and fan page operators

With today's ruling, the European Court of Justice confirms the order of the data protection authority ULD Schleswig-Holstein against the operators of Facebook fan pages and assigns them a data protection responsibility for the processing of the data by Facebook. At the same time, the ECJ notes that EU-wide national data protection law was applicable to Facebook by the supervisory authorities in the Member States before the basic EU data protection regulation (GDPR) came into force, insofar as a corresponding branch was operated.

The ruling has consequences for all sites that operate Facebook fan pages. In future, they will no longer be able to claim that they are not responsible for the data processing, in particular of persons who access these fan pages and are thus tracked by Facebook, under data protection laws. According to the ECJ, there is a joint responsibility, so that companies and authorities that operate fan pages are bound by data protection laws towards the users of their fan pages in a similar manner than to the users of their own homepage. They must now demand full transparency from Facebook regarding the processing of user data in this context from the fan page visitors and, insofar as this is not compatible with applicable data protection law, obtain changes from Facebook or terminate the offer of a fan page. Otherwise, this can lead in individual cases to official orders as well as to the imposition of fines, especially as the legitimate data processing by Facebook with regard to the setting of cookies or the storage of the IP address of the website visitor without the consent of affected website operators and corresponding information is extremely questionable. This has recently also been confirmed by the courts in Belgium.

The applicability of national law in the case dealt with by the ECJ concerns the legal situation before the GDPR entered into force. The Court thus also confirms the application of national law by the HmbBfDI. They had issued an order against Facebook because of the mass exchange of data with WhatsApp. The legal complaints filed by Facebook against this order were rejected in two instances in the interim legal protection proceedings by the Administrative Court (VG) Hamburg and the Higher Administrative Court (OVG) Hamburg.

Johannes Caspar, Hamburg Commissioner for Data Protection and Freedom of Information: "The ruling of the European Court of Justice confirms our long-standing legal opinion on the applicability of national data protection law. Therefore, one thing is clear: On the issue of data transfer between Facebook and WhatsApp in particular, we will continue our efforts to ensure that the Facebook Group's plans to resume data exchange after the GDPR entered into force and thus to turn back the wheel in terms of data protection law are stopped. Facebook fan page operators must realize that they are legally in the same boat as Facebook and can no longer evade their data protection

responsibility. This applies in particular to the many public bodies that are particularly bound by law and regulations. The supervisory authorities of the Federal Government and the Länder will now decide how the judgment of the European Court of Justice is to be implemented".

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