

The Hamburg Commissioner for Data Protection and Freedom of Information

25. October 2017

ECJ Advocate General confirms legal opinion of the supervisory authorities regarding Facebook and fan page providers

Yesterday, the Advocate General of the European Court of Justice, Ives Bot, delivered his Opinion in the case brought by the Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein, a regional data-protection authority in Schleswig-Holstein against the Wirtschaftsakademie Schleswig – Holstein GmbH, a company governed by private law and specialising in the field of education). In this statement, the Advocate General confirms both the ULD's view on the data protection responsibilities of Facebook fanpage operators and the long-standing legal opinion of the HmbBfDI and other European data protection authorities (Belgium, France, Spain, the Netherlands) that national data protection law applies to Facebook's activities in the Member States, even though Facebook has its European headquarters in Ireland. The connecting factor for applying national supervision is, as the Advocate General expressly confirms, that Facebook Germany, whose registered office is in Hamburg, effectively and actually pursues an activity in Germany by means of a permanent establishment and thus operates a branch.

Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information, states: "The Opinion of the Advocate General contains clear proposals for the ECJ with regard to the legal disputes between the supervisory authorities on the one hand and Facebook and the operators of Facebook fanpages on the other. Insofar as the ECJ will follow the Advocate General's Opinion, Facebook's activities in Europe will continue to be monitored by the independent national data protection authorities in accordance with applicable law. I assume that our order for the planned data exchange between WhatsApp and Facebook will continue to apply to German users. At the same time, the operators of fanpages are advised to observe the further course of the proceedings before the European Court of Justice: In the future, operators of fanpages, in addition to Facebook, could be held responsible for data processing with regard to the data collected by visitors to their site."

The Opinion of the Advocate General can be found here:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=195902&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=700535>

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