

PRESS RELEASE

ECJ Advocate General: No Gaps in Responsibility of Administrators of Facebook Pages under Data Protection Law

Can a business operate a Facebook Page (fan page) without ensuring that Facebook complies with EU data protection law? This is the core question in proceedings initiated in 2011, which have now come before the Court of Justice of the European Union. After the hearing took place on 27 June 2017, the Advocate General today delivered his Opinion. The Grand Chamber is expected to deliver its judgment in several months.

The proceedings are based on an order of Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein (ULD), the data protection authority of Schleswig-Holstein, against Wirtschaftsakademie Schleswig-Holstein (WAK) from 2011, which demanded that WAK deactivate their Facebook Page (fan page) due to violations of data protection law.

In the ensuing legal dispute the Bundesverwaltungsgericht (Federal Administrative Court) on 25 February 2016 referred six questions to the Court of Justice. Crucially, the proceedings concern the **question of responsibility under data protection law in cases where a business for its own purposes uses a service provider, such as a social network.** Furthermore, it concerns the competence of the various European data protection authorities in cross-border cases.

In proceedings before the Court of Justice, the Advocate General, in open court and in complete impartiality and independence, provides a proposal for a decision based on the previous jurisprudence of the court. The court frequently follows these opinions in substantial parts; however, it is not bound by them.

Today Advocate General Yves Bot delivered his opinion where he holds that “Wirtschaftsakademie must, in my opinion, be regarded as jointly responsible for the phase of the data processing which consists in the collection by Facebook of personal data.” Even if the administrator does not have access to these data, this “does not preclude the latter [the business] from being regarded as controllers once they have accepted the contractual terms, thus accepting full responsibility for them.” The fact that an administrator “uses the platform offered by Facebook and benefits from the services associated with that platform does not absolve it from its obligations in the field of

personal data protection.” According to the Advocate General, a fan page administrator has a decisive influence over the processing as well as the power to end it by closing the Facebook Page down. The Advocate General finds no difference between a fan page administrator and the manager of a website that contains a web tracking service and thereby supports the setting of cookies and the processing of data of the web tracking service provider.

Furthermore, the Advocate General affirmed that ULD was competent to apply the German data protection law to the case at hand. There was no obligation to previously consult the data protection authority of the Member State in which Facebook has its establishment and request action by that authority.

Marit Hansen, head of ULD: “I welcome the progress achieved in **clarifying the responsibility of controllers** under data protection law. We share the Advocate General’s opinion that a business must not ignore the **data protection risks which ensue with the involvement of service providers**. This is and has been our position in this dispute. The Advocate General underscores that, in his opinion, this does not only apply to fan page administrators, but extends to web tracking services, where service providers collect information about users by use of cookies. The statement is clear: There must be **no gap in the responsibility of controllers under data protection law**. This applies especially when service providers are involved. We are now awaiting the judgment of the Grand Chamber.”

The opinion of Advocate General Bot can be found at:

<https://www.datenschutzzentrum.de/1170-.html> (German)

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=195902&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=730706> (English, provisional version)

More information on the judgment of the Bundesverwaltungsgericht and the questions referred to the Court of Justice (in German):

<https://www.datenschutzzentrum.de/artikel/1013-.html>

Judgment of the Bundesverwaltungsgericht and the questions referred to the Court of Justice (in English, non-authoritative translation):

<http://www.bverwg.de/en/250216B1C28.14.0>

More background information (in German):

<https://www.datenschutzzentrum.de/plugin/tag/facebook>

For further queries please refer to:

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