

Cookies also require consent in Germany

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With today's ruling on Planet49 (C-673/17), the European Court of Justice (ECJ) has given a fundamental answer to essential questions that have led to different interpretations between website operators, providers of tracking services and the data protection supervisory authorities in recent years. The ECJ makes it clear that - also in Germany - the setting or retrieval of cookies or other information stored in the user's device requires consent. The opt-out procedure provided on many websites is not sufficient. The statements of the court apply regardless of whether personal data is involved.

The court also specifies the requirements that must be placed on a corresponding consent. It requires active behavior on the part of the user, which is done without any doubt and voluntarily. This excludes, for example, models that are based on pure continued use of the offer.

The information obligation applicable in accordance with the provisions of the General Data Protection Regulation (GDPR) is interpreted in such a way that the data subjects must be comprehensively informed in advance. Consent can only be given with full knowledge of the facts. According to this, the website operator must in any case inform the user about the duration of the function of cookies and about third-party access to them.

Johannes Caspar, Hamburg Commissioner for Data Protection and Freedom of Information: "Today's ECJ ruling confirms the longstanding legal opinion of the data protection supervisory authorities, according to which the setting of cookies in particular requires consent. This also applies to other forms of tracking such as browser fingerprinting. For web tracking not only in Germany but throughout Europe, the judgment is a wake-up call to align the largely illegal practice in this area with data protection law. We will base our supervisory practice on the standards of the ECJ."

The German supervisory authorities provide a guide for providers of telemedia (PDF) that enables website operators to make any necessary adjustments to their offers.

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