

Tuesday, June 5, 2018 2: Press releases Operators of Facebook fan pages are responsible for data protection! The Bavarian State Commissioner

for data protection European Court of Justice confirms the opinion of German data protection supervisory authorities:

Operators of Facebook fan pages can be (jointly) responsible for data processing by Facebook German version available PDF version With today's judgment, the Court of Justice of the European Union (ECJ) confirmed that the operator of a Facebook fan page - along with Facebook - is responsible under data protection law for Facebook collecting data from fan page visitors to create visitor statistics. The starting point for the decision is an administrative lawsuit that has been pending since 2011 between the Wirtschaftsakademie Schleswig-Holstein GmbH and the Independent State Center for Data Protection Schleswig-Holstein (ULD). The company took the view that it could run a Facebook fan page without having to worry about Facebook complying with data protection laws. The ECJ has now made it clear that this view is not compatible with European data protection law: "The fact that an operator of a fan page uses the platform set up by Facebook in order to make use of the associated services cannot exempt him from complying with his obligations in the area of the protection of personal data." (No. 40) Data protection law is responsible for whoever decides on the purposes and means of processing personal data. The ECJ has determined that the concept of the person responsible must be interpreted broadly in order to ensure effective and comprehensive protection of the data subjects. The operator of a Facebook fan page is involved in deciding on the purposes and means of processing the personal data of visitors to his or her fan page. He designs his information and communication offer himself and thus contributes to the processing of the personal data of the visitors to his fan page. Since Facebook also determines the purposes and means of processing, Facebook and the operators of Facebook fan pages have joint responsibility for data protection. The ECJ explains that a fan page operator is not just a Facebook user, but as the person responsible gives Facebook the opportunity to set cookies by operating the fan page and, in particular, with the help of filters provided by Facebook, can determine the criteria according to which statistics are generated. Responsibility does not depend on access to the personal data concerned. The ECJ also confirmed that the ULD was allowed to take supervisory measures against the operator of a Facebook fan page based in Schleswig-Holstein. The mere possibility of influencing Facebook by the supervisory authority does not rule out measures against the jointly responsible provider of a Facebook fan page. The State Commissioner for Data Protection Schleswig-Holstein Marit Hansen welcomes the judgment of the ECJ: "The decision has confirmed my assessment that there can be no gaps in responsibility in data protection. In concrete terms, this now means for

all fan page operators that they and Facebook must clarify which data protection obligations they have to fulfill themselves and for which Facebook is responsible. This applies in particular to the information obligations: Without transparency, how the data about all users - i. H. Members and non-members of Facebook - are processed, this does not work. With regard to the rights of those affected, e.g. B. the right to information or correction, the following applies: Anyone can assert these rights directly against the fan page operator as well as against Facebook. "Quick judicial clarification is essential for legal certainty. Court proceedings on such fundamental issues need to be in the fast lane. I am convinced that some cases of data misuse - I remember Cambridge Analytica - could have been prevented if all German or even European fan page operators had already demanded data protection compliance for their offers in 2011." The Bavarian State Commissioner for Data Protection Thomas Petri recommends that the Bavarian public authorities use the judgment to critically review their public relations work with social media providers. Petri: "The European Court of Justice has made it unmistakably clear that the operator of a fan page is not released from observing his data protection obligations by using the platform provided by another provider. Numerous complaints have already been received by data protection authorities across Europe about data processing by Facebook and other social media. In view of previous experience, it would not be surprising if Facebook also processed data illegally based on the General Data Protection Regulation. Either social media must comply with the data protection regulations applicable in Europe or they cannot be used jointly. In any case, possible advantages in public relations do not justify data protection violations." Marit Hansen Prof. Dr. Thomas Petri The decision of the ECJ is available under the following link:

<https://www.datenschutzzentrum.de/artikel/1242-.html> The opinion of the Advocate General can be found here:

<https://www.datenschutzzentrum.de/artikel/1170 -.html> More information on the decision of the BVerwG and the questions referred to the ECJ: <https://www.datenschutzzentrum.de/artikel/1013-.html> Further information on the background:

<https://www.datenschutzzentrum.de/facebook/> For inquiries please contact: State Commissioner for Data Protection

Independent State Center for Data Protection Schleswig-Holstein

Holstenstrasse 98, 24103 Kiel

Phone: 0431 988-1200, Fax: -1223

E-mail: mail@datenschutzzentrum.de The Bavarian State Commissioner for Data Protection

Wagmüllerstr. 18

80538 Munich

Phone: 089/212672-0, Fax: -50

E-mail: poststelle@datenschutz-bayern.de <https://www.datenschutz-bayern.de/> The State Commissioner for Data Protection Schleswig-Holstein is also the head of the Independent State Center for Data Protection (ULD) and for compliance with data protection by authorities, responsible for companies and associations in Schleswig-Holstein. The Bavarian State Commissioner for Data Protection monitors compliance with data protection regulations at the Bavarian public authorities. The two state representatives are elected by their respective state parliament, are independent and are not bound by instructions from anyone. Tags for this article: facebook, news, press releases Articles with similar topics: E-prescription procedure: protect machine-readable codes! Short report on the conformity of the operation of Facebook fan pages with data protection law Property tax reform 2022 - responsibility of the BfDI No loopholes in communication with authorities and for foundations with public tasks - further develop the right to freedom of information Announcement - "Save the date!": Summer academy "Freedom of information by design - and data protection?! " on September 12, 2022 in Kiel