

Influence of digital activity on data protection obligations

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SUMMARY: *The author presents and discusses the judgment of CJEU in the field of data protection and new technologies, The analysis mainly concerns the responsibility of the entrepreneur placing on his website a reference to the "Like" button on Facebook. The scope of responsibility is presented in reference to the General Data Protection Regulation (GDPR) and its implementation in the domain of new technologies.*

KEY WORDS: *Court of Justice of the European Union, new technologies, GDPR, data protection, entrepreneur, digital platforms, Facebook*

Digital actions become an important part of the activity for both entrepreneurs and employees. In particular, it applies to digital platforms, i.e. entities conducting a significant part of their activities online. Due to the growing importance of these changes and the impact on numerous spheres of business operations, problems affecting digital activity are increasingly the subject of various regulations. They are also referred to by court judgments, including the Court of Justice of the European Union (CJEU).

On 29 July 2019 CJEU referred to the C-40/17 case. The judgment concerns issues related to the placement of Facebook 'Like' button on the website. CJEU considered the matter of shared responsibility of the company placing such a button for the protection of personal data. Responsibility in question concerns collection and transmission to Facebook of the personal data of persons visiting such a website.

In the case under consideration, the German company „Fashion ID' (online clothing retailer) embedded on its website the Facebook 'Like' button. In consequence visitor's personal data are transmitted to Facebook Ireland, whenever someone consults the website of Fashion ID. German public-service association tasked with safeguarding the interests

of consumers expressed their critic towards this activity. It pointed out that transmission takes place without users' consent and in breach of the duties to inform, closely set out in the provisions relating to the protection of personal data. It stressed that transmission takes place regardless of factors such as whether the visitor clicked on the button, or whether he has a Facebook account.

The Court holds that Fashion ID can be considered to be a *controller* jointly with Facebook Ireland in respect of the operations involving the collection and disclosure of the data at issue. According to the definition included in article 4(7) of General Data Protection Regulation (GDPR) 'controller' means the natural or legal person, public authority, agency or another body which, alone or jointly with others, determines the purposes and means of the processing of personal data. Being considered a controller means, in consequence, assuming obligations provided for in the Directive.

The ground for this reasoning is the assumption that Fashion ID and Facebook Ireland can determine jointly the means and purposes of those operations. CJEU said that the operator of a website as a joint controller in respect of certain operations, such as the collection of those data and their transmis-

sion, must provide, at the time of their collection, certain information to those visitors. The information includes, for example, the purposes of the processing. The operator of a website must also obtain prior consent, solely in respect of operations for which it is the joint controller, namely the collection and transmission of the data.

On the contrary, Fashion ID cannot be considered to be a controller in respect of the operations involving data processing carried out by Facebook Ireland after those data have been transmitted to the latter. The court reco-

gnized as impossible that Fashion ID determines the purposes and means of those operations.

The presented judgment underlines the creation of further obligations referring to “Facebook like button” on the part of entrepreneurs, in particular, information obligations. It is also another example of mutual interaction between digitized business activities and universal legal regulations. Shortly, we can expect many issues and legal decisions related to adapting legal regulations to digital reality.

Wpływ działalności cyfrowej na obowiązki związane z ochroną danych osobowych

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STRESZCZENIE: *Artykuł opisuje wyrok Trybunału Sprawiedliwości Unii Europejskiej w zakresie nowych technologii i ochrony danych osobowych. Wskazano w nim, że przedsiębiorca umieszczający na swojej stronie internetowej odniesienie do przycisku „Lubię to” na portalu Facebook ponosi określoną współodpowiedzialność za dane przekazane temu portalowi. Trybunał wskazał także na zakres odpowiedzialności oraz płynące z niej obowiązki, m.in. informacyjne.*

SŁOWA KLUCZOWE: *Trybunał Sprawiedliwości UE, nowe technologie, ochrona danych osobowych, RODO, przedsiębiorca, platformy cyfrowe, Facebook*