

10 November 2015

By judgment of November 9, 2015, the President of the Court of First Instance, Brussels, sitting in chambers, sentenced Facebook Inc., Facebook Ireland Limited and Facebook Belgium BVBA to stop registering via cookies and social plug-ins the surfing behavior of Internet users in Belgium who have no Facebook account.

The decision, which was requested by the Belgian Privacy Commission on June 10, 2015, shall enter into force 48 hours after the Privacy Commission's verdict on Facebook. If Facebook does not respect the judgment, it must pay a penalty of € 250,000 per day of non-compliance. The conviction remains in effect even if Facebook would appeal.

In summary, the Court ruled as follows:

1. The Belgian privacy law applies and the Belgian court has jurisdiction.

Firstly, the Court decided that the Belgian privacy law applies and that the Belgian courts have jurisdiction. Facebook had argued that it only has to observe the Irish privacy law and that only the Irish courts have jurisdiction. The Court, however, disagreed, referring to the Google Spain judgment of the Court of Justice of May 13, 2014, which stated that the national privacy law of an EU Member State applies if the activities of a local establishment in that Member State are inextricably linked to the activities of the controller. The Court states that this is the case here, because in Belgium the company Facebook Belgium BVBA exists and this local company has been lobbying for the Facebook group and is involved in the marketing and sale of advertising space for the Facebook service. The court shall propose that it is irrelevant whether the controller now Facebook Inc. or Facebook Ireland Limited, as well as Facebook Ireland Limited is part of the Facebook group.

The Court also points out that it is irrelevant whether Facebook Belgium BVBA would or would not handle or conclude contracts with advertisers itself.

2. urgency

To obtain an interim judgment, the matter should be urgent. The Court held that that condition had been fulfilled, since claims relating to fundamental rights and freedoms (such as the protection of privacy) are always urgent and because it is about the violation of the fundamental right of not one person but a huge group of people. Because of the millions of websites with Facebook social plug-ins it is almost inevitable

according to the court to escape. These may also involve highly sensitive data relating, for example, to health or religious, sexual or political affiliations.

3. It involves the processing of "personal data"

Facebook processing included the IP address and a "unique identifier" which is contained in Facebook's data cookie. The Court held that this is "personal data" and that the collection by Facebook is a "processing" of personal data. Facebook had argued that this is not personal because it would allow merely to identify a computer.

4. Violation of the Belgian privacy laws

The Court then held that the fact that Facebook collects data on the surfing habits of millions of residents of Belgium who have decided **not** to become a member of Facebook's social network constitutes a "manifest" violation of the Belgian privacy law, and this regardless of what Facebook does with this data after having collected it.

The court states *inter alia* that Facebook can invoke no legal justification whatsoever for the processing of personal data of people who do not have a Facebook account through cookies and social plug-ins because:

- Facebook has not obtained permission for it;
- Facebook cannot rely on an agreement with people who do not have a Facebook account;
- Facebook cannot rely on a legal obligation;
- the fundamental privacy rights of people who do not have a Facebook account, weigh heavier than the security interest of Facebook.

Moreover, the court believes that Facebook's processing of personal data of people who do not have a Facebook account, is not fair and not legitimate, because their personal data is already processed before they can inform themselves in full on the services of Facebook and even if they do not wish to utilize those services.

As regards the security argument brought forward by Facebook, the Court finds it hardly credible that retrieving the data cookie whenever a social plug-in loads on a website, would be necessary for the security of the Facebook services. The Court states that even a "computer illiterate" understands "that the systematic collection by the data cookie is in itself insufficient to counter the attacks referred to by Facebook, because criminals can very easily circumvent the placing of this cookie by using software which blocks

cookies ". Furthermore, the Court finds that there are less intrusive ways to achieve the security aimed at, so that Facebook's handling of personal data of people who do not have a Facebook account, is disproportionate.

5. Penalty

The court imposes a penalty of Facebook € 250,000 per day that Facebook fails to comply with the decision, because the amount of the penalty payment should be sufficiently deterrent. The District Court pointed out that Facebook in 2014 achieved a turnover of 12.4 billion dollars and a profit of 2.9 billion dollars and is financially one of the wealthiest companies in the world, so the amount of € 250 000 is appropriate.