



EU law does not preclude a host provider such as Facebook from being ordered to remove identical and, in certain circumstances, equivalent comments previously declared to be illegal

In addition EU law does not preclude such an injunction from producing effects worldwide, within the framework of the relevant international law which it is for Member States to take into account

Mme Eva Glawischnig-Piesczek, who was a member of the Nationalrat (National Council, Austria), chair of the parliamentary party 'die Grünen' (The Greens) and federal spokesperson for that party, sued Facebook Ireland in the Austrian courts. She is seeking an order that Facebook Ireland remove a comment published by a user on that social network harmful to her reputation, and allegations which were identical and/or of an equivalent content.

The Facebook user in question had shared on that user's personal page an article from the Austrian online news magazine oe24.at entitled 'Greens: Minimum income for refugees should stay'. That had the effect of generating on that page a 'thumbnail' of the original site, containing the title and a brief summary of the article, and a photograph of Ms Glawischnig-Piesczek. That user also published, in connection with that article, a comment which the Austrian courts found to be harmful to the reputation of Ms Glawischnig-Piesczek, and which insulted and defamed her. This post could be accessed by any Facebook user.

Against that background, the Oberster Gerichtshof (Supreme Court, Austria) is asking the Court of Justice to interpret the Directive on electronic commerce.¹

Under that directive, a host provider such as Facebook is not liable for stored information if it has no knowledge of its illegal nature or if it acts expeditiously to remove or to disable access to that information as soon as it becomes aware of it. That exemption does not, however, prevent the host provider from being ordered to terminate or prevent an infringement, including by removing the illegal information or by disabling access to it. However, the directive prohibits any requirement for the host provider to monitor generally information which it stores or to seek actively facts or circumstances indicating illegal activity.

By today's judgment, the Court of Justice answers the Oberster Gerichtshof that **the Directive on electronic commerce, which seeks to strike a balance between the different interests at stake, does not preclude a court of a Member State from ordering a host provider:**

- to remove information which it stores, the **content** of which is **identical** to the content of information which was previously declared to be unlawful, or to block access to that information, irrespective of who requested the storage of that information;
- to remove information which it stores, the **content** of which is **equivalent** to the content of information which was previously declared to be unlawful, or to block access to that information, **provided that** the monitoring of and search for the information concerned by such an injunction are limited to information conveying a message the content of which remains

¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

essentially unchanged compared with the content which gave rise to the finding of illegality and containing the elements specified in the injunction, and provided that the differences in the wording of that equivalent content, compared with the wording characterising the information which was previously declared to be illegal, are not such as to require the host provider to carry out an independent assessment of that content (thus, the host provider may have recourse to automated search tools and technologies);

- to remove information covered by the injunction or to block access to that information **worldwide** within the framework of the relevant international law, and it is up to Member States to take that law into account.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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