REPUBLIK ÖSTERREICH
OBERSTER GERICHTSHOF

FINAL DECISION

IN THE NAME OF THE REPUBLIC

The Supreme Court, acting as the court of appeal, with Senate President Dr. Hofer-Zeni-Rennhofer as chairperson and , , Court Councilors and , Court Councilors Hon.-Prof. Dr. Faber, , Mag. Pertmayr, , Dr. Weber , and Mag. Nigl LL.M. as additional judges in the case of the plaintiff , represented by , Mag. Maximilian S[redacted], represented by Katharina Raabe-Stuppnig Rechtsanwälte GmbH in Vienna, against the defendant Meta Platforms Ireland Ltd, Dublin, 4 Grand Canal Square, Ireland, represented by [redacted] for a declaratory judgment, injunction, disclosure of information, and EUR 500 in costs, on the appeals of both parties against the judgment of the Vienna Higher Regional Court as the court of appeal dated December 7, 2020, GZ 11 R 153/20f, 11 R 154/20b-99, which confirmed the judgment of the Vienna Regional Court for Civil Matters of June 30, 2020, GZ 3 Cg 52/14k-91, was upheld, in a closed session and rightly recognized:

I. The with decisions of June 23, 2021 6 Ob 56/21k, the proceedings are resumed.

II. The defendant's appeal is dismissed

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Revision of Plaintiff partially – in with regard to points 6 and 8 of the claim (confirmation of points III.6. and 8. of the first judgment) – and the decision of the lower courts is amended as follows.

However, the plaintiff's appeal is not upheld insofar as it is directed against the dismissal of points 5, 5.1, 7, and 9 of the statement of claim (confirmation of

points III.5., 5.1. and 9. of the first judgment) is not upheld.

The decision on points 1 to 12 of the claim, including those no longer contested in the appeal proceedings and those already settled by the partial judgment of the Supreme Court of June 23, 2021, is as follows:

"*The claims*

1. It is hereby established with effect between the defendant and the plaintiff that the plaintiff is the 'controller' within the meaning of Art. 4(7) GDPR of the data applications operated by him for his own personal purposes via the facebook.com portal (profile, timeline – including likes and comments – events, photos, videos, groups, personal messages, friends list, and applications) for his own personal purposes via the portal facebook.com, while the defendant party only acts as a 'processor' within the meaning of Art. 4(8) GDPR in this regard.

2. It is hereby determined, with effect between the defendant and the plaintiff, that the defendant is the 'controller' within the meaning of Art. 4(7) GDPR of the data applications on the facebook.com portal which go beyond the data applications operated by the plaintiff itself via the facebook.com portal for its own personal purposes (in particular profile, timeline – including likes and comments – events, photos, videos, groups, personal messages, friends list, and applications) and which concern personal data of the plaintiff or personal data of third parties stored by the plaintiff in its data applications, and for which the defendant determines the means and purposes itself (in particular the compilation and aggregation of content, of the search function, of the

Advertising, user administration, and similar data applications);

3. The defendant is guilty of processing personal data of the plaintiff and/or third parties, which is stored and transmitted by the plaintiff for its own purposes via the portal facebook.com in data applications for its own personal purposes (profile, timeline – including likes and comments – events, photos, videos, groups, personal messages, friends list, and applications) without or contrary to the instructions of the plaintiff;

4. , represented by , has brought an action against , represented by , claiming that is liable to conclude a written contract with the plaintiff within 28 days, in accordance with the requirements of Article 28(3) of the GDPR, between the plaintiff as the controller and the defendant as the processor with regard to the data applications operated by the plaintiff itself via the portal facebook.com for its own personal purposes (profile, timeline – including likes and comments – events, photos, videos, groups, personal messages, friends list, and applications) in accordance with Art. 28(3) GDPR;

4.1. in eventu, it is established with effect between the defendant and the plaintiff that an effective contract in accordance with Art. 28 (3) GDPR exists between the plaintiff as the controller and the defendant as the processor with regard to the data applications operated by the defendant itself via the facebook.com portal for its [the plaintiff's] *personal purposes (profile, timeline – including likes and comments – events, photos, videos,*

groups, personal messages, friends list, and applications)

5. It is hereby established between the defendant and the plaintiff that the plaintiff's consent to the terms of use of defendant party in of version dated April 19, 2018, and in the version dated July 31, 2019, including the associated data usage guidelines (data policy, cookie policy), as well as consent to (future) clauses with the same meaning in the defendant's terms of use (coupled declarations of consent) do not constitute effective consent to the processing of personal data in accordance with Art. 6 (1) in conjunction with Art. 7 GDPR to the defendant as the controller;

5.1. In the alternative: It is hereby determined with effect between the defendant and the plaintiff that the plaintiff's consent to the defendant's terms of use in the version dated April 19, 2018, together with the associated data usage guidelines (data policy, cookie policy), does not constitute effective consent to the processing of personal data in accordance with Art. 6 (1) in conjunction with Art. 7 (1) of the General Data Protection Regulation (GDPR) and Art. 5 (1) of the Federal Data Protection Act (BDSG) in the version applicable on April 19, 2018. 2018, including the associated data usage guidelines (data policy, cookie policy), does not constitute effective consent to the processing of personal data in accordance with Art. 6 (1) in conjunction with Art. 7 GDPR by the defendant as the controller;

7. It is hereby determined, with effect between the defendant and the plaintiff, that there is no valid consent from the plaintiff for the processing of the plaintiff's personal data, which the defendant has received from third parties, for the defendant's own purposes, as set out in the Data Policy ./AN in

• lines 69-74 ('Activities of others and information they provide about you: In addition, we receive

and we analyze content, communications, and information that other people provide when they use our products. This may also include information about you, for example, when others share or comment on a photo of you, send you a message, or upload, sync, or import your contact information.'),

• Lines 126-143 ("Advertisers, app developers, and publishers can send us information through the Facebook Business tools they use, including our social plugins such as the 'Like' button, Facebook Login, our APIs and SDKs, or the Facebook pixel." and 'We also receive information about your online and offline actions and purchases from third-party data providers who are authorized to provide us with your information.') and

• Lines 166-168 ("This is based on the data we collect and learn from you and others [including any specially protected data you provide us with your express consent]")

is described;

9. The defendant is liable to enforcement if it fails to refrain in future from processing the plaintiff's personal data, which the defendant has obtained from third parties, for its own purposes, unless the plaintiff has given its free, informed, and unambiguous prior consent ('opt-in') to a specific processing operation.

10. The defendant is liable, subject to enforcement, to refrain in future from using the plaintiff's data.

The defendant is prohibited from using the plaintiff's personal data in the context of the 'Graph Search' data application and similar techniques, unless the plaintiff has given their unambiguous, free, informed, and explicit prior consent ('opt-in').

are dismissed.

6. The defendant is guilty of failing to refrain from processing the plaintiff's personal data for personalized advertising, aggregation, and analysis of data for advertising purposes.

8. The defendant is obliged to refrain from using the personal data of the plaintiff obtained from the plaintiff's visit to and/or use of third-party websites, in particular through the use of 'social plugins' and similar techniques, unless technical data is processed solely for the purpose of displaying website elements or unless the plaintiff has, without any doubt, freely, informedly, and unambiguously consented in advance to a specific processing operation ('opt-in', e.g., by clicking on a 'social plugin').

11. The defendant is obliged to provide the plaintiff with written information, free of charge, within fourteen days, about all personal data of the plaintiff that it has processed, stating the purposes of the processing, the recipients to whom the personal data has been or will be disclosed, and—if the personal data has not been collected from the plaintiff—its origin.

12. The defendant is obliged to pay the plaintiff EUR 500 within fourteen days. "

III. Decision on costs remains the

Subject to review by the court of first instance.

Reasons for the decision:

[1] The defendant is a company established under the laws of the Republic of Ireland with its registered office in Dublin, Ireland. It has no branch office in Austria. A significant portion of the world's population (with the notable exceptions of China and Russia) regularly communicates via the "Closed" communication network of the defendant or its parent company, whereby the defendant provides the Facebook service to users in the European Union.

[2] The Facebook service is an online platform and social network for sharing content. It allows users to upload various types of content (e.g., text posts, images, videos, events, notes, or personal information) and share it with other users depending on the settings selected. This content can also be enriched by other users with additional content (e.g., by adding comments, "likes," or tags in photos or other content). Users can also communicate directly with other users and "chat" with them or exchange data via direct messages and emails.

[3] Furthermore, with regard to the **facts** underlying the present decision, reference is made to the two decisions (partial judgment and request for a preliminary ruling) in 6 Ob 56/21k, which are available at 23. 6. 2021 .

[4] The **plaintiff** made the following requests, which are still the subject of of the appeal proceedings and and have not yet been

legally settled (points 5 to 9 and point 11 of the claim):

"*5. It is hereby established with effect between the defendant and the plaintiff that the plaintiff's consent to the defendant's terms of use in the version dated April 19, 2018, and in the version dated July 31, 2019, including the associated data usage guidelines (data policy, cookie policy), as well as the consent to (future) clauses of similar meaning in the defendant's terms of use (linked declarations of consent) does not constitute effective consent to the processing of personal data in accordance with Art. 6 (1) in conjunction with Art. 7 GDPR to the defendant as the controller.*

5.1. In the alternative: It is hereby determined with effect between the defendant and the plaintiff that the plaintiff's consent to the defendant's terms of use in the version dated 19. 04. 2018 and in the version dated July 31, 2019 (in eventu: in the version dated April 19, 2018) together with the associated data usage guidelines (data policy, cookie policy) does not constitute effective consent to the processing of personal data in accordance with Art. 6 (1) in conjunction with Art. 7 GDPR to the defendant as the controller.

6. The defendant is ordered to refrain from processing the plaintiff's personal data for personalized advertising, aggregation, and analysis of data for advertising purposes, under penalty of enforcement.

7. It is hereby determined with effect between the defendant and the plaintiff that there is no valid consent from the plaintiff for the processing of the plaintiff's personal data, which the defendant has obtained from third parties

defendant, as defined in the data policy ./AN in

• Lines 69-74 ("Activities of others and information they provide about you. We also receive and analyze content, communications, and information that other people provide when they use our products. This may include information about you, such as when others share or comment on a photo of you, send you a message, or upload, sync, or import your contact information.")

• Lines 126-143 ('Advertisers, app developers, and publishers can send us information about the Facebook Business Tools they use, including our social plugins [such as the 'Like' button], Facebook Login, our APIs and SDKs, or the Facebook Pixel.' and 'We also receive information about your online and offline actions and purchases from third-party data providers who are authorized to provide us with your information.') and

• Lines 166-168 ("This is based on the data we collect and learn from you and others [including any specially protected data you provide us with your express consent]")

is described.

8. The defendant is obliged, under penalty of enforcement, to refrain in future from using the plaintiff's data relating to visits to or use of third-party websites (in particular through the use of 'social plugins' and similar technologies), unless technical data is processed solely for the purpose of displaying website elements and the plaintiff has given his unambiguous, informed and unequivocal consent to a specific processing operation in advance ('opt-in'; e.g. by clicking on a 'social plugin').

doubt, freely, informedly, and unambiguously consented to a specific processing operation in advance ('opt-in'; e.g., by clicking on a 'social plugin').

9. The defendant is obliged, under penalty of enforcement, to refrain in future from processing the plaintiff's personal data, which the defendant has obtained from third parties, for its own purposes, unless the plaintiff has given his free, informed, and unambiguous consent to a specific processing operation in advance ("opt-in").

11. The defendant is obliged to provide the plaintiff, within 14 days, in writing and free of charge, with complete information about all of the plaintiff's personal data processed by it, stating the exact purpose in each case, the exact origin where possible, and, where applicable, the exact recipients of the data, failing which enforcement measures will be taken.

[5] The **plaintiff** argued, in summary and insofar as still relevant to the present decision, that he had a legal interest in the findings set out in points 5 and 7 of the statement of claim. The defendant's data processing violated the GDPR in several areas. There was a risk of repetition and therefore a claim for injunctive relief as set out in points 6 and 8 to
10. The defendant's partners did not obtain the plaintiff's consent for the transfer of data to and/or further use by the defendant. The defendant also failed to comply with its duty to provide information.

[6] The **defendant** contested the claim. The plaintiff's data was processed in accordance with the agreed guidelines and conditions, which with are

GDPR. The data processing was lawful and was not based on the plaintiff's consent within the meaning of Art. 6 f GDPR, but on other justifications, primarily contractual necessity.

[7] Where necessary, the parties' submissions are reproduced in detail in the discussion of the respective points of the claim.

[8] The **court of first instance** dismissed points 1 to 10 of the statement of claim and upheld the statement of claim with regard to points 11 (right to information) and 12 (payment of non-material damages). With regard to points 5 to 9 and 11, it stated:

[9] With regard to points 5 and 7 of the statement of claim, the plaintiff lacked the legal interest in the requested declaration.

[10] The injunctive relief sought in points 6 and 8 to 10 is not justified. Personalization and personalized advertising as an essential part of the service offered by the defendant are set out in the terms of use and the linked guidelines, which have been made part of the contract. It is true that the defendant itself specified this contractual purpose. However, the plaintiff nevertheless concluded a contract with this content, which is why the defendant may carry out the data processing identified as long as the plaintiff does not delete his account and thus terminate the contract with the defendant.

[11] There was no violation of Article 9 GDPR. It could be left open whether the invitations to events and advertisements that were found revealed the plaintiff's homosexuality, because the plaintiff himself had made this public so that

grounds for exemption from the requirement of explicit consent (Art. 9 para. 2 lit. e GDPR) existed. The plaintiff's "interest" in various parties and politicians only reveals his interest in politics, but not his political opinion.

[12] However, the defendant violated its duty to provide information to the plaintiff pursuant to Art. 15 GDPR. The right to information (point 11 of the statement of claim) is justified for all data stored about the plaintiff pursuant to Art. 15 GDPR and has not yet been fulfilled by the defendant. It is not sufficient for the defendant to provide information on the data it considers relevant.

[13] The **Court of Appeals** dismissed the appeals lodged by both parties against this judgment and upheld the judgment of the court of first instance, with the proviso that point I (point 11 of the statement of claim) should read as follows:

"*The defendant is obliged to provide the plaintiff with written information, free of charge, within 14 days, about all personal data of the plaintiff that it has processed, stating the purposes of the processing, the recipients to whom the personal data has been or will be disclosed, and – insofar as the personal data is not collected from the plaintiff – the origin of the data*."

[14] It did not accept the findings regarding the visibility of profiling data in the tools and the isolated finding that the majority of users prefer personalized advertising to non-personalized advertising and consciously accept it in order to use the platform "free of charge." Furthermore, it rejected the evidence presented and the

complaints.

[15] Legally, insofar as it was relevant to the points of the claim that had not yet been settled, it stated that the request for a declaration that the plaintiff's specified declarations of consent were not to be classified as valid consent within the meaning of Art. 6 (1) in conjunction with Art. 7 GDPR and that there was no valid consent by the plaintiff to the specified data processing carried out by the defendant is not justified because a legal act cannot be the subject of a request for a declaratory judgment pursuant to Section 228 of the Austrian Code of Civil Procedure (ZPO).

[16] The contract between the parties to the dispute is an atypical contractual obligation that is not expressly regulated in Austrian law. Its content essentially consists of the defendant providing the Facebook user with a "personalized" platform, i.e., one tailored to his interests and preferences, on which he can communicate with other Facebook users. Although the Facebook user does not owe any money for access to this forum, he or she agrees to the defendant using all of the user's personal data available to it. The processing of this data serves to send the user personalized advertising. To this end, the defendant does not pass on its users' data to third parties without their express consent, but sends advertising on behalf of advertising customers to specific target groups that remain anonymous to the advertisers, which it filters out from the data . The nature of this Facebook business model is explained in the terms and conditions in a way that is easily understandable to any reader with even average attention span. This model is

neither immoral nor unusual. The processing of personal user data is a fundamental pillar of the contract concluded between the parties to the dispute. Therefore, the processing of the plaintiff's personal data is "necessary" for the performance of the contract within the meaning of Article 6(1)(b) GDPR.

[17] The plaintiff last submitted a request for information to the defendant in 2019 based on Article 15 of the GDPR, in response to which he was referred to relevant online tools. However, the defendant only provided part of the data it had processed about the plaintiff. Thus, point I of the initial judgment, which upheld point 11 of the claim, is to be confirmed with the proviso that a wording slightly deviating from this claim is chosen, which is more closely aligned with the wording of the regulation.

[18] The Court of Appeal allowed the ordinary appeal because the legal issues to be resolved could also be significant for many other similar contractual relationships that the defendant had entered into with Facebook users in Austria. This applies in particular to the legal question of whether the defendant can successfully invoke the justification under Article 6(1)(b) GDPR when it processes the personal data of its contractual partners (Facebook users) in order to generate income from the personalized advertising made possible by this.

[19] The **plaintiff** appealed against the dismissal of points 1 to 9 of the claim; he did not contest the decision on point 10 of his claim.

[20] The **defendant appealed** against the part of the appeal judgment that upheld the claim (points 11 and 12 of the

claim).

[21] In its **partial judgment** of June 23, 2021, 6 Ob 56/21k (ecolex 2022/28, 42 [*Hafner-Tomic*] = jusIT 2022/27, 72 [*Schmitt*]) on points 1 to 4 and 12 of the claim. These points are therefore legally settled.

[22] With regard to point 11 of the claim, the appeal proceedings were included in the partial judgment of June 23, 2021, 6 Ob 56/21k, until the Court of Justice of the European Union (CJEU) has ruled on the preliminary ruling request of the Supreme Court of 18 February 2021 (6 Ob 159/20f).

[23] In **a** separate **decision** issued on the same day, also in 6 Ob 56/21k, the Supreme Court referred four questions to the ECJ for a preliminary ruling and suspended the appeal proceedings with regard to points 5 to 9 of the claim until the ECJ's preliminary ruling was received.

[24] By **decision** of July 19, 2023, on 6 Ob 134/23h, the Supreme Court withdrew this request for a preliminary ruling with regard to questions 1 and 3.

Re I. (Continuation of proceedings)

[25] Decisions of the ECJ via the on 23 June 2021 on 6 Ob 56/21k preliminary ruling request (C-446/21, *Maximilian Schrems* v *Meta Platforms Ireland*) and via the at 18 February 2021 on 6 Ob 159/20f submitted (C-154/21, *RW* v *Österreichische Post*) have been submitted.

[26] The proceedings are therefore to be continued.

Re II. (Appeals by the parties)

[27] The appeals of both parties to the dispute are admissible (see partial judgment 6 Ob 56/21k Rz 111). Those of the plaintiff are

partially justified; that of the defendant is **not justified**.

A. Regarding the plaintiff's appeal

1. To points 5 and 7 of the claim –

General

[28] In point 5 of the statement of claim, the plaintiff seeks a declaration that his consent to the defendant's terms of use in the versions dated 19 April 2018 and dated 31 July 2019 (in eventu: only in of the version dated April 19, 2018) including the data and cookie policies do not constitute effective consent to the processing of personal data in accordance with Art. 6 (1) in conjunction with Art. 7 GDPR; furthermore, he seeks this determination with regard to future clauses of similar meaning.

[29] In point 7 of the statement of claim, he seeks a declaration that there is no valid consent from the plaintiff for the processing of his personal data as described in three sub-points of the defendant's data policy.

[30] The lower courts dismissed both claims on the grounds of lack of declarability (the court of first instance additionally on the grounds of lack of interest in a declaration) within the meaning of Section 228 of the Austrian Code of Civil Procedure (ZPO).

1. Requirements of Section 228 ZPO

[31] According to Section 228 of the German Code of Civil Procedure (ZPO), an action may be brought to determine the existence or non-existence of a legal relationship or right if the plaintiff has a legal interest in having the legal relationship or right determined without delay.

[32] Section 228 ZPO requires that the subject matter be capable of determination and that the plaintiff have a legal interest in its prompt determination.

1.1. Capability of determination

[33] 2.1.1. A – according to § 228 ZPO for a declaratory judgment

A legal relationship is a specific, legally regulated relationship between persons or between a person and an object, which is given and specified by the facts presented (RS0039053; RS0039223; RS0038988). Even in the case of an undisputed legal relationship, the determination of the individual rights, powers and obligations arising therefrom may be sought (cf. 6 Ob 288/98s). Individual legal relationships that are the result of a broader legal relationship, or individual legal consequences of such legal relationships, such as individual claims or claims derived therefrom, are therefore also capable of being declared (RS0038986 [T2]; RS0039053 [T5]; RS0039223 [T4]; 4 Ob 14/24y Rz 12).

[34] In this sense, the existence of warranty or damage claims can be determined (see only 6 Ob 288/98s). The question of whether a legal relationship between two disputing parties can be interpreted

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The request for a declaration of the (non-)existence of a legal relationship arising from two purchase offers was deemed to be capable of being declared. In doing so, the Supreme Court distinguished between this request and the (non-declarable) request for a declaration of the invalidity of contractual declarations (4 Ob 14/24y Rz 15, 17). The declaratory nature was also affirmed for an action for a declaration that there was a contractual agreement on a specific assessment of the amount of the (undisputed) loss of earnings owed as a result of a treatment error. The decisive factor was that the

The request was aimed at establishing certain legal consequences derived from an overall legal relationship (6 Ob 147/22v Rz 13).

[35] 2.1.2. In contrast to legal relationships, legal acts are declarations and statements intended to communicate something to another party, to which legal consequences are attached (*Frauenberger-Pfeiler* in *Fasching/Konecny* ³ § 228 ZPO Rz 40). A legal act cannot be the subject of a request for a declaratory judgment pursuant to
§ 228 ZPO (German Code of Civil Procedure), because this does not concern a right or legal relationship, but only a preliminary question regarding its existence (RS0038804; 7 Ob 210/22s Rz 36; cf. 4 Ob 14/24y Rz 13). The legal characteristics of legal acts are also not capable of being determined, only a resulting right or legal relationship (RS0039087 [T8] = RS0039036 [T17]).

[36] In this sense, the validity or invalidity of contract terminations (1 Ob 98/21z; 1 Ob 1615/95) or a declaration of withdrawal (4 Ob 573/94) are not determinable pursuant to § 228 ZPO.

[37] 2.1.3. In declaratory actions, too, the right or legal relationship to be determined must be specified precisely and unambiguously in terms of content and scope. The need for specificity in the claim does not arise here, as in the case of a judgment on performance, from the consideration that it must be suitable for enforcement, but rather from the purpose and function of the declaratory action and its res judicata effect (RS0037437). Since the plaintiff in a negative declaratory action must seek the non-existence of a specific right or legal relationship, this must be precisely defined and thus also legally qualified.

(RS0037437 [T6]).

1.1. Interest in a declaratory judgment

[38] 2.2.1. Process-related economic purpose of the declaratory action is to clarify the legal situation where there is a need recognized by the legal system to clarify disputed legal relationships (RS0037422 [T1]). It requires a specific, current cause that necessitates a prompt court decision in order to avert an actual and serious threat to the plaintiff's legal position (RS0039215; cf. RS0039071). The determination of mere "legal situations" is not sufficient for this (RS0037422 [T3, T8]). On the other hand, a dispute over the interpretation of a contract, specifically over the powers of a contracting party stipulated therein, justifies the interest in a declaratory judgment (RS0102433).

[39] A legal interest in a declaratory action can be affirmed even despite a possible action for performance if the request for a declaratory judgment is suitable for clarifying the legal relationships between the parties once and for all and cutting off any future claims for performance, or if future proceedings are shortened as a result of the res judicata effect of the declaratory judgment clarifying the preliminary question (RS0038908). The rule that an action for a declaratory judgment is not admissible if an action for performance can be brought only applies if the claim for performance also exhausts the claim for a declaratory judgment, i.e., if no legal consequences other than those arising from the claim for performance can be derived from the determination of the legal relationship or claim in question (RS0039021).

[40] The need to clarify a right or legal relationship is no stricter standard to be applied

(RS0038908 [T12]).

3. Regarding point 5 of the claim

[41] 3.1. In point 5 of his statement of claim, the plaintiff seeks a declaration that the consent he gave was "not valid consent ... within the meaning of Article 6(1) in conjunction with Article 7 GDPR." The aim is to establish the legal nature of the plaintiff's contractual declaration, specifically that it is invalid when measured against a specific legal standard of review – Article 6(1) in conjunction with Article 7 GDPR. However, the request is not directed at a declaration of the non-existence of a legal relationship or specific rights or claims derived therefrom resulting from the alleged invalidity (see RS0039053 [T5]; RS0039223 [T4]).

[42] This confirms the assessment of the lower courts, which denied the admissibility of the claim under point 5 pursuant to Section 228 of the German Code of Civil Procedure (ZPO).

[43] 3.2. Insofar as the plaintiff wishes his appeal to be understood as meaning that it is not aimed at determining the legal classification of his contractual declaration, but rather at determining the resulting (non-)existence of a legal relationship regarding data processing, this does not correspond to the request made. In his appeal against the judgment of the court of first instance, the plaintiff also did not assert that he would have formulated point 5 of the claim differently if it had been discussed by the court of first instance in accordance with Sections 182, 182a of the Code of Civil Procedure (ZPO). Therefore, point 5 of the claim was to be based on the plaintiff's request for judgment.

[44] Since the claim point 5 neither in the

version of the main claim nor in the version of the alternative claim (point 5.1.) satisfies the requirements of § 228 ZPO (German Code of Civil Procedure) for declaratory actions, the dismissal of points 5 and 5.1. of the claim was to be confirmed.

[45] 3.3. The plaintiff's appeal is therefore not justified with regard to point 5 of the claim.

4. Regarding point 7 of the claim

[46] 4.1. With point 7 of the statement of claim, the plaintiff seeks a declaration that there is no valid consent to the specified processing of such personal data of the plaintiff, which the defendant obtained in the manner described in the statement of claim – essentially from third parties.

[47] 4.2. Like the claim in point 5, the claim in point 7 is not directed at establishing the non-existence of a legal relationship or the non-existence of specific rights or claims derived from the legal relationship between the parties as a result of the alleged invalidity (see RS0039053 [T5]; RS0039223 [T4]). This is because the plaintiff does not seek a declaration that the defendant is not entitled to carry out the data processing operations referred to or that it must refrain from doing so. Rather, he seeks clarification of the existence of one of several possible legal bases for certain data processing operations carried out by the defendant. This claim does not seek to establish a right or legal relationship.

[48] Therefore, the declaratory capacity of the claim sought in point 7 of the claim for a declaration pursuant to

§ 228 ZPO.

[49] That the plaintiff the failure of

discussion within the meaning of Sections 182, 182a ZPO has already been explained.

[50] 4.3. The appeal of the plaintiff is therefore also not justified with regard to point 7 of the claim.

5. Regarding point 6 of the claim

5.1. Submissions and course of proceedings

[51] In point 6 of the statement of claim, the plaintiff seeks to prohibit the defendant from processing his personal data for personalized advertising, aggregation, and analysis of data for advertising purposes.

[52] In summary, he argued that the defendant avoided clarifying on which legal basis it relied (among other things) for this processing. There was no valid consent from the plaintiff. In the context of data processing for personalized advertising, the defendant violated the principles of Art. 5 (1) (a) to (e) GDPR by processing the plaintiff's sensitive data without his consent and thus contrary to good faith (lit. a); it violates the principle of purpose limitation (lit b) by reusing tracking data for advertising purposes, and the principle of data minimization (lit c) by collecting data far beyond what is necessary; it violates the principle of accuracy (lit d) and processes personal data contrary to lit e leg cit without further storage limitation. Neither is there a necessity for the data processing objected to in point 6 for the performance of a contract within the meaning of Art. 6 (1) lit. b GDPR, nor is there any discernible legitimate interest on the part of the defendant within the meaning of Art. 6 (1) lit. f GDPR.

[53] The defendant countered that it processed the plaintiff's personal data lawfully in accordance with

Art. 6(1)(b) GDPR, as personalized advertising was an essential, contractually agreed component of the Facebook service. Furthermore, the justification under Article 6(1)(f) GDPR was fulfilled because the processing of personal data for the purpose of providing measurements and analyses to advertisers was in the legitimate economic interest of Facebook and did not infringe on the privacy of users.

[54] In the appeal proceedings, the parties essentially repeat the arguments they had already put forward in the proceedings at first instance.

5.2. On the lawfulness of processing

5.2.1. Regarding Art. 6(1)(b) GDPR

[55] 5.2.1.1. In order for the processing of personal data to be considered necessary for the performance of a contract within the meaning of Article 6(1)(b) GDPR, it must be objectively indispensable for achieving a purpose that is an essential part of the contractual performance intended for the data subject. The controller must therefore be able to demonstrate to what extent the main subject matter of the contract could not be fulfilled without the processing in question (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 98).

[56] The fact that such processing is mentioned in the contract or is merely useful for its performance is irrelevant in itself. The decisive factor for the application of the justification referred to in Article 6(1)(b) GDPR is that the processing of personal data by the controller is essential for the proper performance of the contract concluded between the controller and the data subject and that therefore no

practicable and less restrictive alternatives exist (C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 99).

[57] In the case of a contract covering several services or several independent elements of a service that can be provided independently of each other, the applicability of Article 6(1)(b) GDPR must be assessed separately for each of these services (C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 100).

[58] When asked whether a company such as the defendant in the present proceedings, which operates an advertising-financed digital social network and offers, among other things, the personalization of content and advertising in its terms of use, can rely on the justification necessity necessity for the performance of a contract pursuant to (also) Art. 6(1)(b) GDPR if it collects data (among other things) from third-party websites and apps via interfaces integrated into them, such as "Facebook Business Tools," or via cookies or similar storage technologies used on the Internet user's computer or mobile device, links it to the user's Facebook.com account, and uses it (see C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 35, question 3), the ECJ commented as follows on the justification of data processing for the personalization of content in light of the justification under Art. 6(1)(b) GDPR:

[59] According to the ruling in *Meta Platforms et al.* v. *Bundeskartellamt*, personalizing content is beneficial to users insofar as it

among other things, enables content to be shown to him that largely corresponds to his interests. Nevertheless, subject to review by the referring court, the personalization of content does not appear to be necessary in order to offer the user the services of the online social network. These services could, where appropriate, be provided to them in the form of an equivalent alternative that did not involve such personalization, so that it was not objectively indispensable for achieving a purpose that was a necessary component of the services (see C-252/21 Rz 102).

[60] 5.2.1.2. Point 6 of the statement of claim does not object to any personalization of the content displayed to the plaintiff on the Facebook network, but specifically to the personalization of advertising.

[61] This is not objectively essential to achieve the purpose of the contract, which is an integral part of the contractual service intended for the data subject: a concrete examination of the present case shows that the personalization of advertising using personal user data is a service that the defendant provides to advertisers in order to generate revenue for itself. The display of personalized advertising is therefore not a "necessary part of the contractual service intended for the data subject," but rather part of the defendant's financing concept. It enables the defendant to offer its services to users without requiring them to provide monetary consideration. It follows that the processing of personal data for the purpose of personalization, as objected to in point 6 of the statement of claim, does not constitute a necessary part of the contractual service intended for the data subject.

by advertising, the defendant's established financing model is made possible. This benefits users insofar as the defendant does not charge them any monetary remuneration for its services. However, this does not concern the contractual service intended for the data subjects, which must be taken into account according to the case law described above, but rather the form of the consideration to be provided by the users. However, this type of financing and thus also the personalization of advertising using the user's personal data is not necessary for the provision of the social online network's services.

[62] The aggregation and analysis of personal data for advertising purposes is also not part of the contractual service intended for the plaintiff. Rather, this constitutes the provision of services by the defendant to its advertising customers.

[63] 5.2.1.3. Since the processing of the plaintiff's personal data referred to in point 6 of the statement of claim is not part of the provision of the defendant's contractual services intended for the data subject—i.e., the plaintiff—it is not covered by the grounds for permission under Article 6(1)(b) GDPR.

5.2.2. Regarding Article 6(1)(f) GDPR

[64] With regard to the grounds for permission under Art. 6(1)(f) GDPR, the ECJ has clarified that even if the services of a social online network such as the one at issue here are free of charge, the user of this network cannot reasonably expect the operator of this social network to process their personal data without their consent for the purpose of

Personalization of advertising processed. Under these circumstances, it can be assumed that the interests and fundamental rights of such a user outweigh the interest of this operator in such personalization of advertising, with which it finances its activities, so that the processing carried out by it for such purposes cannot fall under Art. 6(1)(f) GDPR (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 117).

[65] The defendant cannot therefore invoke the grounds for permission under Article 6(1)(f) GDPR for the processing of the plaintiff's personal data referred to in point 6 of the statement of claim.

5.2.3. Interim conclusion

[66] As explained above, the justifications under Art. 6(1)(b) and (f) GDPR cannot be invoked for the processing of the plaintiff's personal data referred to in point 6 of the claim , processing of the plaintiff's personal data.

[67] The defendant, who is responsible for proving the lawfulness of the processing (see only ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 95), did not rely on any other grounds for justification. In the absence of any of the alleged justifications, the processing of the plaintiff's personal data complained of in point 6 of the statement of claim was not lawful within the meaning of Article 5(1)(a) GDPR.

[68] The other alleged violations of Article 5(1) GDPR therefore no longer need to be addressed.

[69] 5.2.4. Insofar as the judgment of the ECJ C-446/21,

Maximilian Schrems v. *Meta Platforms Ireland*, it is stated that the Facebook service has been

6. 11. 2023 will only be free of charge for those users who have agreed to their personal data being collected and used to send them personalized advertising, whereby users will have the option of taking out a paid subscription to access a version of these services without targeted advertising (Rz 11), these are circumstances that occurred after the conclusion of the oral proceedings in the first instance (§ 193 ZPO). They are therefore not part of the facts to be assessed in the present proceedings (RS0036969).

5.3. Regarding the injunction

[70] 5.3.1. The right to injunctive relief is specified by two elements: an obligation to refrain from certain actions and the risk that this obligation will be violated (RS0037660 [T7]). This risk may be characterized as a risk of first-time infringement or a risk of repetition (see RS0037661). The presumption that a person who has violated a specific legal obligation will be inclined to do so again supports the risk of repetition. The defendant must therefore demonstrate the specific circumstances that make a repetition of his action appear completely impossible or at least extremely unlikely (see RS0080065). If the defendant disputes his obligation to refrain from certain actions in the proceedings, this is to be regarded as an indication of the existence of a risk of repetition (RS0012055 [T3]).

[71] Any justifications and resulting restrictions on the injunction order do not have to be included in the ruling of an injunction decision

; rather, these justifications already exist by law and must, if necessary, be reviewed by the court (RS0114017; 6 Ob 16/21b Rz 27) in the event of enforcement proceedings.

[72] 5.3.2. In the present case, it is clear from the findings that the defendant processes the plaintiff's personal data as alleged in point 6 of the statement of claim. It is established that the defendant uses data provided to it by the plaintiff and data it obtains about him on the basis of his actions to display personalized advertising to him. It has already been explained that the grounds for justification invoked by the defendant for this are not fulfilled. The defendant is therefore subject to a substantive obligation to refrain from such processing. There is also a risk of repetition due to the established infringement and the legal position taken by the defendant in the proceedings.

[73] 5.4. As a result, the plaintiff's appeal on point 6 of the claim is justified.

6. Regarding point 8 of the claim

6.1. Arguments and course of proceedings

[74] Point 8 of the statement of claim seeks to prohibit the defendant from "using the plaintiff's data relating to visits to or use of third-party websites (in particular through the use of 'social plugins' and similar technologies)" unless technical data is processed solely for the purpose of displaying website elements and unless the plaintiff has consented to a specific processing operation in a manner described in detail.

[75] The plaintiff argued, in summary, that the defendant uses cookies and social plugins to collect data about which websites he visits on the internet and at what times. In doing so, it violated the principles of purpose limitation, data minimization, and data processing in good faith enshrined in Article 5 of the GDPR because no clear purpose for the data collection was specified, the data was stored beyond what was necessary in terms of scope and time, and such data collection was not lawful. It cannot be based on any justification under Article 6(1) GDPR. The plaintiff did not consent to the use of his personal data collected via cookies, social plugins, and similar technologies.

[76] The defendant is also to be regarded as the controller within the meaning of the GDPR for the collection of data from social plugins, in addition to the operator of a website that integrates plugins. It is also the data controller responsible for processing the data collected by social plugins and similar technologies. It has not demonstrated the alleged legal basis on which it processes social plugins and the data obtained via social plugins.

[77] The defendant wrongly assumes that the plaintiff consented to the setting of cookies by continuing to use the Facebook service after the cookie banner was displayed. He did not accept the setting of cookies and, in addition to the GDPR, refers to Section 96 (3) TKG 2003 (now Section 165 TKG 2021). According to the decision C-673/17, *Planet 49*, of the ECJ, there is a consent requirement for

the use of all cookies that are not technically necessary, for which displaying the cookie banner is not sufficient. When using so-called "Datr cookies," data processing in the form of tracking surfing behavior takes place even when the plaintiff is not logged into the Facebook service. This goes beyond the purpose of providing personalized and customized Facebook products. The plaintiff does not demand that the use of cookies be discontinued, but rather that consent be obtained or that processing for unlawful purposes be discontinued.

[78] The defendant objected to point 8 of the claim as vague because it contained unverifiable conditions. It based its processing of personal data obtained from cookies, social plugins, and pixels on consent only to the extent that the processing was for the purpose of personalizing advertising. Since the plaintiff had not given his consent, it did not process the plaintiff's data from these sources for this purpose. For other purposes for which it processes personal data from cookies, social plugins, and pixels—to provide and personalize its services, improve Facebook products, and promote protection, integrity, and security—it relies on the necessity of contract fulfillment as the legal basis.

[79] The plaintiff is clearly not objecting to the placement of cookies by the defendant, but only to the processing of his personal data obtained from cookies, social plugins, and pixels. The defendant processes "certain processing activities in connection with data from cookies, social plugins, and pixels."

However, data was only processed on behalf of "websites, applications, advertisers, and other business partners" who transmitted the data within the scope of Facebook Business Tools. According to the Terms of Use for Facebook Business Tools, advertisers who collect personal data, including data "from" cookies, social plugins, and pixels, for the purpose of measurement and analysis services to the defendant, are responsible for data protection, while the defendant is only their processor. Since the claim is based on the defendant's alleged obligations as the responsible party, it is too broad in scope and must be dismissed. Furthermore, fulfillment is impossible because the functioning of the internet depends on cookies.

[80] In his appeal, the plaintiff essentially relies on the arguments already presented in the first instance proceedings.

6.2. Interpretation of the request

[81] 6.2.1. A claim must always be understood as intended by the party in conjunction with the factual submissions (RS0041254 [T20]). In doing so, not only the wording of the claim, but also the recognizable legal protection objective of the action to must be taken into account (6 Ob 35/15p; RS0039010 [T3]; RS0041254 [T36]).

[82] 6.2.2. In the present case, when viewed in isolation, the wording of the injunction sought by the plaintiff is open to interpretation insofar as the phrase "the use of data relating to visits to or use of third-party websites" does not specify the nature of the injunction sought with the certainty required for enforcement proceedings under Section 7 EO (cf. RS0000878 [T1]; RS0000466 [T2])

However, a review of the claim formulated in point 8 together with the plaintiff's submissions clearly shows what the plaintiff's legal protection objective is: He objects to any processing of his personal data that is transferred to the defendant in the course of the plaintiff's visit and/or use of third-party websites, in particular through the use of social plugins and similar technologies, unless one of the two exceptions formulated by him – processing of technical data exclusively for the purpose of displaying website elements or qualified consent – is fulfilled.

[83] This meaning must be taken as the basis for examining the legitimacy of the request.

6.3. Qualification as responsible party

[84] 6.3.1. The defendant takes the view that it cannot be qualified as the controller for certain – albeit not specifically described – processing operations of the data received by it in the manner described in point 8 of the statement of claim. This is not correct:

[85] 6.3.2. The European Court of Justice ( ) had in the decision C-40/17, *Fashion ID*, which also concerns the present proceedings, regarding the integration of social plugins from the provider of the Facebook service into websites operated by any company (cf. the description of the actual process in C-40/17, *Fashion ID*, para. 26) with regard to the qualification of the parties involved as controllers under data protection law.

[86] , , , and on Directive 95/46/EC (Data Protection Directive), which came into effect

was repealed on May 25, 2018, and replaced by the GDPR, (see ECJ C-40/17, *Fashion ID*, Rz 3), the relevance of the clarifications made by the ECJ regarding the position of controller does not preclude the present legal dispute, because the definition of "controller" in accordance with Art. 2 lit. d of Directive 95/46/EC corresponds to the definition of "controller" in Art. 4 Z 7 GDPR.

[87] The ECJ stated that the term "controller" is broadly defined in order to ensure effective and comprehensive protection of the data subject (para. 65 et seq.). The ECJ classified the process of transferring personal data from visitors to the third-party website to the defendant (in this case) triggered by the integration of a social plugin from the defendant into the website of a third-party website operator defendant (in this case) as processing of personal data, specifically the collection and transfer of personal data, for which the provider of the social plugin (in the present proceedings the defendant) and the website provider jointly decide on the purposes and means of processing personal data (para. 76, 82). On the other hand, the further processing of the personal data collected in this way (according to the facts to be assessed there) is carried out in such a way that the provider of the third-party website no longer decides on its purposes and means, but only the (here) defendant (margin note 76).

[88] 6.3.3. The fact that, in the present case, the defendant processes the personal data collected by means of social plugins and similar technologies as the controller within the meaning of Article 4(7) GDPR—i.e., decides on the purposes and means of processing—is apparent from the

findings that the plaintiff's personal data obtained via cookies, social plugins, and comparable technologies on third-party websites is stored by the defendant and used for the stated purposes of personalization, improvement of Facebook products,

"to promote protection, integrity, and security" and to offer events to the plaintiff.

[89] The defendant is therefore to be regarded as the controller within the meaning of Article 4(7) GDPR with regard to the collection, transmission, and further processing of the plaintiff's personal data that it obtains through its social plugins and similar technologies in the course of the plaintiff's visits or activities on third-party websites.

[90] Whether the defendant subsequently processes the data obtained in the manner described (i.e., as the controller) in individual cases on behalf of another controller, i.e., as a processor within the meaning of Art. 4(8) GDPR, is irrelevant to the justification of the injunction request based on the defendant's established violations of its obligation to refrain from such processing (see below).

6.4. On the lawfulness of the processing according to point 8 of the claim

[91] 6.4.1. As already explained, injunctive relief is characterized by the existence of an obligation to refrain from certain actions and the risk that this obligation will be violated (see RS0037660 [T7]), whereby a violation of the obligation to refrain from certain actions indicates a risk of repetition (see RS0080065).

[92] In order to assess the validity of the claim asserted in point 8, it must therefore be examined whether the defendant is obliged to carry out the action complained of in point 8 of the claim is authorized to carry out the or whether it is subject to an obligation to refrain from doing so.

[93] 6.4.2. The defendant derives the justification for the data processing described in point 8 of the statement of claim from Art. 6(1)(b) GDPR. However, this fact cannot justify the processing operations to be examined here in the present case because, as explained below, the conditions for permission required here pursuant to Art. 9(2) GDPR are not met.

[94] 6.4.2.1. In addition to the general conditions for permission set out in Art. 6 (1) GDPR, additional precautions apply to the permissibility of processing special categories of personal data. Special categories of personal data pursuant to Art. 9 GDPR include, among other things, data revealing racial or ethnic origin, political opinions, or religious beliefs, as well as health data and data concerning a natural person's sex life or sexual orientation (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 67).

[95] In the case of processing of personal data by the operator of an online social network, the decisive factor for the application of Article 9(1) GDPR is whether this data enables the disclosure of information that falls under one of the categories specified in this provision. If this is the case, such processing of personal data is subject to the restrictions set out in

Art. 9(2) GDPR (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 68; C-446/21, *Maximilian Schrems* v. *Meta Platforms Ireland*, para. 72). This fundamental prohibition provided for in Article 9(1) GDPR applies regardless of whether the information disclosed by the processing in question is accurate or not and whether the controller is acting with the aim of obtaining information that falls within one of the special categories referred to in that provision (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 69; C-446/21, *Maximilian Schrems* v *Meta Platforms Ireland*, para. 73).

[96] The ECJ also assumes that, in certain cases, the processing of data when accessing the websites or apps in question may already reveal such information without users having to enter information there by registering or placing online orders (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 72).

[97] In summary, Article 9(1) GDPR is therefore to be interpreted as meaning that if a user of an online social network visits websites or apps related to one or more of the categories mentioned in this provision and, where applicable, enters data there by registering or placing online orders, the processing of personal data by the operator of this online social network, which consists of this operator collecting the data originating from the visit to these websites and apps as well as the data entered by the user via integrated interfaces, cookies, or similar storage technologies, linking all of this data to the respective user account of the social network

and the use of this data is to be regarded as "processing of special categories of personal data" within the meaning of this provision, which is generally prohibited, subject to the exceptions provided for in Article 9(2) GDPR, if this data processing enables the disclosure of information falling within one of these categories, regardless of whether this information concerns a user of this network or another natural person (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 73).

[98] 6.4.2.2. In the present case, it is clear that the defendant's social plugins are also integrated into the websites of political parties, medical sites, and sites for homosexuals that the plaintiff visited, and that the defendant collects the plaintiff's personal data obtained via cookies, social plugins, and similar technologies on third-party websites – including, therefore, that obtained on the websites of political parties, on websites on health topics, and on websites specifically aimed at a homosexual audience , – and used it, among other things, to personalize its service. This resulted in the link to the user account also referred to in the ECJ decision C-252/21. Furthermore, it is clear th , , , , and do not between "simple" and "sensitive" personal data, as it does not extract whether data is sensitive or not.

[99] These findings show that the defendant did not act with the aim of processing personal data of the plaintiff, the in the in Art. 9 para. 1 GDPR

fall into the special categories mentioned. However, this does not mean at a legal level, as the defendant represents, that Art. 9 GDPR on this processing – which is indiscriminate but objectively comprehensive of sensitive data – is inapplicable. Rather, the entire processing operation at issue here must be assessed as "processing of special categories of personal data" (see ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 73).

[100] 6.4.3. A justification corresponding to the permissibility criterion of necessity for the performance of a contract (Art. 6(1)(b) GDPR) is not provided for in Art. 9(2) GDPR for the processing of special categories of personal data.

[101] The data processing to be examined in point 8 of the statement of claim could therefore not be justified on this basis alone, even if the requirements of Art. 6(1)(b) GDPR were met.

[102] As long as none of the conditions for permission under Article 9(2) GDPR are met, the existence of the conditions under Article 6(1)(b) GDPR is therefore irrelevant for the assessment of the legitimacy of point 8 of the claim and can be left open. Only if the conditions of a circumstance under Article 9(2) GDPR are met must the general processing requirements of Article 6(1) GDPR also be taken into account (see RS0132791).

[103] 6.4.4. With regard to the grounds for justification set out in Article 9(2) GDPR, it is undisputed that the plaintiff did not give his consent to the processing of data that the defendant refers to in its terms of use as
"data subject to special protection" and which it includes

includes, among other things, personal data on political opinions, health data, and data on a person's sexual orientation (in the wording of its terms of use, "your political opinion, who you are 'interested' in, or your health").

[104] Therefore, the plaintiff has not consented to the processing of his personal data of the special categories referred to in Article 9(1) GDPR within the meaning of the justification provided for in Article 9(2)(a) GDPR.

[105] 6.4.5. The justification under Article 9(2)(e) GDPR is also not fulfilled. According to this, the general prohibition on the processing of special categories of personal data set out in Article 9(1) GDPR does not apply if the processing relates to personal data that "the data subject has manifestly made public."

[106] 6.4.5.1. This – like all exceptions to the principle of prohibiting the processing of special categories of personal data – must be interpreted narrowly (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 76) requires an examination of whether the data subject intended to make the personal data in question explicitly and by means of a clear affirmative act accessible to the general public (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 77).

[107] Accessing websites or apps related to one or more of the categories specified in Article 9(1) GDPR is not sufficient to disclose the data relating to this access, which the operator of the online social network collects via cookies or similar storage technologies, within the meaning of Article 9(2)(e) GDPR (see ECJ C-252/21, *Meta Platforms et al.* v.

Federal Cartel Office, margin note 78 f, 84).

[108] With regard to actions that consist of entering data on these websites or in these apps and pressing buttons embedded therein—such as

"Like" or "Share" buttons, or buttons that enable users to identify themselves on a website or in an app using the login details linked to their Facebook account, phone number, or email address, the ECJ points out that these actions involve interaction between the user and the website or app in question and, where applicable, the social networking website, whereby the public nature of this interaction may take various forms, as the user can adjust individual settings in this regard (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 81). If the users concerned do in fact have such a choice, then when they voluntarily enter data on a website or in an app or press buttons integrated therein, it can only be assumed that they are manifestly making data concerning them public within the meaning of Article 9(2)(e) GDPR if they have clearly expressed their decision, through individual settings made in full knowledge of the facts, that this data should be made accessible to an unlimited number of persons (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 82).

[109] If such individual settings are not offered, however, it can be assumed that when users voluntarily enter data on a website or in an app, or click on buttons integrated therein,

only made this data publicly available if, on the basis of explicit information provided on this website or in this app, they expressly consented to such entry or action before doing so, stating that the data could be viewed by any person who has access to this website or app (ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 83).

[110] 6.4.5.2. According to the established facts, there is no evidence of any actions on the part of the plaintiff which, when accessing websites relating to special categories of personal data, would have expressed his intention to make public the personal data resulting from visiting such websites in the manner required by the ECJ through individual settings. According to the findings, such actions are also not a prerequisite for the defendant to integrate its social plugins into , the websites of third parties indiscriminately also collects and otherwise processes "sensitive" personal data relating to the plaintiff.

[111] 6.4.5.3. If the data subject has clearly made data about their sexual orientation public—which cannot be ruled out in the case of a statement about one's own sexual orientation at a publicly accessible panel discussion, the recording of which was later to be published as a podcast and on a YouTube channel (see C-446/21, *Maximilian Schrems* v *Meta Platforms Ireland* , para. 78 f) – this means that this data may be processed in deviation from the prohibition under Art. 9(1) GDPR and in accordance with the requirements arising from the other provisions of the GDPR (C-446/21, *Maximilian Schrems*

against *Meta Platforms Ireland*, margin note 80).

[112] However, this circumstance alone does not justify the processing of other personal data relating to die sexual Orientierung dieser Person (C-446/21, *Maximilian Schrems* v *Meta Platforms Ireland*, para. 88, cf. para. 82).

[113] 6.4.5.4. In the present case, it is clear that the defendant's list of the plaintiff's activities outside Facebook includes, among other things, apps or websites of two dating platforms targeting a homosexual audience and the website of a political party.

[114] The processing – which already includes the storage that took place here of the information that the plaintiff accessed websites or apps of such dating platforms, there is processing of the plaintiff's personal data which, within the meaning of the ECJ case law described above, constitutes "other" personal data relating to the plaintiff's sex life or sexual orientation than his "mere" sexual orientation. The fact that the plaintiff communicated his homosexuality to the public did not therefore entitle the defendant to store and, at most, further process the plaintiff's personal data revealing that he visited dating platforms (aimed at homosexual persons).

[115] This constitutes processing of special categories of personal data relating to the plaintiff that is not covered by the justification provided in Article 9(2)(e) GDPR.

[116] Furthermore, the justification under Art. 9(2)(e) GDPR does not cover the storage of personal data relating to the plaintiff's visit to the website

of a political party by the plaintiff.

[117] 6.4.6. The defendant did not invoke any other grounds for permission under Art. 9 (2) GDPR.

[118] 6.4.7. Since, according to the case law of the ECJ, the data processing to be assessed under point 8 of the statement of claim must be assessed as a whole—without regard to the individual personal data processed in terms of their classification as
differentiate between "simple" and "sensitive" personal data – qualifies as "processing of special categories of personal data" (see ECJ C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 73), the fact that, at least with regard to some of the plaintiff's personal data covered by Art. 9 GDPR no
the processing
justification under Article 9(2) GDPR, means that the entire processing operation must be regarded as inadmissible. The ECJ expressly rejects the division of the overall process into individual processing operations and different data categories in the case of such an overall process (C-252/21, *Meta Platforms et al.* v. *Bundeskartellamt*, para. 73).

[119] 6.4.8. As a result, the data processing described in point 8 of the statement of claim is inadmissible on the basis of the considerations set out above.

[120] 6.4.9.1. The fact that the defendant did not process the plaintiff's personal data obtained through the use of social plugins and similar technologies based on the plaintiff's visits to third-party websites for the purpose of personalizing advertising does not preclude the validity of the asserted claim for injunctive relief, because the processing

for other purposes has been established.

[121] 6.4.9.2. Due to the violations of the obligation to refrain from certain actions resulting from the facts of the case, the injunction cannot be successfully opposed even if it is true that the defendant, with regard to individual processing of the plaintiff's personal data, which it collected in the manner described in point 8 of the statement of claim (therefore as a controller within the meaning of Art. 4(8) GDPR), subsequently acted as a processor within the meaning of Art. 4(9) GDPR.

[122] In this regard, there is also no need to restrict the injunction, because any justifiable reasons and resulting resulting restrictions on the injunction already exist by law and, if necessary, must be reviewed by the court in the event of enforcement proceedings (RS0114017; 6 Ob 16/21b Rz 27).

[123] 6.4.10. The violation of the injunction obligation and the legal position of the defendant in the proceedings justify the risk of repetition. The injunction claim asserted in point 8 of the statement of claim is therefore justified (for the wording of the injunction, see below).

[124] 6.4.11. The fact that the plaintiff excluded the processing of technical data solely for the purpose of displaying website elements from his injunction request is within his freedom to determine the scope of his claim himself on the basis of the principle of disposition (cf. only *Fucik* in *Fasching/Konecny*, Zivilprozessgesetze³ § 405 ZPO Rz 1).

[125] 6.4.12. The second, clearly alternatively to

According to the judgment request, a reasonable exception to the prohibition on processing should apply if the plaintiff "has given their free, informed, and unambiguous consent to a specific processing operation in advance ('opt-in'; e.g., by clicking on a 'social plugin')."

[126] The motion for judgment thus clearly refers to the requirements for effective consent pursuant to Art. 4(11) and Art. 6(1)(a) GDPR. Article 4(11) GDPR defines consent of the data subject as any "freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her." Consent must also be obtained by the controller before the start of the processing of the personal data for which consent is required (*Kastelitz/Hötzendorfer/Tschohl*, Der DatKomm [39th issue 2020] Art. 6 GDPR Rz 31; *Buchner/Kühling* in *Kühling/Buchner*, General Data Protection Regulation/BDSG [2024] Art. 7 Rz 30).

[127] It is not comprehensible that these conditions should be unverifiable, as the defendant claims.

[128] 6.4.13. Insofar as the defendant argued that point 8 of the claim should be dismissed because the functioning of the Internet depends on cookies and it is therefore impossible to comply with the request, it should be clarified that the plaintiff is not opposed to the use of cookies per se, but rather to the processing of his personal data obtained in a certain way from visiting third-party websites without the existence of

qualified consent.

6.5. Regarding the wording of the injunction

[129] 6.5.1. The court may give the judgment a clear and unambiguous wording that deviates from the claim if the latter essentially corresponds to the claim (RS0039357). The claim is to be understood as intended by the plaintiff in conjunction with the statement of claim; the court must correctly interpret a claim that has been inadvertently formulated incorrectly (RS0037440). The decisive factor is what ruling the plaintiff is seeking from the court in conjunction with the facts of the case (RS0041165 [T3]). In this respect, the court is not only entitled to clarify the claim, but is even obliged to do so; this applies in particular where the enforceability of the judgment would otherwise be jeopardized (RS0041254 [T17]; cf. RS0039357 [T24]). A clearer version of the judgment may also be issued ex officio by the Supreme Court in appeal proceedings (RS0039357 [T6]).

[130] 6.5.2. As already explained, the plaintiff objects to any processing of his personal data that is transferred to the defendant in the course of the plaintiff's visit and/or use of third-party websites, in particular through the use of social plugins and similar technologies, unless one of the two exceptions formulated by him – processing of technical data exclusively for the purpose of displaying website elements or qualified consent – is fulfilled.

[131] In the present case, the plaintiff's claim is to be interpreted in accordance with this legal protection objective of the plaintiff.

make it clear that the defendant is ordered to refrain from using the plaintiff's personal data obtained from the plaintiff's visit to and/or use of third-party websites, in particular through the use of "social plugins" and similar techniques, unless the two specified exceptions are met.

[132] The imprecise wording, the on data "relating to" the visit and use of third-party sites, is clarified . The information on the "Other enforcement" and the future orientation of the injunction (see only 4 Ob 4/22z Rz 28) can be omitted without changing the content. The two exceptions to the injunction formulated by the plaintiff are to be linked by the word "or" instead of "and," because it is clear from his submission that he wants two independent constellations—data transmission purely for specific technical reasons on the one hand, and qualified consent on the other—to be excluded from the obligation to refrain.

[133] 6.6. As a result, the plaintiff's appeal on point 8 of the claim is justified in the sense of the clarified injunction apparent from the ruling.

7. Regarding point 9 of the claim

7.1. Submission and course of proceedings

[134] Point 9 of the statement of claim seeks to prohibit the defendant from processing the plaintiff's personal data, which the defendant has received from third parties, for its own purposes, unless the plaintiff has consented to a specific processing operation in a manner described in detail.

[135] Plaintiff brought to after approved

Amendment to the claim: the defendant obtains personal data relating to the plaintiff from other users as well as from external data providers and advertising partners. There is no legal basis for this because the plaintiff has not given his consent, the processing is not necessary for the performance of a contract, and there are no overriding legitimate interests on the part of the defendant in obtaining personal data from third parties. The defendant's unauthorized use of the plaintiff's data stored by other users on the Facebook service is unlawful.

[136] The defendant took the position that it processes personal data received from third parties lawfully for the purposes specified in its data policy. In the absence of the plaintiff's consent, it does not process such data for the purpose of personalizing advertising. For all other processing, it relies on Art. 6(1)(b) GDPR. The plaintiff's submission on point 9 of the statement of claim was unclear, and the claim should be dismissed on the grounds of vagueness. Nevertheless, it is argued that the plaintiff cannot restrict the rights of other Facebook users to freedom of expression and information; he cannot demand that the defendant, which qualifies as a host provider, actively monitor the information posted about the plaintiff by other users. It is therefore impossible to comply with the requested injunction.

[137] The Court of Appeal ruled that the processing was lawful under Article 6(1)(b) GDPR.

[138] In his appeal, the plaintiff argues that the request specifically covers data that the defendant obtained from third parties without the plaintiff's knowledge, as well as data that it obtained from

other users about the plaintiff, for example by uploading the plaintiff's contact details or photos. "For own purposes" refers "in this context" to any purpose other than the original purpose, which was, for example, to share a photo with a Facebook friend. The request already covers the mere collection, storage, and other processing of data for the defendant's own purposes. This constitutes a violation of the principles of purpose limitation and data minimization.

7.2. Specificity of injunctions

[139] 7.2.1. Cease-and-desist orders may be reworded in order to prevent circumvention (RS0037607; RS0037733). However, a cease-and-desist order must describe the prohibited conduct so clearly that it can serve as a guideline for the defendant's future conduct. General terms that are not specified in detail do not satisfy this requirement. It must be clear to the court and the parties in an unambiguous manner what is owed (RS0119807). Accordingly, it is permissible to name the specific infringing act and extend the prohibition to similar infringements, or to describe the impermissible conduct in general terms and clarify it by listing individual prohibitions "in particular." However, the ruling must always capture the core of the infringing act (RS0119807 [T5]; cf. RS0037733; 1 Ob 100/24y Rz 22;
8 Ob 137/21m mwN). The criteria for differentiation must be specified in such a way that the legal dispute is not transferred to enforcement proceedings (RS0000878 [T7]).

[140] 7.2.2. In the case at hand describes the

The plaintiff requests the cessation of the data processing referred to in point 9, referring to its purpose, namely processing "for the defendant's own purposes." The statement of claim does not contain any further details, either by naming the specific infringements combined with a request to extend the prohibition to similar infringements, or by providing a general description of the impermissible conduct, including clarification by means of individual prohibitions listed "in particular."

[141] The purposes served by the individual processing operations carried out by the defendant on personal data obtained from third parties, i.e., the purposes of the individual processing operations, depend on the interpretation of the contractual relationship between the parties with regard to each processing operation in question. If the injunction were to be issued as requested without further specification, the legal dispute over numerous questions of contract interpretation that have not been narrowed down in advance would be shifted to enforcement proceedings.

[142] The vagueness of the claim—which the defendant has criticized—cannot be remedied by the court issuing a clearer version of the judgment (see RS0039357), because with regard to point 9 of the claim, it is not merely a matter of clarifying what is meant, but of determining the content of the claim, which is not the task of the court hearing the case, but of the plaintiff.

[143] 7.3. For this reason, the plaintiff's appeal against the dismissal of point 9 of the claim is not justified.

B. On the defendant's appeal

1. Arguments and course of proceedings

[144] 1.1. The plaintiff argued in point 11 of the claim that the defendant had provided incomplete answers to his requests for information. In response to his last request in 2019, she had merely referred him to various tools. As he could see, among other things, by comparing them with information provided earlier, these tools did not provide complete information. Specifically, the defendant referred him to the "Access your information tool" and the "Download your information tool." He attempted to use these links to obtain all the information provided for in Article 15 of the GDPR. In doing so, he had to open 54 links that referred to further links. It took him several hours just to open and load the links. Ultimately, he still did not have all the information owed to him under Article 15 GDPR. Regardless of the incompleteness of the information, the form and presentation alone meant that the request for information could not be considered to have been fulfilled in a legally compliant manner. The controller must prepare the information in such a way as to enable the data subjects to obtain an overview within a reasonable time and with reasonable effort.

[145] The defendant argued that, following the entry into force of the GDPR, the plaintiff's previous request for information could not be successful. After the plaintiff submitted a new request for information in 2019, the defendant argued that the claim was not justified. It stated that it had provided the plaintiff with "all the information required under Article 15 GDPR." Even if the plaintiff "finally" submitted a "valid" request for information under the GDPR

wanted to enforce, he would not have the claim formulated in his request for judgment. Art. 15 GDPR is more limited in scope than the plaintiff would like. There is no right to "complete information." Insofar as relevant to his claims, the plaintiff only has a right to confirmation as to whether or not personal data is being processed and, if so, access to the personal data and the following information: the purposes of the processing; the categories of personal data concerned; recipients or categories of recipients to whom the personal data had been disclosed, in particular recipients in third countries or international organizations; if the personal data had not been collected from the data subject, all available information about the origin of the data. In addition, the plaintiff disregarded the restrictions on the right of access pursuant to Art. 15(4) and Art. 12(5) GDPR, as well as the possibility granted to Member States by Art. 23 GDPR to provide for exceptions. The defendant did not specify which provisions of national law falling under Article 23 GDPR it had in mind. It argued that it provided its users with "all information required under Article 15 GDPR through a variety of product-internal tools" accessible via the "Access your data tool." These included the "Activity Log" and the "Your Advertising Preferences Tool" together with "other direct product-internal access points such as the 'Info' section of the profile of a Facebook user and 'Your photos'". The
The "Access Your Data Tool," the "Activity Log," and the "Your Advertising Preferences Tool" together formed

the "core tools." The tools provided comprehensive access to data and information in accordance with Art. 15 GDPR.

[146] With regard to information about data and categories of personal data, the defendant relies on "a variety of internal core tools." "This information" is linked to the "access your data tool," which allows users to see which categories of personal data the defendant stores about them and enables them to view the information directly. For example, the "activity log" is a history of a user's activities on Facebook.

[147] With regard to the purposes of processing and "categories of recipients" – the defendant does not address "recipients" – the defendant argued that its data policy provided the plaintiff with information about the purposes of processing and the categories of recipients, "in particular" in three sections listed at of the data policy. The "Legal basis information" provides the plaintiff with additional purposes of use, which are not specified in the submission.

[148] Regarding the origin of the data, it argued that its data policy explained in the section "What information do we collect?" how and where information was collected. It explains the origin of the data received by the defendant, including "data from content and information provided by users, from networks and connections, from the use of products by users, information about transactions carried out via the defendant's products, about things that others do and information that they provide, device information and information from partners."

In addition, the "Your Advertising Preferences Tool" provides information about advertisers who have uploaded a list of personal data. The "Access Your Data Tool" reveals what information the defendant has made available to third parties for advertising purposes.

[149] In summary, the defendant fulfills its obligations under Article 15 of the GDPR. In addition, users can contact Facebook separately if they wish to obtain information about specific data points.

[150] 1.2. The court of first instance ruled that the claim was justified.

[151] 1.3. The Court of Appeal found the defendant guilty of failing to provide the plaintiff with written information, free of charge, about all of the plaintiff's personal data processed by it, specifying the purposes of processing, the recipients to whom the personal data had been or would be disclosed, and – insofar as the personal data was not collected from the plaintiff – the origin of the data.

[152] It assessed the findings that the plaintiff's request for information submitted in 2019 was referred to the defendant's relevant online tools, with which the defendant only provided part of the personal data it processed about the plaintiff, that the plaintiff's right to information pursuant to Art. 15 (1) second half-sentence GDPR had not been fulfilled and therefore remained valid. Furthermore, the defendant's legal objection did not proceed from the established facts in essential points.

[153] 1.4. The Revision of the defendant makes

In summary, the Court of Appeal failed to recognize that Article 15(1) GDPR does not require disclosure of all personal data processed about a data subject. It had fulfilled its obligation to provide information by means of the information provided in its data policy. The Court of Appeal had misinterpreted the findings, failed to mention the rights of third parties, neglected the excessive nature of the plaintiff's request for information, disregarded legal reservations under Irish law, wrongly deemed a summary to be insufficient, failed to note that the request for information was "just a game" for the plaintiff, exceeded the required scope of the right to information with regard to the purposes, recipients or categories of recipients and origin of the data, failed to recognize that the plaintiff was in fact requesting information about the logic involved within the meaning of Art. 15 (1) (h) GDPR, and exceeded the original request in one respect by confirming the provision.

2. Right to information in accordance with Art. 15 para. 1 GDPR

2.1. General information and purpose of the right to information

[154] 2.1.1. If personal data relating to a person is processed—which is the case here—that person has the right to obtain from the controller, in accordance with Article 15(1) of the GDPR, access to and rectification of that personal data and the further information listed in points (a) to (g) of that provision. The right to information is to be regarded as a uniform claim at (*Ehmann* in *Ehmann/Selmayr*, DS-GVO³ [2024] Art. 15 Rz 6 with reference to C-487/21, *Austrian Data Protection Authority and CRIF*, Rz 30 ff).

[155] 2.1.2. Article 15(1) GDPR is one of the provisions intended to ensure transparency regarding the manner in which personal data is processed vis-à-vis the data subject (ECJ C-579/21, *Pankki*, para. 53).

[156] In accordance with the principle of transparency referred to in recital 58 of the GDPR and expressly enshrined in Article 12(1) of the GDPR, information intended for the data subject must be provided in a concise, transparent, intelligible, and easily accessible form, using clear and plain language (see ECJ C-203/22, *Dun & Bradstreet Austria*, para. 49; C-579/21, *Pankki*, para. 51; C-487/21, *Austrian Data Protection Authority and CRIF*, para. 49). The ECJ has expressly clarified that this must also be observed when applying Art. 15 GDPR (ECJ C-579/21, *Pankki*, para. 51; cf. C-203/22, *Dun & Bradstreet Austria*, para. 48 f).

[157] The right of access pursuant to Art. 15 GDPR must enable the data subject to verify whether data concerning them is accurate and whether it is being processed in a lawful manner (ECJ C-203/22, *Dun & Bradstreet Austria*, margin note 53). In particular, it is necessary to enable the data subject to exercise their right to rectification, their right to erasure ("right to be forgotten") and their right to restriction of processing, which they are entitled to under Articles 16, 17 and 18 GDPR, as well as their right to object to the processing of their personal data under Article 21 GDPR or, in the event of damage, their right to lodge a judicial appeal under Articles 79 and 82 GDPR (ECJ C-203/22, *Dun & Bradstreet Austria* , Rz 54; C-487/21,

Austrian Data Protection Authority and CRIF , Rz 35; C-154/21, *RW* v *Austrian Post* , Rz 38).

[158] According to Recital 60 of the GDPR, the principles of fair and transparent processing require that the data subject be informed of the existence of the processing operation and its purposes, with the controller providing all further information necessary to ensure fair and transparent processing, taking into account the specific circumstances and context in which the personal data are processed (ECJ C-487/21, *Austrian Data Protection Authority and CRIF*, para. 36).

2.2. Scope of the right to information

[159] 2.2.1. The right to information under Article 15(1) GDPR refers to personal data, thus referring to the legal definition in Article 4(1) GDPR (see ECJ C-579/21, *Pankki*, para. 40). The use of the phrase "all information" in defining the term "personal data" in this provision reflects the EU legislator's intention to give this term a broad meaning (ECJ C-579/21, *Pankki*, para. 42). Therefore, the broad definition of the term "personal data" covers not only the data collected and stored by the controller, but also all information about an identified or identifiable person resulting from the processing of personal data (ECJ C-579/21, *Pankki*, para. 42; C-487/21, *Austrian Data Protection Authority and CRIF*, para. 26).

[160] 2.2.2. Art. 15 (1) and (2) GDPR standardize the content of the right to information, namely the information, whether

personal data is processed at all, the specific data processed, and the corresponding additional information, also known as metadata or annex information, such as the purposes of processing, recipients, and origin (cf. *Haidinger* in *Knyrim*, Der DatKomm [79. Lfg 2024] Art. 15 Rz 3).

[161] The data subject always has the right to request information about all personal data and related information, provided that there is no reason for exclusion as provided for in the GDPR (*Ehmann* in *Ehmann/Selmayr*, GDPR³ [2024] Art. 15 Rz 52). The reference in the last sentence of Recital 63 of the GDPR that controllers who process large amounts of information about the data subject should be able to require the data subject to specify the information or processing operations to which their request for access relates does not change this (*Bäcker* in *Kühling/Buchner*, General Data Protection Regulation/BDSG [4]
[2024] Art. 15 Rz 30; cf. *Ehmann* in *Ehmann/Selmayr*, DS-GVO³ [2024] Art. 15 Rz 53 f). Even if a person requesting information does not comply with the request for clarification, this does not justify a refusal to provide the information (*Ehmann* in *Ehmann/Selmayr*, GDPR³ [2024] Art. 15 Rz 53); the data subject is free to request information about all existing data and meta-information (*Bäcker* in *Kühling/Buchner*, General Data Protection Regulation/BDSG[4][2024] Art. 15 Rz 30).

[162] The ECJ has confirmed the obligation of completeness (cf. *Bäcker* in *Kühling/Buchner*, General Data Protection Regulation/BDSG[4][2024] Art. 15 margin note 30) by expressly requiring it with regard to the right to receive a copy of the

personal data that is the subject of the processing, in accordance with Art. 15(3) GDPR, which "does not grant any right other than those provided for in paragraph 1" (ECJ C-312/23, *Addiko Bank*, margin note 26; C-307/22, *FT* v *DW*, para. 72; C-487/21, *Austrian Data Protection Authority and CRIF*, para. 32).

[163] 2.2.3. In addition to information about the data processed, Article 15(1) GDPR grants the data subject the right to the following information:

a) the purposes of the processing;

b) the categories of personal data that are being processed;

c) the recipients or categories of recipients to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organizations;

d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;

e) the existence of a right to rectification or erasure of personal data concerning them or to restriction of processing by the controller or a right to object to such processing;

f) the existence of a right to lodge a complaint with a supervisory authority;

g) if the personal data is not collected from the data subject, any available information on the origin of the data;

h) r existence of automated

Decision-making, including profiling, pursuant to Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

[164] 2.2.4. Against the background that the data subject is not obliged to justify the request for information about the data, the ECJ clarified that a claim for information is not precluded if the data subject pursues a purpose other than that referred to in the first sentence of Recital 63 of the GDPR, namely to take note of the processing and verify its lawfulness (ECJ C-307/22, FT v DW, para. 43; cf. (ECJ C-307/22, *FT* v *DW*, para. 43; cf. 6 Ob 233/23t para. 28).

2.3. Application of these principles to the present case

[165] In the present case, the assessment of the lower courts that the defendant did not provide the plaintiff with complete information about his personal data processed by it is correct.

[166] This is evident from the fact that, according to the findings in its tools, to which it referred the plaintiff in order to fulfill his most recent request for information, the defendant "only provides part of the data it processes about the plaintiff, namely only that which it considers relevant and interesting for the user."

[167] This incompleteness was not remedied in the course of the present proceedings. The defendant did not claim to have provided the plaintiff with information during or in the course of the proceedings that would have fulfilled its obligation to provide information.

[168] Your Process submission is merely to

it can be inferred that, if the plaintiff wishes to obtain the information specified in Art. 15(1) GDPR, he must consult a large number of sources that have not been exhaustively listed by the defendant. Rather, as can be seen from the above, its arguments regarding the tools that should enable users to obtain the information covered by the right of access under Article 15(1) GDPR are only illustrative. Even taking into account the fact that the claim does not expressly refer to all the additional information listed in Article 15(1) of the GDPR, it cannot be inferred from the defendant's submissions that its list of information sources claims to be exhaustive with regard to individual aspects.

[169] The question of whether the information owed under Article 15 GDPR can be fulfilled in its entirety by referring the data subject to download certain general or individual information concerning him or her does not need to be addressed, because a mere illustrative list of sources of information does not constitute a transfer within the meaning of the ECJ requires "precise, transparent, understandable, and easily accessible form" (see ECJ C-203/22, *Dun & Bradstreet Austria*, para. 49) can be seen in a mere illustrative list of information sources.

[170] The Court of Appeal's assessment that, in the absence of information provided in accordance with Article 15 GDPR, the plaintiff's claim for information asserted here is justified is therefore correct.

[171] On the other hand, the objections raised by the defendant in the appeal are not justified:

2.4. Objections of the defendant

[172] 2.4.1. The defendant questions whether the data processed "about the plaintiff," which it did not make available to him, constituted the plaintiff's personal data. This legal opinion is not consistent with Article 4(1) of the GDPR.

[173] According to Article 4(1) of the GDPR, the term "personal data" refers to any information relating to an identified or identifiable natural person; A natural person is considered identifiable if they can be identified, directly or indirectly, in particular by association with an identifier such as a name, an identification number, location data, an online identifier or one or more special characteristics that express the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person.

[174] It has already been explained that, according to the case law of the ECJ, a broad interpretation of the term must be assumed, which covers not only the data collected and stored by the controller, but also all information about an identified or identifiable person resulting from the processing of personal data (see C-579/21, *Pankki*, para. 42; C-487/21, *Austrian Data Protection Authority and CRIF*, para. 26).

[175] The findings made by the court of first instance regarding the scope of the data made available—or deemed by it to be irrelevant to the user—refer, both in terms of wording and context, to the data processed by the defendant "about the plaintiff," which is therefore legally considered personal data.

data of the plaintiff.

[176] 2.4.2. In its appeal, the defendant complains that the Court of Appeal disregarded the restrictions under Article 15(4) GDPR and fails to refer to the restrictions on the right of access under national Irish and Austrian law pursuant to Article 23 GDPR and Article 12(5) GDPR. The Court of Appeal wrongly failed to carry out a "substantive legal examination or discussion regarding missing data" in order to determine whether an exception or restriction was applicable to any "missing" data points. According to the appeal, this was the case based on the established facts.

"implies."

[177] 2.4.2.1. The defendant does not disclose which provisions of Irish or Austrian national law it has in mind, even in the appeal proceedings.

[178] 2.4.2.2. Insofar as it does not wish to disclose the plaintiff's user behavior (clicking behavior) that led to the temporary blocking of the "Why Am I Seeing This Ad" function for the plaintiff on the grounds that this infringed on the rights of third parties, namely the rights of other users to use the Facebook service in a secure manner, this argument is not supported by the established facts, so that the defendant has nothing to gain from it. It has been established that the defendant considers it necessary to prevent excessive clicking on certain functions in order to ensure the security of "the data." The fact that providing information on the reasons why the "Why Am I Seeing This Ad" function was temporarily blocked for the plaintiff would infringe on the rights and freedoms of other users with regard to the security of use

However, the established facts, which are to be assumed when executing the legal complaint (see only RS0043312), do not indicate that this would impair the Facebook service.

[179] The fact that the defendant described the plaintiff's clicking behavior, who, according to the findings, had clicked on the "Why Am I Seeing This Ad" function "quickly and repeatedly," as

"excessive" does not make the plaintiff's request for information "excessive" within the meaning of Art. 12(5) GDPR.

[180] 2.4.2.3. The prevention of interference with the rights and freedoms of third parties referred to in recital 63, sentence 5 of the GDPR and in Article 15(4) of the GDPR (specifically for the right to receive a copy of data) (see ECJ C-579/21, *Pankki*, para. 77 et seq.) may make it necessary to weigh up the interests involved with regard to individual items of information (see ECJ C-579/21, *Pankki*, para. 80) in order to verify whether the information provided is complete within the meaning of Art. 15 GDPR despite the absence of specific individual items of information. In the present case, in which complete information is not available simply because the defendant did not make all the personal data it processed about the plaintiff accessible to him, but only allowed him access to the personal data it considered relevant, the mere general reference to the rights and freedoms of third parties is, however, meaningless.

[181] 2.4.3. Insofar as the defendant objects that the lower courts had wrongly not examined , whether a

"allegedly missing date" had been disclosed to the plaintiff "elsewhere," for example, within the framework of the tools provided, it disregards the finding that the defendant only provided the plaintiff with a

part and not all of the data it processed about him.

[182] 2.4.4. Finally, the appeal seeks to infer from the ECJ's decision C-141/12, 372/12, *YS*, which was still issued in relation to Data Protection Directive 95/46/EC, that the plaintiff is not pursuing a legitimate purpose with his right to information. In this regard, it should be clarified that a claim for information is not precluded if – which is not established in the present case anyway – the data subject is pursuing a purpose other than that referred to in the first sentence of recital 63 of the GDPR, namely to take note of the processing and to verify its lawfulness (ECJ C-307/22, *FT* v *DW*, para. 43; cf. 6 Ob 233/23t, para. 28). The defendant's legal position cannot be supported by the cited decision of the ECJ, which concerned the requested access to a draft decision by an authority.

[183] 2.4.5. The fundamental objections raised by the defendant in the appeal proceedings against its conviction to provide information are therefore not valid.

2.5. Requested information about metadata

[184] The appeal objects that the Court of Appeals obligates the defendant in several respects—regarding processing purposes, recipients and origin of personal data – to provide information to an extent exceeding that required by Art. 15(1) GDPR.

[185] As explained below, this is not the case.

2.5.1. Information about processing purposes

[186] 2.5.1.1. The Scope of the right to information of the data subject includes pursuant to Art. 15 (1) lit a GDPR the

information about the purposes of processing. The fact that the defendant was obliged to provide the plaintiff with information about the plaintiff's personal data processed by it, stating the purposes of processing, is therefore in accordance with the legal situation.

[187] 2.5.1.2. In truth, the appeal does not aim to show that the scope of the information granted to the plaintiff regarding the purposes of processing deviates from Art. 15 (1) (a) GDPR, but rather to demonstrate that the defendant has already fulfilled the plaintiff's right to information with the information sources made available to its users.

[188] 2.5.1.3. That the merely illustrative list of information sources for fulfillment the right to information is insufficient has already been explained and also applies to information about the purposes of processing.

[189] Insofar as the defendant argues in its appeal that the information on the purposes of processing can be found, firstly, at in its data policy, and, secondly, at in the "Legal Basis Information" and thirdly in their "user training modules" – for which, again by way of example, you would find the "Privacy Basics" pages, the "Privacy Check Tool," the "Control Center," the "Advertising Preferences Tool," the "About Facebook Ads" tool, the "Off-Facebook Activity Tool," and the "Why am I seeing this ad?" feature—this list does not even correspond to its initial statement regarding the purposes of processing. In order to demonstrate that the defendant has already provided the information owed in a "precise, transparent, understandable, and

easily accessible form" (see ECJ C-203/22, *Dun & Bradstreet Austria*, para. 49), the appeal's argument regarding information about processing purposes is therefore unsuitable.

2.5.2. Information about recipients

[190] 2.5.2.1. Insofar as the defendant objects that it is not obliged to provide information about recipients because Article 15(1) GDPR allows only the "categories of recipients" to be disclosed, this issue was clarified by the ECJ in its judgment C-154/21, *RW* v *Austrian Post*.

[191] Accordingly, Article 15(1)(c) GDPR must be interpreted as meaning that the right of the data subject to obtain information about the personal data concerning him or her, as provided for in that provision, requires the controller, where those data have been or are to be disclosed to recipients, to inform the data subject of the identity of the recipients, unless it is impossible to identify the recipients or the controller demonstrates that the data subject's requests for access are manifestly unfounded or excessive within the meaning of Article 12(5) GDPR; in which case the controller may only inform the data subject of the categories of recipients concerned (C-154/21, *RW* v *Österreichische Post*, para. 51).

[192] Therefore, Article 15(1)(c) GDPR does not give the controller the right to specify either specific recipients or only categories of recipients at its own discretion.

[193] The obligation to provide information imposed by the Court of Appeal therefore exceeds the scope of the GDPR insofar as it requires information about recipients and not

requested via "recipients or categories of recipients" does not constitute the substantive content of Art. 15 (1) GDPR. The fact that the right to information about "recipients" refers to identifiable recipients is already apparent from the interpretation of this legal term by the ECJ. The defendant, who had already pointed out the restrictions on the obligation to provide information arising from Art. 12(5) GDPR in the proceedings at first instance, did not prove that the request was manifestly unfounded or excessive in accordance with Art. 12(5) sentence 2 GDPR.

[194] 2.5.2.2. At this point, it is necessary to comment on the appeal argument that the Court of Appeal exceeded the plaintiff's original claim in confirming the judgment.

[195] The claim is to be understood as intended by the plaintiff in conjunction with the statement of claim. The court must correctly interpret a claim that has been inadvertently formulated incorrectly. A change in wording within this framework does not constitute an exceeding of the claim within the meaning of Section 405 of the Code of Civil Procedure (RS0037440; RS0041207 [T1]).

[196] The minor change in wording made by the Court of Appeal served the purpose of eliminating unclear words or phrases that were not enforceable and bringing the wording of the obligation to provide information more closely in line with the wording of Article 15 GDPR. By rephrasing the request for disclosure of "the exact recipients" to mean "the recipients to whom the personal data have been or will be disclosed" (cf. Art. 15(1)(c) GDPR), it remained within the scope of the plaintiff's submission, which referred to Art. 15 GDPR and, with regard to the information

no restriction on the data disclosed in the past can be inferred from the recipients of the plaintiff's personal data.

[197] With regard to the defendant's concern that, due to a lack of knowledge about how the plaintiff would use the service, it was not possible "from a compliance perspective" to provide information about recipients to whom the data would be transferred in the future, it should be noted that the obligation to provide information about specific recipients (rather than categories of recipients) is not possible "from a compliance perspective" if the recipient is not known at the time of the transfer was not possible "from a compliance perspective" due to a lack of knowledge about how the plaintiff would use the service, it should be noted that there is no obligation to provide information about specific recipients (rather than categories of recipients) if specific recipients are not yet known (see C-154/21, *RW* v *Austrian Post*, para. 48).

2.5.3. Information about the origin

[198] 2.5.3.1. If the personal data has not been collected from the data subject, the data subject has the right to obtain all available information about the origin of the data.

[199] The obligation imposed on the defendant by the Court of Appeal therefore does not go beyond Article 15 GDPR with regard to the information about the origin of the plaintiff's personal data.

[200] 2.5.3.2. In its appeal, the defendant takes the view that it has already complied with this obligation.

[201] Information that meets the requirements of

However, no information was provided in a "precise, transparent, comprehensible, and easily accessible form" (see ECJ C-203/22, *Dun & Bradstreet Austria*, margin note 49) regarding the origin of the plaintiff's personal data obtained from third parties.

[202] In addition to the aforementioned incompleteness of the information, which means that

the plaintiff's right to information remains unfulfilled , it is clear that the with help of the "Activities outside of Facebook tools" downloadable list from third parties who transmitted information about the plaintiff to the defendant did not contain any information about which specific personal data of the plaintiff the third parties listed there transmitted to the defendant.

[203] In view of the purpose of the right to information pursuant to Art. 15 GDPR, which is to enable the data subject to verify the lawfulness of the processing of personal data concerning him or her (see ECJ C-487/21, *Austrian Data Protection Authority and CRIF*, para. 34), merely providing information about the identity of those persons who transferred the plaintiff's personal data to the defendant is insufficient. It is obvious that the lawfulness of the transfer of data from a specific third party to the defendant depends largely on the nature of the data involved.

[204] For these reasons, the defendant's legal position that it has already fulfilled its obligation to provide information about the origin of the plaintiff's personal data, which it did not collect from the plaintiff, is incorrect.

2.5.4. Information about the logic applied

[205] The appeal argument regarding Article 15(1)(h) GDPR is already invalid because the claim does not relate to the provision of information about the existence of automated decision-making, including profiling, in accordance with Article 22(1) and (4) GDPR and – at least in these cases – meaningful information about the logic involved and the significance and intended effects of such processing for the data subject.

C. Result

[206] Taking into account the claims already legally assessed in the partial judgment of June 23, 2021 (6 Ob 56/21k), the plaintiff's appeal is unfounded with regard to points 1 to 5, including the contingent claims made in 4.1. and 5.1. and points 7 and 9 of the claim, but justified with regard to points 6 and 8 of the claim.

[207] The defendant's appeal is not justified in its entirety (points 11 and 12 of the claim).

Re III. (Reservation of costs)

[208] The decision on the costs of the proceedings in all three instances was left to the court of first instance, because it had already reserved the decision on costs until the final settlement. The Supreme Court is also bound by this (RS0129336).

Supreme Court Vienna,
November 26, 2025

[redacted]

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