

[DE] Facebook must fulfil transparency obligations under the German State Media Treaty until European law issues have been clarified

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The Higher Administrative Court (OVG) for the state of Schleswig-Holstein confirmed the decision of the lower court in summary proceedings on 18 December 2025 (Case No. 6 MB 24/25), according to which Facebook users are currently not sufficiently informed about the central criteria according to which content is displayed on the platform.

The media law complaint issued by the Hamburg/Schleswig-Holstein Media Authority in October 2024 and the requirement for transparency information to be easily viewed, directly accessible and permanently available in accordance with the Interstate Media Treaty (MStV) must therefore be complied with for the time being.

According to Section 93 sentence 1 of the MStV, providers of media intermediaries such as Facebook must provide their users in Germany with information on the central sorting criteria for content in such a way that it is easy to find, directly accessible and constantly available. Under media law, the term "media intermediary" pursuant to Section 2 (2) No. 16 MStV refers to a telemedium that aggregates, selects and makes publicly accessible journalistic and editorial content from third parties without bundling it into its own overall offering. This only covers intermediaries that provide such content; however, it is sufficient if journalistic-editorial content is merely distributed alongside other content. The aim of the transparency rule in Section 93 MStV is to sensitise users to how the algorithms work and to give them an insight into how content is compiled. Meta had failed to fulfil this obligation and argued, *inter alia*, that the provisions in the MStV violated EU law, specifically the E-Commerce Directive (ECD), the Digital Services Act (DSA) and the Platform-to-Business Regulation (P2B Regulation). On 30 October 2024, Meta filed an action for annulment against the media authority's decision and at the same time applied for the suspensive effect to be restored. This action for annulment was rejected by the Administrative Court (VG), as the public interest in enforcement outweighed the private interest in suspension. The substantive legal question of the applicability of Section 93 MStV against the background of EU law could not be clarified conclusively in summary proceedings. Meta lodged an appeal against this decision, in which it primarily argued that the court had failed to address the issue

of EU law and that the transparency information last updated on 4 June 2025 was compatible with Section 93 MStV.

With regard to the updated information, the Schleswig-Holstein OVG also saw strong indications that Meta was in breach of transparency obligations.

At the time of the complaint, the information provided on Facebook, such as the "Transparency Centre", was neither easy to find nor directly accessible. The "Why am I seeing this post?" function was also only available in the app and its content was "superficial and empty (*phrasenhaft*)", according to the court.

Furthermore, the OVG also takes the view that questions of European law cannot be clarified conclusively in summary proceedings, including the question of whether the transparency provision of the MStV, which also applies to providers of media intermediaries based in other member states, violates the country of origin principle, which is enshrined in Article 3 of the ECD and was transposed into national law in Germany by Section 3 of the DSA. It is questionable whether Article 1 (6) of the ECD can be used to justify the imposition of the market place principle in the MStV, as the ECD does not affect measures to protect cultural diversity and pluralism. The OVG assumes that Section 93 of the MStV is a provision that serves to protect pluralism. However, the meaning of Article 1 paragraph 6 of the ECD is "ambiguous in many respects and [...] also highly controversial in academic discourse". The key issue is whether the country of origin principle is mandatory for information society services or whether national legislators have room for manoeuvre to pursue their own media policy objectives. A similar question is whether Section 93 MStV could be applicable to Meta in view of the transparency rules in Articles 14 and 27 of the DSA. This question also arises with regard to the P2B Regulation. Like the DSA, it aims at a functioning internal market (Article 114, Treaty on the Functioning of the European Union) and lays down rules to ensure transparency, fairness and effective remedies, such as search engines, for commercial users of online intermediary services and corporate websites.

The answer to these questions depends on the interpretation of the provisions of EU law, and this is ultimately the responsibility of the European Court of Justice (ECJ). In order to clarify the questions, the OVG referred to the main proceedings, from which a referral to the ECJ could be made if necessary. In the summary proceedings, the OVG assessed the consequences of refusing immediate enforcement in favour of the immediately applicable transparency obligation provision. In particular, the central role of services such as Facebook in shaping public opinion played a role. The increasing influence of the platform is closely linked to the ad-financed business model, which is dependent on the fastest possible growth in user reach. Transparency targets are therefore particularly important in order to prevent a biased or one-sided selection of content. The

public interest in immediate compliance with the transparency obligations was rated higher by the OVG than Meta's economic interests. The OVG's decision is final.

In light of the fact that the country of origin principle is a central control instrument under EU law in both the ECD and the Audiovisual Media Services Directive (AVMSD) and that this principle is of great importance for member states' room for manoeuvre, the issues in the legal dispute are urgent and topical legal issues that require fundamental clarification.

Link zur Entscheidung des OVG Schleswig-Holstein

<https://www.gesetze-rechtsprechung.sh.juris.de/bssh/document/NJRE001628453>

Link to the decision of the Schleswig-Holstein OVG

Link zur Pressemitteilung des OVG Schleswig-Holstein

https://www.schleswig-holstein.de/DE/justiz/gerichte-und-justizbehoerden/OGV/Presse/PI_OVG/2025_12_19_Meta_muss_Facebook_transparenter_machen?nn=e2ec8178-da32-49c8-b837-48df11a696d2

Link to the press release of the Schleswig-Holstein OVG

