OSLO DISTRICT COURT

RULING

Resigned:	06.09.2023
Case No.:	23-114365TVI-TOSL/08 and 23-114359TVI-TOSL/08
Judge:	Judge Henning Kristiansen
The case is:	Request for provisional injunction against the decision of the Data Inspectorate

Case 23-114365TVI-TOSL/08

Meta Platforms Ireland Limited	Lawyer Christian Reusch Legal Assistant: Lawyer Nicholas Foss Barbantonis

foreword

State v/Datatilsynet	Lawyer Hanne Jahren

Case 23-114359TVI-TOSL/08

Facebook Norway AS	Lawyer Christian Reusch Legal Assistant: Lawyer Nicholas Foss Barbantonis

foreword

State v/Datatilsynet	Lawyer Hanne Jahren

1 Background

Oslo District Court received 3 and 4 August 2023 petitions from Meta Platforms Ireland Limited (Meta Ireland) and Facebook Norway AS (Facebook Norway) for temporary injunction against the state by the Norwegian Data Protection Authority. In the petitions, a requirement was made that the Data Inspectorate should be prohibited from implementing a decision on 14 July 2023 against Meta Ireland and Facebook Norway. The decision applies to the prohibition that the companies process personal data for behavioural marketing on the basis of GDPR Art. 6 (1) b) and f) in connection with the services Facebook and Instagram, and have a duration of three months. The deadline for compliance with the decision was set to 4 August 2023.

The plaintiffs requested that the court handed a ruling without prior oral negotiation. In particular, it was pointed out that the Data Inspectorate had notified that it would consider imposing a compulsory fine on the companies in case of failure to comply with the decision, and that it was not practically possible to hold oral negotiations before the forced fine began to run.

The court decided that the parties should be summoned to oral negotiation before taking a position on the petitions, cf. the Dispute Act section 32-7 first paragraph. In a letter of 7 August 2023, the parties were summoned to oral negotiations on 22 and 23 August 2023.

On 7 August 2023, the Norwegian Data Inspectorate decided to impose a joint fine on Meta Ireland and Facebook Norway (as joint liability) for failure to comply with the decision on 14 July 2023. Tvangsboten started running from 14 August 2023 and amounts to NOK 1 million for each day that passes without the ban being complied with.

On August 10, 2023, Meta Ireland and Facebook Norway asked the court to reconsider whether there were grounds for injunction without prior oral treatment.

In written comments to the petitions (equivalent) on 11 August 2023, the state requested that the negotiations be divided, so that the question of security grounds should be dealt with first.

The court communicated in its letter of 13 August 2023 to the parties that the decision to conduct oral negotiation before the court took a decision on the petitions was upheld, and that the sharing of the negotiations was not decided.

A joint oral negotiation was held for both cases in Oslo Courthouse on 22 and 23 August 2023. The negotiations were conducted according to the main entry model.

2 Background of the case

2.1 Brief about the plaintiffs and the case complex

Meta Ireland is a company based in Dublin. The company is a party to agreements that provide the services Facebook and Instagram to users in Norway and the rest of Europe, and is also the data controller for the processing of users' personal data for the purpose of providing Facebook and Instagram.

Facebook Norway is a Norwegian limited liability company. The company is a subsidiary of Facebook Global Holdings II LLC, which in turn is a subsidiary of Meta Platforms Inc. The company provides sales support and marketing services, including resale of such services, cf. the company's annual report for 2022.

The dispute in this case is part of a comprehensive complex of cases relating to the legality of Meta Ireland's processing of personal data for behavioural marketing under the General Data Protection Regulation (Regulation (EU) 2016/679 — General Data Protection Regulation — GPPR) Article 6 (1). The disputes relate to both administrative bodies and courts, and the parties have in this case not given an exhaustive statement of which administrative bodies and courts are involved, what questions these cases raise and what is the status of the various processes. The court will provide a concentrated and more transparent presentation of the background for the case, where the overall case complex is described to a limited extent.

2.2 More about the background of the case

The present dispute is based on complaints submitted by the data protection organisation NOYB to the Austrian Data Protection Authority in May 2018. The complaint cases concerned the processing of personal data for behavioural marketing through the services Facebook and Instagram.

The complaints were processed by the Irish Data Protection Commission (DPC) because it is a cross-border processing and Meta Ireland has its main activities in Ireland, cf. GDPR Art. 4 (23) cf. Art. 56.

The DPC dealt with the complaints in accordance with the cooperation mechanism pursuant to Art. 60 GDPR, and sent on 6 October 2021 (regarding the service Facebook) and 1 April 2022 (regarding the service Instagram) out draft decisions in the cases of the supervisory authorities concerned, including the Data Protection Authority. No agreement was reached between the DPC and the various supervisory authorities on all the issues raised by the complaints, and the DPC therefore submitted some of the questions to the European Data Protection Council (EDPB), cf. GDPR Art. 65.

The EDPB made decisions on the issues related to the relevant services — Facebook and Instagram — December 5, 2022. The decision regarding the service Facebook paragraph 1(3) (Summary of the Dispute) states that the complaint concerns the question of whether there was a breach of the specified provisions of the GDPR and the EU Charter of

Fundamental Rights in that Meta Ireland built the processing of personal data on forced consent ("forced consent"). In the decisions, among other things, it was assumed that the processing of personal data for behaviour-based marketing could not be based on Art. 6 (1) b GDPR), cf. binding decision 3/2022. Facebook Section 484 and 4/2022 regarding Instagram Section 451.

The DPC then made decisions on 31 December 2022 that Meta Ireland could not base its processing of personal data for the purpose of behavioural marketing on GDPR Art. 6 (1) b). Meta Ireland was also given a deadline of three months to correct the matter and at the same time subject to substantial fines/benefits, see the decision concerning Facebook Sections 10.44 and 10.45 and the decision concerning Instagram Sections 417 and 418.

In e-mail on 28 March 2023 to the Data Inspectorate Meta Ireland requested a meeting to explain its views on certain questions concerning the processing of personal data for the purpose of behavioural marketing. The Data Inspectorate responded to the request in e-mail on 14 April 2023 and pointed out that the case was being processed by the DPC, as the lead supervisory authority. The DPC had made its final assessment/decision, and the Norwegian Data Protection Authority referred Meta Ireland to dialogue with the DPC regarding its implementation.

Meta Ireland reported in its letter of 3 April 2023 from its associate with the DPC about how the company would meet the requirements, as stated in the DPC's decision on 31 December 2022.

The Data Inspectorate addressed the DPC in e-mail on 5 April 2023. In the e-mail, the Data Protection Authority requested, inter alia, DPC's view of Meta Ireland's change of processing basis for behavioural marketing from GDPR Art. 6 (1) b) to Art. 6 (1) f).

Following this, the DPC forwarded Meta Ireland's reports on how the company planned to meet the requirements that DPC had set for behaviour-based marketing, cf. the Norwegian Data Protection Authority's letter of 5 May 2023 first paragraph. The Norwegian Data Protection Authority requested the DPC in the same letter to decide a temporary ban which stated that Meta Ireland could not base its processing of personal data for the purpose of behavioural marketing on GDPR Art. 6 (1) f). In the event that the DPC would not follow up the request, the Data Inspectorate notified that it would consider the possibility of taking temporary measures in Norway pursuant to Art. 66 GDPR, cf. the letter point 1. The letter was forwarded to Meta Ireland's legal associate, cf. DPC's letter of 25 May 2023 and an update to the supervisory authorities concerned on 31 May 2023.

In a letter of 31 May 2023, Meta Ireland commented on the comments received by the DPC from some of the supervisory authorities concerned. From the letter it appears that Meta Ireland had in particular noted the content of the request from the Data Protection Authority.

DCP responded to the Data Protection Authority's request on 5 May 2023 regarding mutual assistance in the notification sent on 2 June 2023. In the notification form used, it was stated that the DPC could not comply with the request for a temporary ban ("No, I cannot

comply with the request"). On 9 June 2023, the Norwegian Data Inspectorate asked questions whether the DCP could informally indicate whether the audit could follow the Data Inspectorate's request at a later date. At the same time, the Data Inspectorate communicated that it would await the DPC's feedback that was notified towards the end of June 2023.

On 9 June 2023, the Data Inspectorate requested a response from the DPC to whether the Norwegian Data Protection Authority's request for a temporary ban would be followed. The request was not answered.

In request of 13 June 2023 to the other relevant supervisory authorities, the DPC informed that it would await the decision of the European Court of Justice in Case C-252/21 *Facebook Inc. and Others v. Bundeskartellamt* before deciding whether Meta Ireland could base the processing of personal data in connection with conduct-based marketing on Art. 6 (1) b) or f).

In a letter of 21 June 2023 to Meta Ireland, the DPC commented on certain issues related to the processing of urgent measures. Further comments relating to the further process of ensuring compliance were submitted in a letter to the DPC on 30 June 2023 from Meta Ireland's legal associate.

On 4 July 2023, the Court of Justice of the European Union decided in case C-252/21 and concluded that the provision of GDPR Art. 6 (1) f) could not constitute a legal basis for the processing of personal data for behavioural marketing purposes, see the decision paragraphs 116 and 117.

The DPC then sent out a new preliminary assessment on 11 July 2023, in which the relevant regulatory bodies were invited to comment on the DPC's assessment that Meta Ireland did not process the personal data in accordance with GDPR legislation. Furthermore, the DPC informed that it would communicate the views of the supervisory bodies to Meta Ireland by 4 August 2023, and that the DCP would finalise its assessments by 21 August 2023.

In the Norwegian Data Protection Authority's e-mail on 14 July 2023, the DPC was informed that the Norwegian Data Protection Authority would decide on the same day temporary measures against Meta Ireland in Norway.

In a decision on the same day, the Data Protection Authority decided that Meta Ireland and Facebook Norway could not base the processing of personal data for behavioural marketing on the provisions of GDPR Art. 6 (1) b) or f). It is stated in the decision that it applies to registered persons in Norway and that the order should have a duration of three months. At the same time, it was informed that the ban would be lifted if Meta Ireland and Facebook Norway took measures to ensure that the processing was in accordance with GDPR Articles 6 (1) and 21. It was further announced that the Norwegian Data Protection Authority would consider imposing on Meta Ireland and Facebook Norway a forcible fine of up to one million kroner per day, collected or separately, if Meta Ireland and Facebook Norway did not comply with the ban.

On 20 July 2012, the DPC sent a notification to the European Data Protection Council and the supervisory authorities concerned, where the DPC explained that it had not intended to reject the Data Protection Authority's request for mutual assistance, cf. the Communication on 2 June 2023. In the letter, it was further accounted for the further plan for the case processing.

Meta Ireland commented on the Norwegian Data Protection Authority's decision in a letter of 27 July 2023 from lawyer Thomas Olsen. In the letter Meta Ireland informed that the company was willing to change the processing basis for behavioural marketing to consent (GDPR Art. 6 (1) a)). Furthermore, Meta Ireland requested that the Data Protection Authority repeal the ban and notified that the company would dispute that there were grounds for making decisions with such content. On the same day Meta Ireland — through its legal associate in Ireland — contacted the DPC and informed that the company was willing to take steps to establish consent as a basis for the processing of personal data in connection with conduct-based marketing, cf. GDPR Art. 6 (1) a). At the same time, it was announced that Meta Ireland would probably take at least three months to implement this change.

On 31 July 2023, a video meeting was held between Meta Ireland and the Norwegian Data Protection Authority.

In a letter of 1 August 2023 from the DPC to Meta Ireland's lawyers, a plan/timeline was communicated for the further proceedings.

In a letter of 3/4 August 2023, the Data Inspectorate requested confirmation that Meta Ireland and Facebook Norway would comply with the decision on 14 July 2023 within the deadline of 4 August 2023, including whether the companies would introduce a temporary halt to the processing in question, and if so to what extent. In a letter from lawyer Thomas Olsen to the Data Inspectorate, Meta Ireland and Facebook Norway reported that the companies had fulfilled the decision from the Norwegian Data Protection Authority by confirming that Meta Ireland would base the processing of personal data for behavioural marketing on consent. Furthermore, it was argued, among other things, that the Norwegian Data Protection Authority's prohibition was unlawful, destructive for Meta Ireland and contrary to the interests that the GDPR is to safeguard.

Meta Ireland and Facebook Norway appealed in a letter of 1 August 2023 from lawyer Reusch Data Protection Authority's decision on 14 July 2023. It was stated that the decision was invalid and the decision was requested to be reversed. At the same time, postponed implementation was requested as long as the Data Inspectorate or the Ministry processes the complaint. It was also notified that the companies would file an application for temporary injunction if the decision was not reversed or postponed implementation was not made no later than 3 August 2023

In a letter of 3 August 2023, the Data Inspectorate rejected the appeal and refused to reverse the decision on 14 July 2023.

Meta Ireland and Facebook Norway submitted 3 and 4 August 2023 petitions for a

temporary injunction to Oslo District Court.

In its report on 18 August 2023, the DPC has made its final assessments in the audit cases and a plan for the further handling of the cases.

3 The parties' submissions

3.1 Meta Platforms Ireland Limited and Facebook Norway AS have in short

The decision of the Data Inspectorate on 14 July 2023 is invalid.

The decision cannot be directed to Facebook Norway. Meta Ireland is not Facebook Norway's parent company, and Facebook Norway provides limited services to the Meta Ireland group. Facebook Norway has no dealings with the data processing in question, is not the data controller pursuant to Art. 4 (7) of the GDPR, and cannot comply with the decision. This also follows from the judgment of the European Court of Justice in Cases C-645/19 and LB-2020-170405. Facebook Norway is also not involved in the DPC process.

Neither the Personal Data Act nor the GDPR supports the view that Facebook Norway should be held responsible for another EEA legal entity's obligations as a data controller. This is also the basis of jurisprudence. The provision of the GDPR Art. 60 (10) or paragraph 80, cf. art. 27, does not imply another assessment. The term "establishment", which is used in Art. 3(2), Art. 56 and Article 79 of the GDPR, shall be construed narrowly, and includes only entities that carry out relevant processing activities and have a real connection with the data processing in question.

Meta Ireland and Facebook Norway did not receive any advance notice and were not given the opportunity to comment in advance, cf. the Public Administration Act § 16 first and second paragraphs. The fact that the parties were familiar with the case is not sufficient. In particular, this applies where it may be appropriate to impose a sanction on the private party. Although the party is aware that a decision can be taken, special notice may be required that the management is now actually considering this.

The decision is based on circumstances that had not previously been the subject of the DPC proceedings, including whether the conditions of GDPR were met, deadlines for compliance, sanctions in the event of non-compliance, etc.

The Data Protection Authority cannot assume that Meta Ireland shared information about the process with Facebook Norway.

As regards Meta Ireland's communication with DPC, Meta Ireland and Facebook Norway point out that this is a separate oversight abroad. The correspondence with such body may not constitute a special notice or imply an invitation to speak.

The Data Inspectorate's request for mutual assistance on 5 May 2023 does not constitute sufficient notice. The request mentions that the Data Inspectorate considers temporary measures, but does not adequately explain what the case concerns, nor does it contain

information that allows the plaintiffs to safeguard their interests. The inquiry lacks an account of the extent of the acute situation, which alternative advertising models could be feasible, time frames and sanctions in case of continued infringement.

The subsequent provocations by the Norwegian Data Protection Authority in the injunction cases strengthen the impression of a decision building to a deficient actual basis. In addition, the DPC had instructed Meta Ireland to wait to respond to the DPC's preliminary assessment had been published, which first occurred on July 11, 2023.

For the reasons mentioned above, there is also a breach of Section 17 of the Public Administration Act, in that the case was not as well informed as possible before a decision was made. The Data Inspectorate did not carry out any investigations to justify the decision, for example concerning haste, damage or real compliance.

Both the breaches of the requirement for prior notification and sound investigation have affected the decision, cf. section 41 of the Public Administration Act. Meta Ireland would inform the Data Inspectorate of significant aspects, including that the decision is unnecessary (lack of timeliness). Furthermore, the Data Inspectorate has an incorrect understanding of how Meta Ireland's services work, including hiding the advertising function, what behavior-based marketing consists of, how localisation data works and what users expect from the services.

The conditions for urgent measures pursuant to Art. 61 (8) of the GDPR are not met. The general rule is that national supervisory authorities are not competent to issue orders in cross-border matters, cf. Art. 56. The competence lies here for the leading audit, cf. GDPR Art. 60, which establishes a cooperation mechanism. The purpose is to ensure equal application of the regulations and predictability.

The Data Inspectorate has not demonstrated that the DPC has failed to respond to its request for mutual assistance, cf. the request on 5 May 2023. The Data Inspectorate requested that the DPC share a schedule, which was done on several occasions. The Data Inspectorate has also accepted the answers given by the DPC and has not indicated that the DPC has neglected to respond to the inquiries. Under any circumstances, the DPC's assessment on 11 July 2023 constitutes an answer. The fact that the process takes a few weeks longer than the time frame stipulated by the provision does not justify the application of the provision.

The present case is complicated and requires extensive case processing. In any case, the fact that the audits should cooperate does not require unreserved acceptance of all requirements. In any case, the DPC had to be able to comply with relevant administrative law requirements for the processing of cases. The decision further undermines the one-site mechanism and opposes Meta Ireland's ability to comply with the DPC processes. Furthermore, Meta Ireland has not been aware for a long time that consent is the only lawful basis for processing, cf. older case law that underpins that Art. 6 (1) b) could also apply.

The conditions for taking measures in accordance with the urgent procedure referred to in

Article 66(1) are not met. The provision applies only in special cases and requires an urgent need to take measures to protect the rights and freedoms of data subjects. The provision shall be interpreted restrictively, cf. the European Data Protection Board's decision in Case 01/2021 paragraphs 165-167. The Data Inspectorate has not pointed to acute circumstances that justify the decision.

Behavioural marketing is very widespread and has been going on for many years, including the entire period GDPR has been in effect. Meta Ireland has recently given users more control over their own personal data by giving the opportunity to object to the processing, which has reduced the need for urgent measures. In addition, the urgency procedure will interfere with the ongoing process for the DPC and in practice represent an impossible obligation. The decision entails de facto that Meta Ireland must temporarily stop Facebook and Instagram services in Norway.

The plaintiffs also point out that the Data Inspectorate did not object to the DPC's preliminary assessment. The supervisory bodies agreed that the transition to Art. 6 (1) f) as a basis for processing for conduct-based marketing was not legitimate, cf. in particular the Data Protection Authority's e-mail of 14 July 2023 to the DPC. None of the other inspections concerned have taken urgent action.

There was also no urgent need for the decision as a result of the decision in the Bundeskartellamt case. The DPC built on this decision in its assessment. Furthermore, it is not relevant that Norwegian administrative law facilitates faster processing pursuant to Art. 66 (1) of the GDPR. The fact that the DPC has adhered to basic procedural requirements may also not constitute a special or acute circumstance that justifies exceptional urgent measures. In addition, the Data Protection Authority's process delays Meta Ireland's ability to find a solution.

The decision is disproportionate, cf. GDPR art. 83, 84 and paragraphs 4, 129 and 148, ECHR and the principle of administrative law. The decision requires Meta Ireland with three weeks' notice and within fifteen working days to make fundamental changes to its services for Norwegian users. This is not possible, and it will therefore also have limited effect to allocate resources to fulfil the decision, cf. also section 51 (2) of the Public Administration Act. Furthermore, the Data Protection Authority's proposed advertising model is not appropriate. In addition, Meta Ireland points out that the decision has already been met, in that Meta Ireland has already committed to amending the basis for the relevant data processing to Art. 6 (1) a of the GDPR). There is a detailed compliance plan.

The decision is further contradictory and unclear. It is also in violation of other legislation, including ECHR Art. 6.

There is a reason for security, both according to the alternative in Section 34-1 first paragraph (a) and b) of the Dispute Act.

Meta Ireland's main claim will be substantially more difficult if temporary security is not granted, cf. the Dispute Act § 34-1 first paragraph letter a). The plaintiffs will in practice be deprived of the possibility of judicial review as a result of the decision having a time limit

of three months. It will take much longer to file a lawsuit. Meta Ireland could potentially get compensated accrued daily payments in such a lawsuit, but the lawsuit would hardly help to replace reputation and revenue losses resulting from the decision. Nor will such an injunction constitute any preemption of the main requirement, cf. in particular LE-2008-48261.

Temporary injunction is also necessary to avoid significant damage and inconvenience, cf. the Dispute Act section 34-1 first paragraph letter b). The decision will result in irreversible damage to the reputation of the services — both in Norway and internationally — and will also cause the plaintiffs a significant financial loss. It's hard to estimate how big this loss will be. Meta Ireland and Facebook Norway refer to negative reviews in Norwegian and international media. Furthermore, there are a number of advertisers who have questioned what consequences this case will have.

The fact that the government is good, no decisive emphasis can be placed on.

The threshold for stating that there is security reasons should be significantly lower for Facebook Norway. The company has limited turnover and the basis for imposing on the company's trading obligations is very thin.

It is not possible to avoid the negative consequences of the decision without temporary injunction. The decision is burdensome and it is not possible to comply with this during the period the decision is in force. The adverse effects will occur if the injunction is not given. Attempts to walk the way for administrative complaints and a request for postponed implementation have not led.

Temporary injunction will not inflict damage or inconvenience to the state that is clearly disproportionate to the interest of the plaintiffs in that injunction is decided, cf. the Dispute Act section 34-1 second paragraph. It is unreasonable that the coercive fine runs before the validity of the underlying decision is legally settled. Moreover, there is no real rush in the case. The processing of the case is already under consideration by DPC and Meta Ireland has undertaken to change the basis for processing to a model of consent. The need for injunction is due to the Norwegian Data Protection Authority's inadequate investigation and lack of prior notice. In addition, the value of the main requirement is significant.

Meta Platforms Ireland Limited has closed such a claim in Case 23-114365TVI-TOSL/08:

1. The decision's order by 4 August 2023 to refrain from processing the "Personal Data in the Context of the Services" shall not be effective until there is a valid judgment on the validity of the decision.
2. Meta Platforms Ireland Limited shall take action within two weeks of the court's ruling.
3. Meta Platforms Ireland Limited is subject to legal fees.

Facebook Norway AS has closed such a claim in case 23-114359TVI-TOSL/08:

1. The decision's order by 4 August 2023 to refrain from processing "Personal data for

Behavioural Advertising based on Article 6 (1) b) and 6 (1) f) GDPR in the context of the Services shall not be effective until there is a legal judgment on the validity of the decision.

2. Facebook Norway AS will take action within two weeks of the court's ruling.
3. Facebook Norway AS is awarded legal costs.

3.2 The State v/The Norwegian Data Protection Authority has, in brief, applied

The Data Inspectorate's decision on 14 July 2023 is valid.

The decision could also be directed at Facebook Norway, as a "establishment" of Meta Ireland. Facebook Norway performs effective and actual activity in Norway, in the form of marketing services on Facebook and Instagram. The company has a permanent structure and a physical office on Norwegian territory. This is sufficient to be considered an establishment in accordance with the European Court of Justice's practice.

Neither the provisions of Art. 61 (8) of the GDPR or Article 66 (1) govern who shall be the addressee of the decision. The objective of ensuring effective compliance implies that the decision can also be directed at companies in the same group. Whether the establishment can control the processing in question cannot be decisive, cf. GDPR Art. 4 (16), Art. 27 and paragraph 80.

The assessment topic is whether the decision concerns the processing of personal data carried out in the context of the establishment's activities, cf. the judgment of the European Court of Justice in Case C *-645/19 Fcaebook Ireland* paragraphs 85 and 96. The Data Inspectorate's decision relates to the processing of personal data carried out in connection with Facebook Norway's activities in Norway.

The plaintiffs have not substantiated procedural errors that may have affected the content of the decision.

Meta Ireland and Facebook Norway have already spoken in the case, cf. Meta Ireland's letter of 21 June 2023, which contains a thorough account of Meta Ireland's view of the terms of urgency measures. It was notified of measures on Norwegian territory. It must be assumed that the statement was also made on the basis of Meta Ireland's operations in Norway. The Norwegian Data Protection Authority took all of these inputs into account when the decision was made.

It is stated that Meta Ireland and Facebook Norway have been given the opportunity to speak before the decision was made. The Data Inspectorate notified of possible urgent measures in the request for mutual assistance on 5 May 2023. It was clear from the warning what kind of decision it was appropriate to make. The notification was shared with Meta Ireland by DPC in accordance with the GDPR procedures, cf. that it is the lead supervisory authority that shall be the sole point of contact, cf. GDPR Art. 56 (6). It is also likely that the information was shared with Meta Ireland's operations in Norway. It is the duty of Meta Ireland to ensure that urgent measures are implemented by their establishment in the Norwegian territory, cf. GDPR Art. 66 (19) and Article 60 (10). The state further points out

that employees in Facebook Norway have been in contact with the Data Protection Authority regarding the EDPB decision.

Again subsidiaryly, it is stated that Meta Ireland and Facebook Norway have otherwise learned that decisions are to be taken and have had reasonable precedent and time to comment, so that notification must be considered unnecessary, cf. the Public Administration Act section 16 third paragraph c. Meta Ireland stated in the letters from June 2023 much of the same that the Norwegian Data Protection Authority took into account when the decision was made. In any case, the arguments were drawn up in the request for reversal and in advance of the periodic penalty decision, but they did not proceed.

The conditions for urgent measures in Article 61 (8) of the GDPR are met. The Norwegian Data Protection Authority submitted a request for mutual assistance to the DPC on 5 May 2023, where it was asked, among other things, that the DPC shared a schedule for how it would ensure that Meta Ireland quickly followed up the requirements under the GDPR. The deadline for answering the inquiry was 5 June 2023, but the DPC added in letter 30 May 2023 up to respond on 30 June 2023. In response to the Norwegian Data Protection Authority on 2 June 2023, DPC announced that it would not comply with the request ("No, I cannot comply with the request"). The Data Inspectorate heard nothing more by the deadline of 5 June 2023, and received no response to the request on 9 June 2023. The DPC stated on 13 June 2023 that it would wait for the decision in the Bundeskartellamt case. Nor in a letter of 11 July 2023 was given information from the DPC about any measures to ensure compliance.

It is stated that the conditions for taking measures pursuant to Article 66 (1) of the GDPR are fulfilled. In this case, there is a "special case". In DPC's December 2022 decision, Meta Ireland was given a three-month deadline to ensure compliance. By July 2023, the requirements were not met. Meta Ireland did not impose a temporary ban following the Bundeskartellamt decision. At the same time, Meta Ireland coaches the process. There are serious breaches of the regulations with extensive illegal use of large amounts of data, and there is an urgent need for measures to be taken.

The decision of the Data Inspectorate is not disproportionate, either under EEA law or Norwegian internal administrative law.

It is not disproportionate to impose the cessation of illegal activities. The interests of the plaintiffs are primarily of an economic nature. These interests must be compared with the interests of Norwegian users' privacy and rights under the GDPR and the extent of the unlawful use of data.

The claim that it is not possible to comply with the decision has not been substantiated. No evidence has been provided to support the claim. Meta Ireland has already today a protest solution that might be used, and has also taken other measures recently, including related to children. There is no evidence that the company will need three months to make the necessary changes. Meta Ireland has also not proven that the company has implemented repairing measures, by initiating new processes, after they became aware of the requirements. The plaintiff's submission is based solely on a party's entry without the value

of evidence.

The state further points out that it was more than a month from the time the decision was made until the coercive payment began to run. The plaintiffs have also had many years to ensure compliance with the regulations, without taking any action or preparation. It is pointed out, among other things, that almost eight months have passed from the DPC decisions came without the necessary changes being made. The processing itself has been illegal at least since 2018, cf. the DPC decisions on 31 December 2022.

The Data Protection Authority's decision is not too vague. It is the responsibility of the plaintiffs to ensure compliance with the GDPR. Meta Ireland has not met the decision.

The decision of the Data Inspectorate is not invalid on other grounds, including violations of ECHR art.
6, violation of the principle of unlawful cooperation or inadequate justification.

There is no reason for security, neither in accordance with the provisions of Section 34-1, first paragraph, letter a or b of the Dispute Act.

Implementation of the enforcement fines may not be averted by temporary injunction. In any case, the plaintiffs can try the decision in the event of a forcible collection of the fine. Any claims can also be brought through a claim against the state.

It is not probable that the plaintiffs will suffer significant damage in the form of reputation loss or that they will suffer a financial burden as a result of the decision. It has previously been established, both by the Irish supervisory authority, by the European Supervisory Authority and other supervisory authorities in Europe, that the processing of personal data for conduct-based marketing is unlawful. No further loss of reputation has been substantiated as a result of a ban on illegal treatment. The case received a lot of negative mention, even before the decision of the Data Inspectorate. In this case, Meta Ireland has been widely mentioned.

Any loss of reputation is not irreversible. If the plaintiffs subsequently determine that the decision of the Data Inspectorate was invalid, any loss of reputation may be corrected. The aforementioned reputation loss is nevertheless inextricably linked to the plaintiff's financial interests.

In any case, it would be disproportionate to decide an injunction with the content requested by the plaintiffs.

If a provisional injunction is decided in this case, it will render the Data Inspectorate's decision contentless.

<u>The State v/Datatilsynet has made such a claim in both cases:</u>

1. The request for a temporary injunction is not accepted.
2. The State v/Datatilsynet is awarded legal costs.

4 Notices of the Court

Pursuant to Section 34-1 of the Dispute Act, cf. section 34-2, the plaintiff must — in order to obtain an application for provisional injunction — as a starting point substantiate the main requirements and grounds for security. The cause of security must always be substantiated; from this there are no exceptions, see Schei et al., comments on Section 34-2 of the Dispute Act on Juridika, updated as of 1 March 2023, paragraph 1.

The main requirement is that the Data Inspectorate's decision on 14 July 2023 is invalid. It is not stated that the decision/decision of 7 August 2023 to impose Meta Ireland and Facebook Norway forcibly fines is invalid on an independent basis. However, the decision on forced fines is based on Meta Ireland's and Facebook Norway's failure to comply with the decision on 14 July 2023. If the decision on 14 July 2023 is invalid, in the court's view, there will also be no grounds for collecting the forced fines, and there is therefore no reason to make separate assessments of whether the two decisions are invalid.

The court will first address the question of whether there is a probable reason for security. The plaintiffs have stated that securing the claim can both be based on the alternative in Section 34-1 first paragraph (a) and letter b of the Dispute Act.

4.1 The question of whether there is a security reason

The plaintiffs have made, inter alia, by reference to the preparatory works (Ot.prp. No 65 (1990-91) p. 292), that the provision in point (a) may be invoked as a hedging ground even in cases where the main requirement stated is that an administrative decision is invalid.

In the case of applications for provisional injunctions that are aimed at invalid administrative decisions, the normal alternative in Section 34-1 first paragraph (b) of the Dispute Act is invoked, cf. Flock, Temporary hedging, p. 143 and Schei et al., comments to Section 34-1 paragraph 4. However, it is not considered excluded that the provision in point (a) may also be used as defence against invalid administrative decisions, cf. the minority's remarks in Rt-1996-342, the preparatory works of the provision and Flock p. 97. However, the court is not aware that there are recent case law where the alternative in point (a) has been used as a basis for injunction that is aimed at an invalid administrative decision. As based on Flock p. 97, the court considers that it will normally be the option in point (b) that will constitute the legal basis for establishing a security ground where the request is directed to an invalid administrative decision.

The court therefore first looks at the question of whether there is a probable reason for security based on the alternative in Section 34-1 first paragraph (b) of the Dispute Act.

In the court's view, the assessment of whether there is a guarantee will be similar for Meta Ireland and Facebook Norway. There are no relevant, individual differences between these companies that indicate that the assessment may fall out differently. In this, the court does not consider that there is reason to place decisive emphasis on Facebook Norway being financially weaker than Meta Ireland or that the company has a more distant connection to the processing activity itself.

4.1.1 The question of whether there is a guarantee under Section 34-1 first paragraph (b) of the Dispute Act

The alternative in Section 34-1 first paragraph (b) of the Dispute Act stipulates that a temporary arrangement in a disputed legal relationship is necessary in order to prevent significant damage or inconvenience. The provision allows for a complex assessment of the importance of the disputed legal relationship for the plaintiff, how much need the plaintiff has for temporary injunction, how intrusive a temporary injunction will be, the defendant's conduct, etc., cf. Rt-2002-108. Where the injunction is directed to an administrative decision, the strength of the damage/disadvantage to which the plaintiff is subjected by the decision will be central, see Flock pp. 143.

The plaintiffs initially argued in the present cases that there was a hedging basis according to the option in letter b) because it was appropriate to impose fines on Meta Ireland and Facebook Norway on substantial amounts. It was pointed out that it is highly unreasonable that the forced fines should begin to run before the validity of the underlying decision was legally settled.

The starting point under Norwegian procedural legislation is that provisional injunction cannot be used to defend itself against a monetary claim or prevent collection measures taken by the national authorities or a court, cf. Rt-1993-1595, LB-2022-161199 cf. HR-2023-348- U (the appeal denied submitted), Schei et al., remarks to the Dispute Act § 32-1 paragraph 3 and Flock s. 43 and p. 45-46. In these cases, the plaintiff is referred to as using the means to which procedural legislation in conjunction with Norway's obligations under international law and agreements with foreign states grant access. In Borgarting Court of Appeal's ruling in case LB-2022-161199, this is stated as follows:

> The reason for the Court of Appeal's view is firstly that provisional injunction pursuant to Section 32-1 third paragraph of the Dispute Act may only be claimed by the person who has a claim that is other than payment of money. A claim on payment of money cannot justify temporary injunction. The same must apply when the requirement is in reality that there is no basis for an alleged monetary claim, cf. Rt-1993-1595 and LE-1996-551. Although A's claim is formally based on the validity of an administrative decision, the requirement is in reality that there is no basis for the contribution requirement against him. The purpose and content of the Management Decision is to provide legal grounds for collecting the contribution. On this basis, the Court of Appeal has concluded that there is no opportunity to demand temporary injunction, cf. the Dispute Act section 32-1 third paragraph, and that the application must be rejected.

The reason that there are narrow limits for using temporary injunction as defence against a monetary claim is that the defendant/cultor has a broad right to raise objections during the execution, cf. Rt-1993-1595. In the decision of the Loving Governance Committee, it is particularly noted that pursuant to Section 4-2, third paragraph of the Enforcement Act, section 4-2, third paragraph, of the Enforcement Act provides for objections to a special basis of enforcement (such as an administrative decision) and that Section 6-6 of the

Enforcement Act allows for disputes relating to objections made during enforcement to be transferred for consideration by general process. During the execution, it will also be possible to assert that it is impossible to fulfil the duty of action, as the plaintiffs have done in this case, cf. section 13-14 third paragraph of the Enforcement Act, cf. section 13-8 fourth paragraph.

The purpose of a coercive fine is that it shall be a "money penalty for a non-fulfillment, designed with a particular aim to achieve the strongest possible psychological effect", cf. Andenæs et al., General Criminal Law, 6th edition, p. 10 (paragraph 36). However, when it comes to the claim against Meta Ireland, it is difficult to see that *the fine itself* will have such an effect. The parties agree that the fine cannot be enforced in Ireland (or any country other than Norway), and Meta Ireland has, after that stated no value or turnover in Norway in which expenses can be taken.

The plaintiffs have — probably for the above reasons — clarified that the statement that there is a security reason because Meta Ireland and Facebook Norway have been imposed forcibly fines, is not maintained.

If there is to be a security reason, this must therefore be based on circumstances other than that the plaintiffs have been imposed forcibly fines.

In the petitions for a temporary injunction, it was stated that Meta Ireland and Facebook Norway would be forced to consider limiting their services in Norway to reduce enforcement risk while the decision is in force, which would in turn cause reputation damage and financial loss. It was also pointed out that users will suffer irreversible damage by restricting the services, cf. the request from Meta Ireland section 3.2.2.

Meta Ireland and Facebook Norway have so far failed to comply with the Norwegian Data Protection Authority's decision and the forcible fines have begun to run. Nor have the companies announced that they intend to comply with the decisions earlier than what is assumed in the dialogue between Meta Ireland and the DPC, cf. e.g. Position Paper of DPC 18 August 2023, where 24 November 2023 is set as the final deadline for compliance. Meta Ireland and Facebook Norway have now also argued that it is impossible to comply with the Data Inspectorate's decision, while it initially seems to have been based on the assumption that this would have been possible, cf. the argument in the petitions relating to this and the lawyer Reusch's disposition for the main post point 5.4.2.

In the court's view, the plaintiffs have for this reason not substantiated that they will suffer a reputation loss or financial loss *as a result of the* companies restricting the services in accordance with the Data Inspectorate's decision. The reason for this is that there is no evidence that companies will decide on any such limitation of services. If the companies do not comply with the decision, the consequence will be that there will be forced fines, but objections to these fines can therefore be brought at the consummation stage, and some enforceable basis for executing the fines against Meta Ireland outside Norway is not as mentioned.

In the court's view, it cannot be disregarded that it will also have *positive* reputational and

economic effects, if Meta Ireland and Facebook Norway AS choose to comply with the Data Protection Authority's decision. In this way, companies will be able to show that they meet regulatory requirements and are prepared to take quick action to improve user privacy. Neither the plaintiffs nor the state have argued that this may be a possible effect of fulfilling the decision. Since it is not likely that Meta Ireland and Facebook will comply with the decision, there is no basis for going further into this.

The question is whether the companies will suffer a reputation loss or financial loss as a result of the Data Protection Authority's assessment that they are acting in violation of the GDPR. Meta Ireland and Facebook Norway have in this connection pointed out, among other things, that the Norwegian Data Protection Authority's handling of the case has received broad, negative media attention, and that the companies will be able to lose market share. The companies have also presented anonymised inquiries from advertisers who question the consequences of the decision of the Data Inspectorate, how it will affect the advertiser, what this can answer to its customers, etc. The viewpoint is here — as the court understands — that the plaintiffs will suffer reputation loss and other financial loss by *not* complying with the Data Inspectorate's decision.

In the court's view, Meta Ireland and Facebook Norway have not substantiated that the companies will suffer substantial financial loss or reputation loss by *failing* to comply with the Data Protection Authority's decision.

In this assessment, the court places *first* emphasis on the fact that it is highly unclear whether it is Meta Ireland and/or Facebook Norway that will be subjected to any financial loss as a result of the Data Protection Authority's decision, or whether there are other companies in the same group. It is not disclosed whether the revenue from advertising sales in the Meta Ireland/Facebook Group goes to any of these companies. The starting point is that the damage/disadvantage that justifies the reasons for the security must affect the plaintiff, cf. Flock p. 105.

However, it cannot be disregarded that damage/disadvantage affecting other companies in the group/group may also justify the existence of a hedging basis in relation to the plaintiffs. The negative mention referred to will probably affect Meta Ireland and Facebook Norway, because these are part of the same group/group. Despite this, in the court's view, it must be emphasised that no information has been submitted or attempted to substantiate that the negative mention, etc., will have *direct* financial consequences for the activities of these two companies.

Secondly, the right to the decision of the Data Inspectorate will not be binding on Meta Ireland and Facebook Norway if it is invalid; the companies do not respect the decision, see Eckhoff/Smith, Administrative Court, 12nd edition, 2022, p. 500. There is no evidence that the companies will expose themselves to penalties or other sanctions by not complying with the decision, except that there will be forced fines.

Thirdly, the court emphasises that any reputational and financial loss will be time-limited, cf. LB-2019-119376. The court here refers to that the Data Inspectorate's decision has a time limit of three months, and that Meta Ireland has confirmed that the company intends to

comply with the decision from the end of November 2023, cf. DPC's schedule. The court does not consider it probable that Meta Ireland and Facebook Norway will suffer a lasting and irreversible financial or non-financial loss in this short period. Loss of turnover that may arise during the period in force of the decision may be compensated by compensation, cf. LB-2018-4746.

Fourth, the court emphasises that Meta Ireland — by confirming that the company will comply with the Data Protection Authority's decision within a few months and by cooperating with DPC — has signaled a willingness to comply with regulatory requirements. In these circumstances, it is difficult to see that it will represent any major reputational or commercial burden to communicate that companies will need a few months to implement necessary changes to their systems.

Fifth, the right refers to the fact that only the Data Inspectorate has made urgent decisions, and that other European audits relate to the process led by the DPC. In this connection, among other things, a statement from the Danish Data Protection Authority has been presented to the Danish media, stating that the audit — like other European audits — is awaiting the outcome of the Irish process. Although the Data Inspectorate's decision in this case also gets media coverage in

abroad, the court cannot see that there is evidence that this will have negative reputational or commercial consequences outside of Norway. In particular, this applies when Meta Ireland has confirmed that the company will comply with the requirements set by the DPC within the relevant deadlines.

Sixthly, it is uncertain whether negative reputational consequences for Meta Ireland and Facebook Norway are due to the decision of the Data Inspectorate or that the companies continue to process personal data for behavioural marketing without consent, and in violation of the requirements derived by European oversight and courts of the GDPR.

Seventh, a question may be raised as to whether any negative reputational consequences cannot be reversed by a enforceable judgment stating that the decision of the Data Inspectorate was invalid, or that this will be the conclusion after Meta Ireland and Facebook Norway raise objections during the enforcement of the forced fines, cf. in particular LB-2018-4746, where this moment is highlighted.

Although it is assumed that Meta Ireland and Facebook will suffer harm or inconvenience in that the decision is not set aside, the court nevertheless does not consider that the threshold for this constitutes a security reason has been reached, cf. the wording "substantial".

The question of what emphasis should be placed on an enterprise having to make adjustments to the turnover of goods and services as a result of changed framework conditions was for consideration in Borgarting Court of Appeal's case LB-2018-4746. The Norwegian authorities had adopted new rules on the standard packaging of snus, which the plaintiff — Swedish Match AB — argued was in violation of EEA law. The new rules entailed costs for the conversion of production to meet requirements for packaging, etc.,

which were estimated to be in the range of NOK 40 million. In addition, the new requirements entailed detailed and invasive requirements for packaging, including colour and gloss, surfaces, etc., cf. section 30 of the Tobacco Injury Act and regulations relating to the content and labelling of tobacco products, etc.

In the decision, the Court of Appeal pointed out that costs for adapting production do not constitute significant damage or inconvenience that necessitates injunction, because the consequences of the injunction — if this proved to be illegal — could be required to be replaced by the state. The Court of Appeal pointed out that in the case there was a purely financial loss that could be compensated through a compensation lawsuit, and that the state was nevertheless eligible, cf. also LB- 2019-119376 and LB-2023-87007.

The fact that it may be difficult to quantify and document the loss was, in the view of the Court of Appeal, no decisive argument for the existence of a security reason, because in a compensation case it is sufficient to substantiate a loss. The Court of Appeal pointed out that in this assessment there is often an essential element of judgment. The court also pointed out that the plaintiff had limited himself to implying that the injunction over time would affect the sale, and that the effect of the measure thus appeared as distant and uncertain.

In the court's view, the decision in LB-2018-4746 shows that the scope of application of the injunction institute, in cases that concern exclusively economic interests and where the state is a counterpart, is narrow. This applies in particular where the measure sought by the injunction does not threaten the existence of the plaintiff or cause irreparable harm. Whether the person affected by the legislation/decision has good opportunities to reach a later lawsuit is not given decisive weight, cf. the Court of Appeal's reference that it was not necessary to consider this. The fact that LB-2018-4746 involved the implementation of a law/regulation, and not a decision, does not imply that the assessment will be another in the present case.

In the court's view, it is unlikely that the business, either in Meta Ireland or Facebook Norway, will be threatened by any losses related to the decision of the Data Inspectorate. It is uncertain whether any loss will occur at all, cf. the court's observations above. In any case, a party that has suffered a financial loss because a decision has not been properly dealt with will normally have a legal claim to cover this loss by the administrative body in question in accordance with general rules for damages, without it being necessary to prove guilt, cf. Bernt, comments to Section 41 of the Public Administration Act on Legal Data, Note 1042.

A further condition under the provisions of Section 34-1 first paragraph (b) of the Dispute Act is that the injunction is necessary to "prevent" a material damage or inconvenience, cf. Rt-1999-1220. The injunction requirement here states that the Norwegian Data Protection Authority's order by 4 August 2023 to refrain from processing personal data for behavioural marketing shall not have effect until there is a legal judgment on the validity of the decision. The question is what it means that the decision should not be "in effect", cf. the injunction requirement as this appears from the claim. As mentioned, the imposition of

the coercive fines may not constitute a basis for ascertaining that there is a security basis. Some other direct and noticeable consequences for the plaintiffs have not been decided, except that it indicates the Data Protection Authority's *assessment* of the legality of Meta Ireland's and Facebook Norway's processing of personal data for behavioural marketing. The courts may not intervene and order the Data Inspectorate to make a decision with a different content, but can — in a preliminary assessment — find that the Data Inspectorate's decision is invalid. The question is whether such a prejudicial assessment by a First Instance Court in an order that will not necessarily be enforceable during the period of the decision is in force, is at all suitable to "prevent" the damage or inconvenience that the Data Inspectorate's decision will inflict on the plaintiffs. In the court's view,

this is unlikely, and this also implies that the condition on security grounds pursuant to Section 34-1 first paragraph (b) of the Dispute Act is not met.

On this basis, the court concludes that there is no probable reason for security under Section 34-1, first paragraph (b) of the Dispute Act.

4.1.2 The question of whether there is a guarantee under Section 34-1 first paragraph (a) of the Dispute Act

Meta Ireland and Facebook Norway have further stated that there is a reason for security under the alternative in Section 34-1 first paragraph (a) of the Dispute Act.

Pursuant to this provision, there is a hedging reason "when the defendant's conduct makes it necessary to temporarily safeguard the claim because the prosecution or implementation of the claim will otherwise be substantially hampered."

The basis for security in point (a) may not imply a preemptive fulfilment of the main requirement. The main requirement in this case is that the Data Inspectorate's decision is invalid. The injunction requirement, on the other hand, is that the decision shall not have effect until there is a legally enforceable decision in the case.

The plaintiffs have argued that compliance with the injunction claim will not constitute any preemptive fulfilment of the main claim. In this connection, it is argued that the main requirement is not a "pre-completion of the invalidity question", but a temporary ban on implementing the Data Inspectorate's decision.

When one disregards the forcible fines, there is nothing left to implement. What the plaintiffs request is that the court must confirm that the decision does not have legal effects. This is in the court's view almost the same as that the court finds that the decision is invalid, because the principle of administrative law is that an invalid prohibition or injunction does not have legal effects in accordance with the content, cf. Eckhoff/Smith p. 498 and Hans Petter Graver, General Administrative Law, 5th edition, p. 571. If it is a burdensome decision, such as an injunction, the decision will, as a general rule, be considered a nullity, cf. Eckhoff/Smith p. 499.

As the court sees it, the injunction requirement with this represents a preemptive fulfilment

of the main claim. Already for this reason, the plaintiffs may not be admitted in the statement that there is a basis for security under Section 34-1 first paragraph (a) of the Dispute Act.

The need for injunction after the option in point (a) must be due to "the behavior of the defendant" and it must be "necessary" to intervene against this behavior. In the preparatory works, it is noted that "usually there must be a certain external course of action or conduct that gives reason to fear that there will be a violation of a right if it is not intervened", cf. Ot.prp. no. 65 (1990-91) p. 262. The question here is which of the plaintiffs' rights are violated by the Data Inspectorate's decision and justify the need to intervene.

With regard to the possibility — by injunction — to avert that forced fines accrue, the right to the above observations refers to the alternative in Section 34-1, first paragraph, letter b of the Dispute Act. The same views apply to the assessment according to the option in point (a). Any other direct implementation measures are not current. The question therefore becomes whether it represents a violation of Meta Ireland's and Facebook Norway's rights that the Data Inspectorate has taken a decision that is invalid and which it is necessary to intervene, in order for the plaintiffs to receive the protection afforded by the legislation. The court here refers to the assessment under alternative b) relating to the scope of action the plaintiffs have and what negative consequences the Data Inspectorate's decision will have for Meta Ireland and Facebook Norway. The factors mentioned there indicate that it is not *necessary* for the court to establish measures that enable the plaintiffs to exercise their rights unhindered, cf. Flock p. 97.

Following the wording, it is further a condition that the prosecution or implementation *of the claim* will be made difficult if the injunction is not decided, cf. the word "otherwise". It may be questioned whether this condition is met if the main requirement is to invalidate an administrative decision. Whoever is subjected to a (invalid) decision in the form of an order or prohibition, as mentioned above, may choose not to comply with it. As a rule, the person concerned will not lose the opportunity to put aside the decision (as invalid) even if a provisional injunction is not decided, but will still be able to pursue this requirement also without an injunction. Neither the *prosecution* nor *the implementation* of the requirement that the decision is declared invalid is complicated if the injunction is not granted.

The question is whether this is different in this case because the decision in question has a time limit of three months. The plaintiffs have argued that due to the time limit of the decision, they will in practice be deprived of the possibility of judicial review because it will take significantly longer to carry out an ordinary lawsuit. It has been shown that the plaintiffs will potentially be able to get compensated daily in such a lawsuit, but that it will be difficult to replace reputation loss or financial loss as a result of the decision. The court understands the arguments so that the focus is on the *consequences* of the invalid decision — not on the possibility of putting the invalid decision aside through an ordinary lawsuit.

The court assumes that the question of the validity of the decision can both be drawn into a lawsuit relating to compensation for unjustified coercive fines and compensation for other financial losses. The plaintiffs will have a current interest in claiming the grounds for

invalidity in such an action, regardless of the temporal limitation of the decision, cf. section 32-2 of the Dispute Act, cf. section 1-3 second paragraph and LB-2011-90334. However, if the invalid decision has not had any consequences for the plaintiffs, for example in the form of reputational or financial loss, it is nevertheless difficult to see that it is "necessary" with any temporary safeguarding of the claim, cf. the court's assessment of security grounds pursuant to the alternative in Section 341 first paragraph letter b) above.

The court has subsequently concluded that there is no substantiated reason for security, neither in accordance with the provisions of Section 34-1 first paragraph (a) or b) of the Dispute Act. After this, it is not necessary for the court to decide whether injunction as required would be disproportionate on the basis of a balancing of interests, cf. the Dispute Act 34-1 second paragraph.

The petitions for temporary injunction are not followed after this.

4.2 The question of whether a main requirement has been substantiated

The main requirements and hedging grounds are, in principle, independent conditions for the injunction to be decided. In principle, there is nothing wrong with the court taking a position on one of the conditions in isolation, see illustration, cf. LB-2018-4746 and LB-2019-119376. As regards the question of whether security grounds exist, in some cases there may nevertheless be a correlation between the assessment of this condition and whether a main requirement has been substantiated, cf. Flock p. 107 and the examples highlighted there.

In the court's view, in this case we are not faced with a case where there is reason to impose more lenient requirements on the security grounds because the Data Inspectorate's decision is encumbered with one or more clear reasons for invalidity. As the court will immediately address, the question of whether there is a main requirement raises a number of complicated legal questions, cf. LB- 2019-119376, where it was about contractual interpretation based on a complex and comprehensive fact. At the same time, there are no significant factors that indicate that there is a security reason; in the court's view, the present case does *not* constitute a border case. The court here refers to the assessment under section 4.1 above.

For these reasons, in the court's view, it is also not necessary to examine whether a main requirement has been substantiated in order for the court to properly decide on the question of security reasons.

Nevertheless, the court will briefly and more clearly comment on the most important statements that the plaintiffs have made applicable in connection with the main claim. The assessments must be seen in light of the fact that the court has concluded that the petitions cannot bring forward because there is no reason for security. The attention that is devoted to the main requirement must also be seen in the context of the fact that this is an injunction case where the parties need a quick clarification.

4.2.1 The question of whether the decision can be directed at Facebook Norway AS

Meta Ireland and Facebook Norway have argued that the prohibition on processing personal data for behavioural marketing on the basis of GDPR Art. 6 (1) letter b) or f) cannot be directed at Facebook Norway because the company is not the data controller pursuant to GDPR Art. 4 no. 7.

In the decision of 14 July 2023, the decision to correct the order also against Facebook Norway is justified by the establishment of the controller, cf. the decision p. 4:

> Facebook Norway AS, whose stated purpose is related to sales of digital advertising, is also addressed as a recipient of this order as it is a Norwegian establishment of the controller.

The Data Inspectorate has also pointed out that the decision to direct the decision against Facebook Norway is due to the fact that this is necessary to ensure compliance with the decision. It is also pointed out that Facebook Norway facilitates and facilitates the illegal processing activity in Norway.

It is not disputed that Facebook Norway is not the data controller, and does not determine the purpose of the processing or the means used, cf. also LB-2020-170405. Nor is it disputed that the company is not a subsidiary of Meta Ireland. The company's activities relate to the sale, purchase and dissemination of online advertising on Facebook and Instagram, cf. the company's annual report for 2022, the company's articles of association and LB-2020-170405.

The state has pointed out that Facebook Norway is a contractual party to agreements with advertisers, and has presented Meta's terms and conditions for self-service advertising to support this. Some orders for ads in Norway may take place through Facebook Norway, so that the company is also a contractual party to agreements with advertisers, cf. the terms and conditions section 16 and "Special provisions that apply to certain advertisers in Norway". The court does not understand that this is disputed.

As mentioned, there is no disagreement that the Norwegian Data Inspectorate's decision on forced fines cannot be enforced against Meta Ireland in Ireland, or that the company has values in Norway in which coverage can be sought (for the forcible fine).

The question is whether the prohibition of the relevant processing of personal data for behavioural marketing, possibly the injunction to cease such processing, can be directed to Facebook Norway, even if the company cannot influence the content of the services.

The legal basis for the urgent action taken by the Data Inspectorate is Art. 61 No. 8 GDPR and/or Art. 66 No. 1. The wording of these provisions does not clarify whether measures can also be directed at companies that are not data controllers or can affect the content of the services.

In particular, the State has pointed out that the provisions in question provide for the sole purpose of taking measures in the territory of the Member State concerned. However, the court cannot see that this makes any contribution to the solution of the current interpretation

question. The same applies in the court's view to the State's reference to the provision of GDPR Article 4, paragraph 16(a), which defines the term "main activity". The provision regulates where a controller is to be considered to have its main activity, which is particularly important for determining which supervisory authority is competent in relation to the activity. The starting point is that it is the place of the controller's main administration that is crucial. Exceptions apply if decisions on "purposes and means in relation to the processing of personal data" are taken at another agency's offices within the EEA and that Agency is empowered to carry out those decisions. This also applies where the processing takes place in a group, cf. paragraph 36 and Skullerud et al., the General Data Protection Regulation, legislative comment on Juridika, updated as of 1 April 2023, comments on Art. 4 (16). It is also here that the entity with decision-making authority shall be regarded as the main activity; exceptions apply where "the purpose of the processing and the means used are determined by another undertaking" (understanding of the law). However, Facebook Norway does not have such decision-making authority, nor is Norway the place where most processing activities take place.

The State has also referred to the provisions of Art. 27 GDPR and paragraph 80, which apply to representatives of businesses not established in the EEA. Paragraph 80 states that the designated representative should be subject to enforcement measures in the event of non-compliance on the part of the controller or processor.

In the court's view, these provisions do not provide any guidelines for the interpretation in this case; if urgent measures can be directed to other companies within a group, which are not the data controller or have any decision-making authority with regard to the processing in question. The reason for the appointment of a representative is to ensure that supervisory authorities and data subjects who have rights under the Regulation can hold the controller or the processor responsible for processing in accordance with the provisions of the Regulation. Without a representative who is subject to enforcement measures in the EEA, in practice it will often be impossible to exercise public authority or assert rights in respect of enterprises that are not themselves established here. It is therefore difficult to see why the provision shall provide some guidelines for the assessment of whether a national supervisory authority can take measures where all the establishments concerned are established within the EEA.

In the court's view, the provision of GDPR Article 60 (10) does not make any contribution to the solution of the interpretation question. The provision imposes a duty on the *controller* to take the necessary measures to ensure compliance with this decision with regard to processing activities carried out in connection with "all of its establishments" in the EEA. The provision does not regulate who the lead supervisory authority — or other supervisory authorities — can direct a decision against.

The State has further pointed out that it follows from case law from the ECJ that urgent measures can also be directed against Facebook Norway, in the capacity of being a establishment of Meta Ireland, cf. GDPR Prosecution 22. Paragraph 22 stipulates that the Regulation applies where the controller has operations within the EEA area regardless of how that business is organised and regardless of where the processing of personal data

takes place. In this case, it is clear that all the companies in question are established within the EEA and that the relevant treatment also takes place here.

Central to the state's argument is the decision in C-645/19 *Facebook Ireland Ltd. et al.* The case concerns, among other things, whether a national supervisory authority (the Belgian) could bring a case on cross-border processing of personal data (in this case the processing of information about Belgian citizens) before a Belgian court. The business of the Belgian company — Facebook Belgium BVBA — was primarily parallel to the business Facebook Norway operates (advertising and selling advertising space), see the judgment paragraph 94. The decision concerned enforcement measures, cf. art. 58 no. 5. The European Court of Justice found that the activities of the Belgian company were closely related to the relevant processing of personal data, for which Facebook Ireland was responsible. On this basis, the Court concluded that the processing was carried out as part of the activities carried out for a data controller, cf. Article 3(1) of the GDPR. As regards the question of whether the Belgian supervisory authority (which was not the lead supervisory authority) could initiate supervisory proceedings etc. against its establishment in Belgium, the Court laid the basis (Section 96):

> In the light of all the foregoing, the answer to the third question referred is that Article 58(5) of Regulation 2016/679 must be interpreted as meaning that the power of a supervisory authority of a Member State, other than the lead supervisory authority, to bring any alleged infringement of that regulation to the attention of a court of that Member State and, where appropriate, to initiate or engage in legal proceedings, within the meaning of that, may be exercised both with respect to the main establishment of the controller that is located in that authority's own Member State and respect to another establishment of that establishment of that controller, which is located in that authority's Member State with respect to another establishment of that establishment, the answer to the third question referred to it is that Article 58(5) of Regulation 2016/679 must be interpreted as meaning that the power of a supervisory authority of a Member State, other than the lead supervisory authority, to bring any alleged infringement of that regulation to the attention of a court of that Member State and, where appropriate, to initiate or engage in legal proceedings, within the meaning of that provision, may be exercised both with respect to the main establishment of the controller which is located in that authority's own Member State and respect to another establishment of that establishment of that, provided that the object of the legal proceedings is a processing of data carried out in the context of the activities of that establishment and that that authority is competent to exercise that power, in accordance with the terms of the answer to the first question referred.

It follows from this that a national supervisory authority which is not the lead supervisory authority in the meaning of the Regulation may also take action against the establishment in its own territory. The precondition is that the processes implemented relate to the processing of personal data carried out in the framework of the activities of this establishment and that the procedures for cooperation and uniform application of the regulations have been followed, cf. GDPR Chapter VII.

In the case in question, the Belgian Court had questioned whether the interpretation of the ECJ had been based in Case C-210/16 Wirtschaftsakademie *SchleswigHolstein*, that German supervisory authorities had the competence to settle disputes over the protection of personal data, even if the controller was Facebook Ireland and its subsidiary Facebook Germany only engaged in the sale of advertising services and marketing activities, could be maintained under the new regulation, cf. paragraphs 38 and 39.

The question presented to the ECJ in C-210/16 is therefore parallel to the question raised by this case, cf. the judgment section 45. The European Court of Justice concluded that the German supervisory authority could take measures against the local establishment even if it was solely engaged in marketing activities, cf. the judgment paragraph 64. The Court here considers that this is the question that the European Court of Justice commented on in Case C-645/19 paragraphs 85-96. The decisive factor here is whether the measure applies to a treatment that has been carried out within the framework of the activities of the establishment in question, cf. section 96. In both decisions, it is assumed that the activities carried out by the establishments in connection with marketing etc. are closely linked to — or constitute an integral part of — the activities of Facebook Ireland, cf. C-645/19 paragraph 93-95 and C-210/16 paragraph 60.

The court has subsequently concluded that the Data Inspectorate had a legal basis for directing the decision against Facebook Norway, even if this company was not the data controller or on an independent basis could affect how the relevant processing of personal data took place. The decision cannot therefore be considered invalid on this point.

4.2.2 The question of whether the decision is invalid as a result of breaches of the duties of prior notification and sound investigation, cf. the Public Administration Act § 16 and 17

In order for a procedural error to lead to invalidity, it is sufficient that there is not a completely remote — possibly real or reasonable — possibility that the error has had significance for the decision, cf. section 41 of the Public Administration Act and HR-2017-2376-A Section 24. It is not necessary to prove or substantiate that the decision would not have been made or made so burdensome without the error; it is enough that "there is reason to reckon" that the error "may" have mattered, cf. Rt-2009-661 paragraph 72, Bernt, remarks to section 41 of the Public Administration Act on Rettsdata, note 1040, and Eckhoff/Smith pp. 486. The assessment depends on the specific circumstances of the case, including the grossness of the error and the nature of the decision. Where the procedural error has led to inadequate or incorrect decision basis at a point of significance for the decision, or the error otherwise entails disregarding basic requirements for proper processing, it shall generally be relatively small to establish that the decision is invalid, cf. Rt-2009-661 Section 72.

In legal theory, it is assumed that it normally takes little to ascertain invalidity where there is a breach of the rules on advance notice. This applies in particular where someone is subjected to a particularly burdensome intervention and there is evidence that the case has not received proper treatment.

Meta Ireland and Facebook Norway have argued, *among other things*, that the decision is unnecessary and that the companies would inform the Data Inspectorate of significant aspects of importance to the decision. Among other things, it is pointed out that the Data Inspectorate has a seemingly incorrect understanding of how Meta Ireland's services work, both in terms of the "hide ad" function, what "behavioral marketing" is and how localisation data works. The plaintiffs have also pointed out that the Data Inspectorate has an incorrect understanding of users' expectations. In addition, it has been shown that the decision is vague and impossible to meet within the deadlines set, and that this would have been clarified if the companies had been notified in a prudent manner.

The court does not consider that there is reason to go further into the question of whether the requirements for prior notification and investigation have been breached, as it has nevertheless concluded that further information would not have resulted in the decision having received a different content, cf. Bernt, comments to section 41 of the Public Administration Act on Rettsdata, note 1052. As the court sees, there is no evidence that there is a failure in the decision basis that could potentially have affected the content of the decision.

In this assessment, the court first points out that Meta Ireland and Facebook Norway have confirmed that they will comply with the interpretation of GDPR Art. 6 on which DPC's and the Data Protection Authority's decisions are based. In connection with this, the plaintiffs have asserted that the Data Inspectorate's decision is not "currently" because it has already been fulfilled, cf. lawyer Reusch's disposition for the main post item 5.6. In that Meta Ireland and Facebook Norway have stated that they will comply with the orders of the supervisory authorities within the time frame set up by the DPC, the dispute here mainly relates to the need for urgent action.

In light of this, it is somewhat difficult to see how the information the plaintiffs have disclosed, and which the Data Inspectorate should not have emphasised or misunderstood, could have led to the decision being given a different content. In this assessment, the court also emphasises that the statements that the Data Inspectorate should have misunderstood key concepts or key functions have not been explained or substantiated further in the presentation of evidence. This applies, for example, to the definition of behavioural marketing, as explained in Decisions 3 and 14-15. Nor is it explained what the "hide ad" function consists of and why the Data Inspectorate has had an incorrect perception of how this works. The same applies to the use of location data, which is mentioned in the decision p. 15. As regards the question of what are the expectations/desires of users, this is commented in the Decision pp. 15-17.

The plaintiffs have further argued that the extensive "evidence provocations" that the state has put forward in this case show that the decision is based on a lack of decision basis. The right to this point notes that the provocations have not been complied with, and that it appears likely that the information in question would not have been disclosed during the administrative processing, cf. that it is argued that the documentation/information deals with protected (subject to secrecy) trade secrets. In Meta's provocation on August 18, 2023, the provocations are described as "irrelevant". However, if the provocations were

irrelevant, it is difficult to understand that the decision basis failed by the fact that the relevant documentation or information was *not* presented. In any case, the plaintiffs could have chosen to provide the evidence to substantiate that the Data Inspectorate's decision base failed, cf. the Dispute Act § 22-12.

As regards the compulsive fine, the right shows that this was notified in the decision of 14 July 2023 item 3.

The court further points out that Meta Ireland and Facebook Norway in a letter of 1 August 2023 filed a complaint against the Norwegian Data Protection Authority's decision. The complaint was extensive (of 25 pages) and contained references to surveys and assessments that the companies believed the Data Inspectorate should have taken into account in the decision on 14 July 2023, partly related to users' expectations (p. 12). The court assumes that the companies in this complaint had the opportunity to address all the circumstances that are now stated as the basis for the decision on 14 July 2023 being invalid as a result of a lack of prior notification. The Data Inspectorate considered the issue of reversal in a letter of 3 August 2023, and concluded that no new information had been submitted that changed the conclusion of the decision.

Meta Ireland and Facebook Norway submitted further comments in a letter of 4 August 2023 from lawyer Thomas Olsen. Both the letter/complaint on 1 August and the letter 4 August 2023 were commented in the Data Inspectorate's letter and decision on 7 August 2023, where the forcible fine was decided. It appears from the decision that the Data Inspectorate has assessed the statements that the stipulated deadlines were too short (p. 3) and also the statements related to the fulfilment of the decision (p. 4). The court cannot then see that Meta Ireland and Facebook Norway have invoked actual or legal circumstances that the Data Inspectorate has not considered.

In summary, the court considers it to be a remote — or more theoretical — possibility that a lack of prior notification or investigation may have affected the decision. There is reason to expect that such a mistake may not have been decisive on the content of the decision, cf. section 41 of the Public Administration Act. The court considers that in this assessment there is no reason to distinguish between Meta Ireland and Facebook Norway, and points out that the actual circumstances on which the decision is based are essentially the same, and that the appeal/application for reversal has been filed on behalf of both companies.

4.2.3 The question of whether the conditions for urgent measures pursuant to GDPR Art. 61 (8) or Article 66 (1) were met

In the decision of 14 July 2023, the Data Inspectorate referred to Art. 66 (1) of the GDPR as the basis for the decision to take urgent measures. Subsidy is referred to GDPR Art. 61 (8).

Article 66(1) of the GDPR states:

> In exceptional circumstances, where a supervisory authority concerned considers that

there is an urgent need to act in order to protect the rights and freedoms of data subjects, it may, by way of derogation from the consistency mechanism referred to to in Articles 63, 64 and 65 or the procedure referred to in Article 60, immediately adopt provisional measures intended to produce legal effects on its own territory with a specified period of validity which shall not exceed three months. The supervisory authority shall, without delay, communicate those measures and the reasons for adopting them to the other supervisory authorities concerned, to the Board and to the Commission.

The question is whether there are extraordinary circumstances that require immediate action to protect the rights and freedoms of data subjects. The provision is based on the fact that proceedings pursuant to the procedures in Articles 60 to 65 may take a long time, cf. Skullerud et al., comments on Art. 66 on Juridika. It is not disputed that the other conditions that follow from the wording, inter alia, related to the time limit and the scope of the decision, are met.

The wording points to the fact that there is a lot to be done for the exemption provision to apply. The right refers to the use of the words "exceptional"/"exceptionnelles"/außergewöhnlichen and the words "urgent need"/"urgent d'intervenir"/"dringender Handlungsbedarf" in conjunction with Prosecution 137, where there is evidence that there may be grounds for taking urgent measures where there is a risk that the enforcement of data subjects' rights may be substantially impeded. The court assumes that the exemption provision shall be practiced restrictively, cf. EDPB's Decision 01/2021 Section 167. Article 66 (2) of the GDPR and the decision of the Court of Justice in Case C-645/19 Paragraph 63.

The State has argued that the provision allows the supervisory authorities to have a judgement when assessing whether the conditions are met. The wording can draw in this direction, cf. the wording "considers"/"can"/"considère"/"mean".

When it comes to the further interpretation of the provision, authoritative sources are presented sparingly. It is referred to Advocate General Bobek's proposal for a decision in Case C-645/19 *Facebook Ireland Ltd., paragraph* 135, where it appears that sentential proceedings by the lead supervisory authority may indicate that the provision is applicable, without the court being able to see that this provides any significant guidance, cf. Art. 61 (8) second sentence.

The state has submitted a decision on 10 May 2021, in which German supervisory authorities (The Hamburg Commission for Data Protection and Freedom of Information) banned the processing/transfer of personal data concerning users of the WhatsApp application from the controller(s) for this service to Facebook Ireland. In the case in question, German supervisory authorities had addressed the Irish authorities, but the Irish supervisory authority had not responded to/handled the request, see Decision 11–12. In the decision, it was assumed that Meta Ireland could not process the personal data for its own purposes (the basis for processing was lacking), and in the court's view, the questions that were the subject of the case have similarities with the present case. However, whether the

circumstances in the German case were more serious or acute than in the present case and whether the lead supervisory authority had acted more or less transmitting, it is difficult for the court to decide without further evidence. The parties to this case have little attempt to shed light on the extent to which the German case is similar to — or differs from — the case being discussed here.

The same applies to a decision taken by Italian supervisory authorities on 21 December 2022 against Meta Ireland. The decision concerns, among other things, treatment of removing posts on Facebook and Instagram, where users were advised not to vote at the upcoming parliamentary elections in Italy, cf. the decision point 1.1. The decision refers to the fact that over a longer period of time the Italian supervisory authority had not received any feedback or assessment from the DPC as the lead supervisory authority, see paragraph 3 second and second last paragraph.

After this, doubt is attached to the closer scope of GDPR Art. 66 (1). This applies both to the question of whether the threshold for applying the provision, whether the supervisory authority has a discretionary right after the provision that has been exempted from testing, the importance of the lead supervisory authority having ongoing proceedings and whether private parties can invoke the provision directly, etc.

The plaintiffs have argued that the provision of Article 66 (1) does not apply because the decision is not urgent. Among other things, it has been shown that the case is being processed by the leading audit (DPC), that the Data Inspectorate has not objected to the DPC's procedures for processing, that behaviour-based marketing is common practice and has been considered legal for a long time, and that it does not matter that the Data Inspectorate has the ability to act faster than the DPC.

In the court's view, these factors are relevant in assessing whether the conditions under GDPR Article 66 (1) have been met. In this case, the violation of the rules does not relate to a specific future date, and where it is necessary to intervene before this occurs (for example, where data is to be transferred to a third party). As indicated by the plaintiffs, the processing of data for behavioural marketing without consent has been carried out over years. The court also points out that in this case there is an active case processing at the DPC, involving a number of audits and where most of these have decided to comply with the plan that the DPC has put in place. Overall, these arguments suggest that no exceptions should be made from the cooperation mechanism of the GDPR Article 60.

The State has, in turn, referred to the assessment in the Decisions 7.3 and 7.4 (Acts 27-30), where it is pointed out, inter alia, that the processing of personal data for conduct-based marketing lacks legal basis, that it is extensive (applicable to many persons) and involves the processing of private and sensitive personal data. In the decision, the Data Protection Authority assumes that the processing of personal data has taken place for many years, but that it is in particular Meta Ireland's non-compliance with the DPC's decision on 31 December 2022, which had a three-month deadline for compliance, in conjunction with Meta Ireland having made illegal adjustments as a result of the decision, which makes it necessary to take immediate action (p. 28). The decision further explains the contact with

the DPC and the feedback received by the Data Inspectorate.

In the court's view, the factors that the state has pointed out are also relevant for the assessment of whether there are grounds for taking urgent measures. The fact that the violation of the rules takes place continuously, and is not related to a specific future event, cannot, in the court's view, be given decisive weight. In particular, this must apply in cases such as the present, where the illegal treatment is extensive, invasive and concerns large groups. In a situation where it is uncertain where the further threshold for applying the exemption provision lies, the court — under considerable doubt — has concluded that the conditions of GDPR Art. 66 (1) for taking urgent measures have been met.

The court does not determine whether the conditions pursuant to Art. 61 (8) of the GDPR have been met.

4.2.4 Other entries

Meta Ireland and Facebook Norway have further stated that the decision is disproportionate, unclear, impossible to comply, in violation of other legislation (including ECHR) and that it has already been fulfilled.

In the court's view, none of these statements can be brought forward.

When assessing whether the decision is disproportionate, the right shows that the question in this case is not whether the processing in question is legal or whether Meta Ireland and Facebook Norway will comply with the decisions. Both companies have confirmed that they will follow the order to change the processing basis. The court agrees with the State that it can be considered disproportionate to impose the cessation of an illegal activity. This is particularly true when the plaintiff's interest is primarily of an economic nature and there are clear and comprehensive breaches of the requirements for the processing of personal data. It has not been substantiated through the evidence that the changes necessary to comply with the decision will have greater, negative consequences for users of the services. In the court's view, the plaintiffs have also not demonstrated that it will be impossible to comply with the decision within set deadlines. The plaintiffs have provided information about which work processes are necessary to carry out in order to comply with the obligation to consent, but this information is not further substantiated with evidence, cf., for example, the aid document presented ("Compliance was not possible within the Data Inspectorate's deadlines"). Nor is it possible to read out from the plaintiff's statement/argumentation that the work will take at least three months, *or* that it will not be possible to move forward faster by establishing temporary solutions that do not appear as well worked.

4.3 Case costs

The state has won the cases, and according to the main rule of Section 32-2 of the Dispute Act, cf. section 20-2 second, cf. the first paragraph, it is entitled to cover its legal costs. There are no weighty reasons that make it reasonable to exempt Meta Ireland and Facebook Norway from cost liability, cf. the Dispute Act § 20-2 third paragraph.

Lawyer Jahren has filed cost responsibilities, showing that 114 hours have been worked in the case raised by Meta Ireland and 33 hours in the case concerning Facebook Norway. An hourly rate of 1600 kroner was used. The total cost requirement amounts to NOK 182,400 and NOK 52 800 respectively. The court considers that the costs have been necessary and assumes the tasks.

CONCLUSION

In Case No. 23-114359TVI-TOSL/08

1. The petition is not followed.
2. In court costs, Facebook Norway AS pays to the state v/Datatilsynet 52 800 — fifty-tto-hundreds — NOK within 2 — two weeks from the hearing of the ruling.

In Case 23-114365TVI-TOSL/08

1. The petition is not followed.
2. In court costs, Meta Platforms Ireland Limited pays to the state by the Norwegian Data Protection Authority 182,400 — one hundred thousand thousand four hundred — NOK within 2 — two — weeks from the hearing of the ruling.

The court raised

Henning Kristiansen

Guidance on the access to appeal in civil cases is attached.

Guidance on appeal in civil matters

In civil cases, the rules of the Dispute Act chapters 29 and 30 apply to appeal. The rules for appeal over judgments, appeals over rulings and appeals over decisions are slightly different. Below you will find more information and guidance on the rules.

Deadline and Fee
The deadline for appeal is one month from the day on which the decision was made known to you, unless the court has set another deadline. These periods are not included when the deadline is calculated (legal holiday):

- from the last Saturday before Palm Sunday through Easter Sunday
- from 1 July to 15 August
- from 24 December to 3 January

The person who anchors will have to pay a processing fee. You can get more information about the fee from the court that has dealt with the case.

What does the appeal statement contain?
In the appeal statement, you must mention

- what decision you appeal
- which court you appeal to
- name and address of parties, proxies and proxies
- what you think is wrong with the decision made
- the factual and legal justification for the existence of an error
- what new facts, evidence or legal justifications you would like to present
- whether the appeal relates to the entire decision or only part of it
- the appeals claim, and the result you demand
- the basis for the court to process the appeal, if there has been any doubt about it
- how you think the appeal should be dealt with

If you want to appeal a district court judgment to the Court of Appeal
A judge from the District Court may appeal to the Court of Appeal. You can appeal a verdict if you think it is

- errors in the facts that the court has described in the judgment
- error in the application of justice (that the law is interpreted incorrectly)
- errors in case processing

If you wish to appeal, you must submit a written appeal statement to the district court that has dealt with the case. If you bring the case yourself without a lawyer, you can appear in the district court and appeal orally. The court may also allow attorneys who are not lawyers to appeal orally.

It is usually an oral negotiation in the Court of Appeal that determines an appeal over a judgment. In the appeal proceedings, the Court of Appeal shall concentrate on the parts of the district court's decision that have been disputed and with which doubt is attached.

The Court of Appeal may refuse to consider an appeal if it determines that there is a clear preponderance that the judgment of the district court will not be changed. In addition, the court may refuse to process any claims or appeals, even if the rest of the appeal is processed.

<u>The right to appeal is limited in cases concerning tax value of less than NOK 250 000</u>
If the appeal concerns a tax value of less than NOK 250 000, consent from the Court of Appeal is required in order for the appeal to be processed.

When the Court of Appeal considers whether to give consent, it emphasises

- the character of the case
- the parties' need to have the case tried again
- whether there seem to be weaknesses in the decision appealed, or in the consideration of the case

If you want to appeal a district court's ruling or decision to the Court of Appeal
As *a* rule, you can appeal because of

- errors in the facts described by the court in the ruling
- error in the application of justice (that the law is interpreted incorrectly)
- errors in case processing

Rulings relating to the processing of cases, which are based on discretion, can only be appealed if you believe that the exercise of discretion is irresponsible or clearly unreasonable.

You can only appeal a *decision* if you think
- that the court did not have the right to make this type of decision on that legal basis, or
- that the decision is clearly indefensible or unreasonable

If the District Court has issued a judgment in the case, the District Court's decisions concerning the proceedings may not be appealed separately. Instead, the verdict can be appealed on the basis of errors in the case processing.

Rulings and decisions are appealed to the district court that has handed down the decision. The appeal is normally settled by order after written consideration in the Court of Appeal.

If you want to appeal the Court of Appeal's decision to the Supreme Court
The Supreme Court is the appeal body for the Court of Appeal's decisions.

Appeals to the Supreme Court over *judgments* always require the consent of the Supreme Court's appeal committee. Consent is granted only when the appeal concerns questions that matter beyond the case in question, or for other reasons it is particularly important to have the case dealt with by the Supreme Court. Appeals over judgments are normally settled after oral negotiation.

The Supreme Court's Appeals Committee may refuse to take an appeal over *rulings* and *decisions* for consideration if the appeal does not raise questions of importance beyond the case in question, nor does other considerations suggest that the appeal should be tried. The appeal may also be denied if it raises extensive questions of evidence.

When an appeal over rulings and decisions in the district court is settled by a ruling in the Court of Appeal, the decision as a general rule cannot be appealed to the Supreme Court.

Appeals against the Court of Appeal's rulings and decisions are normally settled after written consideration in the Supreme Court's Appeals Committee.