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Germany: the struggle for digital sovereignty

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The Federal Cartel Office (FCO) on 7 February ordered the social networking portal Facebook to change its practices of obtaining user data from external sources (websites and applications other than Facebook). In the FCO's opinion, Facebook is using this to abuse its dominant position in the market and using unfair competition practices, and its users lose control of the way their data are used. Facebook has four months to present proposals of changes that have to be implemented within one year. This decision is not legally binding, and Facebook has announced that it will be contested partly due to the expansion of the FCO's competences to the data protection area. If the decision becomes legally binding and Facebook refuses to comply with it, the FCO may impose a penalty exceeding ten million euros. 23 million users in Germany use Facebook daily, and the company's share in the German social networking portal market, according to the FCO's estimates, has reached 95%.

80% of Germans view the protection of their personal data as a fundamental right, and 75% of respondents say that they are watching the debate concerning data protection closely. This has also been confirmed by appeals from political parties; all the groupings that are represented in the Bundestag have backed the FCO's decision.

Commentary

- The FCO's move is another proof of the increasing significance of IT data. The German government assumes that data will be the most important 'resource' of the 21st century, necessary to maintain the high competitiveness of the German economy. At the same time, there is high concern that the development of the German industry may be disturbed due to the lack of 'digital sovereignty' (German *digitale Souveränität*, i.e. the possession of the technologies and competences necessary for independent and sovereign operation in cyberspace). German firms have been tasked with liberating themselves from the strong reliance of software suppliers (especially those from the USA). This dependence may mean that German car manufacturers will generate smaller profits from sale of autonomous electric cars than their competitors from South Korea, China or the USA.
- Given the strong position of foreign companies in the digital services sector, Germany's goal is to force IT corporations operating on the German market to comply with German law. Germany wants to keep a balance between the development of the digital technologies market and maintaining German jurisdiction over those cyberspace areas

which extend over the areas of essential social life. One example of such regulations is the act adopted in 2017 by the Bundestag imposing the obligation on social networking portals to remove untrue information and hate speech. Portals which notoriously fail to comply with this obligation may face a penalty of up to 50 million euros.

- Berlin is interested in setting the standards in the area of digital economy for the EU as a whole. If the FCO's decision proves effective, Germany will be pushing through similar practices in the European Union. So far, it has referred solely to German competition law regulations, without also mentioning EU regulations, which may make it difficult for other EU member states to adopt this manner of restricting Facebook's business model.