



Conference of the Independent Data Protection Authorities of the Federal State and the Länder (DSK), Düsseldorf, 5. September 2018

DSK decision regarding Facebook Fan Pages

In its decision of June 5, 2018, the European Court of Justice (ECJ), file number C-210/16, ruled that operators of Facebook pages (known in Germany as fan pages) and Facebook share a joined responsibility. In its resolution of June 6, 2018, the Conference of the Independent Data Protection Authorities of the Federal State and the Länder (DSK) clearly states the consequences of the decision for those jointly responsible - in particular for the operators of a fanpage.

In the case of shared responsibility, the General Data Protection Regulation (GDPR) requires, among other things, an agreement between the parties concerned that clarifies how the obligations arising from the GDPR are to be fulfilled.

Three months have passed since the ECJ ruling. Although Facebook has made some changes to its offerings – for example regarding its use of cookies – cookies with unique user codes will continue to be set even for people who are not Facebook users, at least if they access content beyond the mere homepage of a fan page.

Furthermore, the fan page visits of data subjects are still evaluated according to certain – partly preset – criteria within the framework of the “Insights” function and made available to the operators.

Among other things, the ECJ has pointed out that “fan pages hosted on Facebook can also be visited by persons who are not Facebook users and so do not have a user account on that social network. In that case, the fan page administrator’s responsibility for the processing of the personal data of those persons appears to be even greater, as the mere consultation of the home page by visitors automatically starts the processing of their personal data”.

Facebook has not yet made any official statements with regard to whether and what steps are being taken to enable Facebook fan pages to be legally compliant. An agreement announced by Facebook in June 2018 pursuant to Art. 26 GDPR (Joint Data Controller) has not yet been made available. The German data protection au-

thorities are therefore working towards a coordinated approach towards Facebook at a European level.

Page operators also must face up to their data protection responsibilities. Without an agreement pursuant to Art. 26 GDPR, the operation of a fan page as currently offered by Facebook is illegal.

For this reason, the DSK demands that the requirements of data protection law be fulfilled when fan pages are operated. In particular, that those jointly responsible clarify the current situation and provide the necessary information to the data subjects (= visitors on a fan page).

Joint responsibility also means, however, that fan page operators (regardless of whether they are public or non-public controllers) can guarantee and prove the legality of the data processing for which they are jointly responsible. In addition, the data subject may exercise his or her rights under the Regulation in respect of and against each of the controllers (Art. 26 (3) GDPR).

In particular, the questions listed in the appendix must therefore be answered by both Facebook and fan page operators.

Appendix: Questionnaire

1. In what way it is determined between you and other jointly responsible parties who of you fulfils which obligation in accordance with the GDPR? (Art. 26 (1) GPDR)
2. On the basis of which agreement have you determined among yourself who fulfils which information obligations pursuant to Art. 13 and 14 GDPR?
3. How will the essential aspects of this agreement be made available to the data subjects?
4. How do you ensure that the rights of data subjects (Art. 12 et seq. GDPR) can be fulfilled, in particular the right to erasure pursuant Art. 17 GDPR, the right to restriction of processing pursuant to Art. 18 GDPR, the right to object pursuant Art. 21 GDPR and the right of access pursuant Art. 15 GDPR?
5. For what purposes and on what legal basis do you process the personal data of visitors to fan pages? What personal data is stored? To what extent are profiles created or enriched based on visits to Facebook fan pages? Are personal data by non-Facebook members also used to create profiles? Which retention period is planned?
6. For what purposes and on what legal basis are entries in the so-called Local Storage created for non-members when a fan page is called up for the first time?
7. For what purposes and on what legal basis are one session cookie and three cookies with lifetimes between four months and two years stored after a sub-page within the fan page offer has been called up?
8. What measures have you taken to fulfil your obligations under Art. 26 GDPR as joint controller and to conclude an agreement to this effect?