

Summary opinion on compliance with data protection the operation of pages of rapeseed Facebook

in the light of the foregoing since 1. Telecommunication media in force in December 2021
The Law on data protection (TTDSG), the judgment of 25 November 2021 of the OVG Schleswig
(Data Protection Act, BGBl. 4 LB)
20/13) and current actual Facebook voyages
(updated in November 2022)

— Version 1.1

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A. Introducti

By judgment of 5 June 2018, the EuGH held, in an order for reference, that fan page administrators on Facebook are jointly responsible for data protection with Facebook (RS. C-210/16, 'Wirtschaftsakademie'). They endorsed the judgments delivered by the referring court.

Bundesverwaltungsgericht (Federal Administrative Court, BVerwG) of 11 September 2019 (Case 6 C 15.18) and the Oberverwaltungsgericht ('the OVG') Schleswig (Article 4 LB 20/13) of 25 November 2021. The OVG Schleswig based its decision on the legal and factual situation in 2011. However, the findings and legal assessments remain relevant, leaving aside, in particular because the cookies mentioned in the judgment continue to be used up to date.

The Conference of Supervisory Authorities independent of data protection of the Federal State and the Länder (DSK) had given rise to the judgment of the EuGHs in order to deal, in the context of a Taskforce established for that purpose, with questions relating to the legal compliance of the operation of a fan page. The results of the Taskforce were obtained, inter alia, by the DSK's publications of 6 June 2018 (which could be consulted under: https://www.datenschutzkonferenz-online.de/media/en/20180605_en_fb_fanpages.pdf and 1 April 2019 (table table under: https://www.datenschutzkonferenz-online.de/media/dskb/20190405_position_facebook_fanpages.pdf) addressed to the public.

The purpose of that simplified report is to give the DSK, in a view, a current legal assessment of the operation of fan pages. In that regard, the Taskforce takes account of the grounds of the OVG Schleswig, the Law on Telecommunications Data Protection (Telekommunikation-Telemedien-Datenschutzgesetz; 'the TTDSG'), which has been in force since December 2021, and the earlier findings of Taskforce. The summary expert's report is based on the current state of implementation of the fan Facebook pages recorded in the course of a technical examination.

The summary report focuses in that regard on the storage of information in end-user terminal equipment: premises and access to information already stored in terminal equipment. Those transactions have been applicable since 1 January. In December 2021, the TTDSG, which transposes Article 25(5) of the Privacy Directive into German law, in particular Article 3 (1) of that directive. On the basis of the ULD's initial decision, the OVG Schleswig ruled on, inter alia, two cookies, namely cookie and c_user-. In addition to the foregoing cookie, the latter is opened and read only with registered and stored users, whereas, for unregistered users: interior or registered user: unregistered users: those who are not stored, that is to say those who use the cookie. Another cookie taken into consideration in that report is cookie (see below).

The processes and processing of personal data taken into account in the context of that opinion are as follows:

- I. Store and play cookies and the subsequent processing of personal data in the form of linking the use data with registered users: information relating to statistics (known as 'Insights') previously provided in the recording process, using c_user-user cookies
- II. The development and extraction of cookies and subsequent processing of personal data, in the form, inter alia, of the linking of data on the use of statistics (so-called 'Insights') by means of Dada cookies
- III. Declencheront and read cookies and subsequent processing of personal data in the form of connecting the data of use for the design of targeted profiles and language and advertising (targeting) using fresh and other cookies.

B. Treatment and process found

Fan pages can be visited (depending on the configuration of theatre operators) without prior recording or

recording, so that the content available there may also be collected by persons who are not registered: in particular Facebook. Depending on whether users draw and read a page after entering their account or fail beforehand, various cookies will be displayed and read accordingly and the information will be processed subsequently. When a person enrolled with Facebook and adopts a Facebook account, a clear account is allocated to the 'fair/discount' account. On that date, the c_user-Cookie cookie is stored for the first time on users' terminal equipment: the body by which they drew up the account and then, in principle, on all other terminal equipment through which Facebook is stored. Appellants: between them, while stored on their behalf, a fan page is automatically attached and restored to the codemandes -Cookie already present. For unregistered users: internal or unregistered users: users who have not been stored shall be stored and read in cookie.

The following list is a summary of cookies regularly installed on the fan page advertisement:¹

1 Depending on the browser or terminal equipment used and whether a user/e: in Facebook: other cookies and Web Storage are stored and read, where appropriate, other cookies and Web Storage. The situation of the appeals in February 2022.

Cookie-Nom	Validity	Purpose (if applicable)
c_user	1 years	Unequivocal account number
day	2 years	Clear identification, Facebook is also provided by Facebook for non-members or undeclared visitors.
FR	3 months	it is, for example, used to provide advertisements and to measure and improve their relevance. Market Share https://www.facebook.com/policies/cookies/
OO	5 years	Only if notification with so-called 'Nur [cookies]' is granted. In that case, the logo shall remain in storage!
defendant:	Act. Meeting	The Browsers' memory is present only. Obscure aim. If applicable, as regards the status of pyjama or cat?
local authorities	7 days	Linguistic preference. There is no doubt as to the determination of the Facebook browser or account. Is presented after the logo...
Sb	2 years	Stored Information in response to Browser ('Source: https://cookiedatabase.org/cookie/facebook/sb/)
sfau	Act. Meeting	Lack clarity. Was it applied only once and on a temporary basis:
WD	7 days	Width and height of the screen and, respectively, pixel bread windows
XS	1 years	Light Meeting room I ('Source: https://cookiedatabase.org/cookie/facebook/xs/)

In the remainder of my legal analysis, the c_user-, cookie and cookie are examined in greater detail. The lawfulness of the use of other cookies was not assessed.

C. Legal appraisal

With the entry into force of the TTDSG with effect from 1. In December 2021, a new Law on telecommunications ('the TKG') and amendments made to Telemediengesetz (Law on telecommunications, 'the TMG') entered into force at the same time. The TTDSG organised the essential rules on data protection for telecommunications services and telemedia services. In particular, the TTDSG has an impact on the very practical use of cookies and similar technologies.²

As regards the distinction between the GDPR and TTDSG, it is referred to OH Telemedien. Consequently:

Under Article 2(1) of the DS-GVO, it applies, with the exception of 'all or part of the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system'. EPrivacy-RL, and therefore also national transposition into the TTDSG, seeks in particular, in accordance with Article 1 (1) and (2), protection equivalent to the right to privacy and confidentiality, and seeks to 'clarify and supplement' the provisions of the DSG regulation relating to the processing of personal data in the electronic communications sector. In the context of the provision of telemedia, there are operations which fall within the scope of only one of the two sets of regulations. Where, for example, the use of technologies does not process personal data, only the requirements of the TTDSG, and not those of the DS-GVO, must be complied with. However, processes such as, for example, the use of cookies to follow users' behaviour, which are also subject to the processing of personal data, are regularly at issue, thus opening the scope of both the TTDSG and the DS-GVO. In that case, Article 95 of the DS-GVO lays down a conflict-of-laws rule. According to that provision, processing entities are not subject to additional obligations by the Regulation, in so far as they are subject to particular obligations defined by ePrivacy RL which pursue the same objective. That conflict-of-law rule also applies to national rules transposing the Directive, such as the TTDSG.

It follows that the specific provisions of Article 25 of the TTDSG apply as a matter of priority over the provisions of the DS-GVO, in so far as personal data are processed during the storage and reading of information in terminal equipment. For subsequent processing of personal data which is permitted by the terminal equipment only by reading those data and which are not covered by any specific rules, it is necessary, in turn, to comply with the general requirements of the DS-GVO regulations. The TTDSG central standard relating to the technologies to be taken into consideration in the present case constitutes the rule set out in Article 25 of the TTDSG. Contrary to the provisions of the DS-GVO, Article 25 of the TTDSG seeks to protect privacy and confidentiality in the use of terminal equipment. End-users: they are protected against the fact that third parties improperly record or read information on their final destination and thus undermine their privacy'.³

'In so far as Article 25 of the TTDSG transposes into German law the requirements of Article 5(3) of the ePrivacy RL, the same considerations apply as regards the delimitation of the national provision relating to DS-GVO. For the use of cookies, this means that the consent requirement laid down in Article 25 of the TTDSG applies irrespective of whether personal data are stored or consulted in the cookie, for example in the form of a clear identification number.'⁴

I. Compatibility with the TTDSG

1. Applicability of the TTDSG

The c_user-Cookie cookie, post_r-Cookie and cookie are information stored by means of access to users'

2S. OH Telemedien, p. 3, and N.

3OH Telemedien, p. 5 et seq., and N.

4OH Telemedien, p. 9, and N.

ultraterminal equipment: the information which will be consulted within the user and which will be consulted below.

2. Obligations arising from Article 25 of the TTDSG for operators: carbook-Fanges pairs

The obligations arising under Article 25 of the TTDSG are imposed on operators: pairs of Facebook pages. The operators: facebook pages are providers of telemedia services within the meaning of Article 2(2) (1) of the TTDSG. According to the legal definition, 'telemedia service provider' means any natural or legal person providing its own or foreign electronic media services or who participates in the provision or provides access to its own or foreign electronic media. OH Telemedien states in that regard, in Appendix II.1.a) "Destinatee":

'This definition differs somewhat in the wording of the definition of "service provider" in Article 2 (1) of the TMG. According to that provision, a service provider is any natural or legal person who prepares or provides access to its own or foreign electronic media. The TMG since the TMG exceeds 1. Beyond December 2021, without the data protection provisions, the differences in wording are likely to create new uncertainties. There is nothing in the explanatory memorandum to explain why, in the TTDSG, a different definition of suppliers, namely telemedia as compared with the TMG, was adopted. There is hardly any justification for European law in this case, since European law makes no distinction between telecommunications services and telemedia services. Consequently, the slightly different definition is another scope ratione personae of the TTDSG, since only the persons involved are included in the group of addressees.'

Administrators: launch an internal fan page, on the one hand, themselves providing telematics media in that they establish and provide a page capable of being viewed separately on the network. The side can and shall be activated by operators: inside it and contain content. Operators: a fan page internal may also deactivate it autonomously. Irrespective of whether the fan page is part of the Facebook network, the operation of a fan page must be regarded as the provision of a television broadcasting service. In addition, fan page administrators act on the Facebook social network through the operation of their fan page.

Persons who 'cooperate' are not defined either in the TTDSG or in the Media Act, so that the criterion must be interpreted by reference to the TTDSG's intention. As regards telemedia, the purpose of the law is to fully ensure the protection of data and the private life of users: within the country, the choice of recipients has been broadly designed. It is sufficient that public or non-public bodies have no means of ordering, design of the content or purpose of the teleminor, such as, in particular, subcontractors as purely technical providers, for example hoteliers. ^{Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of}

Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG. Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG. Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG. Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG. Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG. Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG. Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG. Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG. Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG. Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG. Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG. Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. Under Article 2(2) (1) of the TTDSG.

Administrators: parts of fan pages operate Facebook's technical equipment and determine the content updated on their fan page. Under Article 5 of the TMG, they are responsible for that content and may terminate the operation of the fan page at any time. The concept of social network provides that users are to be kept and set up within the framework established by the network, whatever their nature. Without content made available to users: within the social network, there would be no television broadcasting service on the social network. In that context, the layout of the content of the fan page to supplementary content therefore also constitutes a substantial contribution to the social network. To that extent, it is therefore necessary to consider not only the provision of an independent television broadcasting service by the operation of a fan page, but also participation in a television broadcasting service within the meaning of Article 2(2) (1) of the TTDSG.

Article 25 of the TTDSG does not apply exclusively to telemedia service providers, but in particular to telemedia service providers, as an obligation formulated without further detail. That already demonstrates the reference, in the exception to the requirement of consent in principle laid down in Article 25(1) of the TTDSG, to the 'provider of a teleservice service' in Article 25(2) (2) of the TTDSG. As will be explained below, what matters, according to that provision, is whether the storage of information in end-users' terminal: interior or access to information already stored in the end-user terminal is absolutely necessary to enable providers, in a television broadcasting service, to provide a telemedia service expressly requested by users. If those conditions are not met, the service providers must obtain the consent referred to in Article 25(1) of the TTDSG. Furthermore, that reading also constitutes the scope and objective of the European legislature. According to Article 1(1) of that directive, its purpose is, inter alia, to protect the right to privacy with respect to electronic communications equipment and services.

Any person who provides electronic media services or who provides access to its own or foreign electronic media must ensure that, in operating such a service, access to terminal equipment is ensured only if the legal requirements of Article 25 of the TTDSG are complied with. That obligation is therefore imposed on pairs: as service providers: interior Fanpage telemedia service, such as other obligations imposed on providers: telemedia services, such as the obligation imposed by Article 5 of the TMG to manage immediate consumption.

3. Requirement of consent within the meaning of Article 25 of the TTDSG

Under Article 25(1) of the TTDSG, the retention of information in terminal equipment of end-users is to be authorised only if end-users have given their agreement on the basis of clear and complete information. In so far as none of the exceptions provided for in Article 25(2) of the TTDSG applies, that principle remains applicable.

In the course of viewing a fan page Facebook on the user's terminal equipment consists of recording and playing a variable number of cookies depending on whether or not users are signed at that time as a registered member of the network. The difference lies essentially in the fact that, for the intended users: those of c_user-Cookie are used and for non-members of the cookie network. It is also to those two cookies that the abovementioned decision of the OVG is relevant. The table in B shows that, in the technical examination of several fan pages in February 2022, a total of eight other cookies are placed and read at the request of a fan page. The objectives of those cookies are only partially known. The fresh cookie is, according to the cookie directive, used by Meta to provide advertisements and to measure and improve their relevance. He is stored for 90 days.⁶days

Golland, the public opinion of the Economic and Energy Committee on 21 April 2021
9.30 hours, draft law governing data protection and privacy in the telecommunications sector the in circumstances
where: Telemedia services; BTT printed matter 19/27441, 3, accessible: under:
<https://www.bundestag.de/resource/blob/836010/498ffdbeff45200bdc011b13acc38b31/19-9-. Its>
1054_SV_Golland_PwC_Legal_oe_TTDSG_21-04-2021--pdf.

4. Derogations provided for in Article 25(2) of the TTDSG

As regards the principle of consent, two exceptions are provided for in Article 25(2) of the TTDSG. The first exception is addressed to operators: in particular, Article 3 (1) of the amended TKG: the amended Paragraph of the TKG.⁵

That argument cannot be taken into account in the present case. Unlike providers, the second derogation addresses telemedia services within the meaning of Article 2(2) (1) of the TTDSG.

However, a derogation under Article 25(2) (2) of the TTDSG does not apply to cookies (c_user-Cookie, datr-Cookie and Fr-Cookie). Article 25(2) (2) of the TTDSG does not, by way of exception, require consent where the storage of information in the termination mechanism or access to information already stored in the final mechanism is absolutely necessary to enable the providers of a television broadcasting service to provide a television broadcasting service which the user expressly wishes to use.

As regards the criteria to be examined in that regard, namely the 'television broadcasting service expressly requested by users' and the 'unconditional need' relating thereto, reference is made to guidance to providers: in particular telemedia services.⁷

Stimulation for advertising purposes and the creation of Insights are not telemedia services expressly desired by users.

According to OH Telemedien, basic service⁸ must be regarded as being, in principle, the service which has an interest inherent in the supply as a whole as being 'the telemedia service expressly requested by the user: in general'. That is, in the present case, one of the designated operators, namely the interior side, placed in a social network, by which operators can acquaint themselves with the content published within the undertaking and which enable users, where appropriate, to allow interaction in that regard with network content. Significant interaction between users: the interior can be fully noticed only in so far as they are also registered with Facebook.

The extent and analysis of the data of use, in particular, but not exclusively in the context of the creation of Insights, do not fall within the scope of the basic service. Insights are a tool of the Reichweiß measure, provided inside fan and unpaid pages, which is also offered, to the greatest extent possible, in connection with the operation of a website outside Facebook, by services such as Google Autics, etc. It is not necessary to identify a user orientation, in the sense that the functionality directly operates a direct complement for users: internal fan pages and should therefore be attributed to the basic service.

The current version of the voluntary banner merely distinguishes between necessary cookies and optional cookies. As regards the necessary cookies, the following is stated:

Necessary cookies

Those cookies are necessary for the use of Meo products. They are necessary. In so doing, they operate as planned.

Ibid., pp. 19 to 22.

5. OH Telemedien: 'Basic services may be deducted regularly from the category of telemedia services. In the present case, categories of examples are mentioned as Weshops, search engines, information sites of undertakings or public institutions, administrative services, online banks, blogs, social networks, translation services. The

⁵<https://www.facebook.com/policies/cookies>.

basic service of a website is the sale of goods. The search engine base service is that, in the case of insertion of a search term, web pages adapted to a search term are found on the Internet and are shown as search results using hyperlinks.'

⁹ See OH Telemedien, p. 21 et seq.

That leads to the conclusion that the characteristic ‘telemedia service specifically desired by the user’ does not refer even to the service www.facebook.com, but to all metamedia products and therefore to numerous television broadcasting services.⁶

a. c_user-Cookie

Admittedly, both for the c_user- and for cookie, it is possible also to find cases and objectives which make it possible to use cookies for those specific purposes on the basis of the exception provided for in Article 25(2) of the TTDSG. In so far as c_user-uses cookie is in fact technically necessary for the provision of the ‘social and interactive network’ basic service, the exception provided for in Article 25(2) (2) of the TTDSG is applicable to Facebook with regard to users. In that regard, cookie would then be necessary for the processing of personal data on the basis of Article 6(1) (b) of the GDPR. However, although the same cookie is also used for other purposes which are not covered by Article 25(2) of the TTDSG, the principle laid down in Article 25(1) of the TTDSG remains applicable.

According to Meta, c_user-Cookie cookie serves, inter alia, authentication and other purposes.

Authentication

*We use cookies to verify lack of account and to determine when it has been declared, in order to facilitate access to meta-media products and to provide appropriate staff and appropriate functionalities.*⁷

It is apparent from that information, in addition to the objective of authentication of registered users: the other purposes, formulated in very abstract terms, according to which access to meta-product products can be facilitated and provide adequate experience for the user and appropriate functionalities.

The OVG examined very intensively the cookie c_user-Auser-Cookie and finally arrived at, in essence, the following two findings:

- *‘The link between the call for grass and the Facebook member, made possible through the c_user cookie, places Facebook in the profiles established through the member and which are themselves used for advertising purposes.’⁸*
- *‘The establishment of those statistics — referred to in the Facebook Insights service statistics compiled on the use of fan pages are possible, inter alia, on the basis of c_user-user cookies, in so far as that cookies allows the use of a fan page to be linked to the Facebook members and to the information already obtained on them. Stiques Fanpaget, through Insights, receives lateral statistics in aggregated and anonymous form, without it being necessary to grant a corresponding mandate to Facebook. IES... develops side statistics with the aim of adapting the operation of a fan page on users, that is to say making the fan page more attractive. At the same time, these Facebook should make it possible to increase network advertising.’⁹*

10

Messaging, for
undertakings;

6Other very well-known services of the company are Instagram and WhatsApp. Meta platform Inc. operates in part several television broadcasting services in the following sectors of social networks, video conference, video platforms, electronic commerce, collection software, payment and computer games software.

¹³ 7Cookie Directive, <https://www.facebook.com/policies/cookies>.

8OVG-Schleswig, Urt. v. 25.11.2021, No 4 LB 20/13, p. 33.

9OVG-Schleswig, Urt. v. 25.11.2021, No 4 LB 20/13, paragraph.

According to the findings of the Court of First Instance, the cookie c_user-Fokie is therefore used to establish user profiles and side statistics on the use of fan pages and for advertising purposes.

The abovementioned purposes cannot be classified as functions which the user expressly wishes to perform or which form part of the basic service. Consequently, the consent of users is required within the country before those cookies are placed or extracted.

b. Cookie daxe-Cookie

As regards the cookie datr-Cookie, the OVG Schleswig states:

*'However, the function of this cookie remained uncertain. According to the information provided by the interveners: Facebook plays a central role in protecting the social network and is not aimed at broadcasting targeted advertising.'*¹⁰

Meta's cookie directive is not astonished by Meta's cookies.

In the past, meta claimed that 'date' cookie could help to detect incorrect profiles and to avoid cyber attacks. For example, where a browser visited in the five minutes of pages constitutes a clear sign of the fact that the computer has been grasped by online criminals. The data collected by the cookie are not allocated to individual persons and cannot be linked to it either.¹¹¹²

That argument is contradicted by the fact that the specification for cookies corresponds to a typical cookie such as that used for the training of sections, the objective of which is the long-term and targeted monitoring of the behaviour of individual users: in particular.

However, if the cookie at issue is actually used exclusively to ensure the security of the social network, the exception provided for in Article 25(2) (2) of the TTDSG would apply in that regard only if the related processes are in fact necessary for that purpose.

In assessing whether there is an unconditional need, account must be taken of the criteria set out in OH Telemedien. In particular, it must be ascertained whether the period of retention of the cookie of the cookie and the resulting accessibility is necessary for the objective pursued. That is not the case with a 2-year storage period. Therefore, the cookie at issue, in its specific technical arrangement, cannot be regarded as necessary for the purposes of preventing fraud and therefore also requires prior agreement on the part of the users:

c. fine cookie

The Cookie Directive states, first of all, as advertising, recommendations, Insights and measures, that cookies are used to make known to persons who may be interested in products, services or purposes offered by undertakings and other organisations advertisements to those undertakings and organisations and make recommendations to them. By way of specific example, it is explained below that the 'fr' cookie is used to provide advertisements and to measure and improve their relevance.

¹⁶similarly, if the cookies set up pursue objectives such as the preparation of sections and advertising, they cannot benefit from the exception provided for in Article 25(2) (2) of the TTDSG either. Advertising is not technically necessary to provide the service requested by users, namely the display of the website www.facebook.com. In that regard, reference is made, for the sake of completeness, to the relevant determinations of EDSA relating to Article 6(1) (b) of the GDPR.¹³

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¹⁵ Thus, as regards the abovementioned cookies, the principle remains that, in order to store and play
¹⁶ cookies, the consultation of a fan page requires effective consent, in accordance with Article 25(1) of the

10 OVG-Schleswig, Urt. v. 25.11.2021, No 4 LB 20/13, p. 59.

11 The ZD-Aktuelle 2015, 04886, see subsequently the judgment of the EuGH v. 15.06.2021, RS C-645/19.

12 Cookie Directive, <https://www.facebook.com/policies/cookies>.

13 Guidelines 8/2020 on the Targeting of Social media, p. 16 et seq., paragraph et seq. 49 referring to the Guidelines

[TTDSG, to be obtained by the providers: television broadcasting services.](#)

[5. Actual consent in accordance with Article 25\(1\) of the TTDSG, read in conjunction with Articles 4 \(11\) and 7 thereof. GDPR](#)

It is apparent from the current consent document displayed immediately after the call of the website www.facebook.com that it is intended to use cookies in the use of the Facebook pages. ¹⁴

Facebook @...

Permit Facebook's use of cookies in that browser?

We use cookies and similar technologies for the following purposes:

In order to provide and improve content from Facebook products,

With the help of information obtained by means of cookies on and outside Facebook, strengthening the safety of our users

For the purpose of supplying and **improving** Facebook products to people who already have an account

We will use on Facebook other undertakings for advertising purposes and for measuring services outside of the Facebook goods, for analysis purposes and to provide certain functionalities and improve our services. Those undertakings also import cookies.

To permit the use of all cookies or only necessary cookies or to select other options [in our cookies](#) Directive or to select other options on cookies and how we use them. In addition, it is necessary to check or amend at any time the choice of the person.

Only necessary cookies are permitted:

[Allowing necessary and optional cookies](#)

[Other information concerning the use of cookies on Facebook pages is contained in the company cookie directive \(s. <https://www.facebook.com/policies/cookies/>\), which is inflated in the Banner cookie. It is also clear from the order for reference that the use of a fan Facebook page uses several cookies.](#)

[In its judgment in Case C-11.9.2019/, the BVerwG held as follows:](#)

'The OVG will have to verify what data were collected on the fanpage's appeal to the relevant date for the decision. In so far as the use of cookies installed by Facebook has given rise to the processing of personal

2/2019 on the processing of personal data under Article 6 (1) (b) GDPR in the context of the commission of online services to data subjects. 18.

¹⁴ Different rings, with partially different text elements, are used according to whether the facebook.com page or its subpages are visited there. The following presentation refers to Banner, which is currently used (November 2022) during the visit to the facebook.com.

data, it is for that court to distinguish the situations of Facebook members from those of internet users who are not registered with Facebook. The processing of personal data would be lawful only if the former had validly consented to the collection and subsequent processing and the second group had a legal basis for the collection of personal data and any necessary information was provided.'

By a judgment of 26.11.2021, the Schleswig-Holsteinisches Obergerverwaltungsgericht found that the use of personal data relating to persons registered on the Facebook and declared network was not legally authorised by law and had not been authorised by the users or consented to it

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Directive, which is surrounded by consent rings, also contains no express reference to Article 25 of the TTDSG. However, it is stated as follows:

*'This Directive explains how we use cookies and specifies the choices available to it. Unless otherwise specified in this Directive, the data directive applies to our processing of the data collected by us through cookies.'*¹⁵

It could be inferred from the distinction made here between the use of cookies, to which the cookie directive applies, and the processing of (personal) data collected via the cookies to which the data directive applies, that the consent holder refers to Article 25 of the TTDSG. In short, it remains uncertain for users: in internal, there is no need to consider the consent referred to in Article 25(1) of the TTDSG and/or the consent referred to in Article 6(1) (1) (a) of the GDPR.

The consent ring provides two options in the first place. It may be fitted either for the cold surface 'to enable the cookies necessary or for the cold surface 'to enable necessary and optional cookies'. Irrespective of which of the two cold areas of users of fan page are clicked, it is followed.

Unlike the pretext, the reason for consent is not of a second level. Thus, 'optional cookies' no longer make it possible to choose. In the intermediate version of the voluntary banner, users could choose, at the second level, to accept, in addition to optional cookies, cookies from other undertakings, outside the Maa Platform group:


Those cookies are necessary for the use of Facebook products. They are necessary to enable those websites to operate as planned.'	
Optional cookies	Nova
Cookiesd of Other undertakings—...	E....

Instead of the selection option, it is now stated as follows:

Optionalcookies
Cookies of other undertakings I shall use tools of other undertakings for advertising purposes and measuring services outside the Facebook goods, for analysis purposes, and for the provision of certain functionalities and the improvement of our services. Those undertakings also import cookies.

In those circumstances, it must be concluded that Meta Plaform's click on the cold surface 'allows for cookies' to be the consent of all cookies, including other undertakings.

In that regard, it is not possible to understand the following paragraph in the country of consent:

Allow theuse of all cookies or only necessary cookies, or	
	select other options. In the cookie directive, the more the poker is in the form of cookies and how we use them.
In addition, it is necessary to check or amend at any time the choice of the person.	

However, the image does not fully indicate the first level of consent in so far as the whole The content can be perceived only if the text is rounded.

15 The cookie Directive, <https://www.facebook.com/policies/cookies/>

In a detailed approach, no possibility of 'choosing alternative options' was found to be 'downward'.

Article 25(1), p. 2, of the TTDSG refers to the relevant provisions of the GDPR, as regards both the information to be provided to end-users, and the formal and substantive requirements of consent. It is therefore the definition in Article 4 (11) of the GDPR which is decisive. The other requirements of effective consent arise from Article 7 and Article 8 of the GDPR. In order to assess the validity of consent under Article 25(1), p. 1, of the TTDSG, it is therefore necessary to apply the same assessment criteria as those applicable in the event of consent under Article 6(1) (a) of the GDPR.

Those legal constraints reveal, in essence, the following points of analysis for the purposes of assessing the effectiveness of consent:

- Date of consent;
- The informal nature of consent,
- clear confirmatory act;
- voluntary consent, in particular as regards the absence of unlawful interference in the users' decision (sog Nudging),
- Revocation of consent;
- Specific conditions for consent to the processing of data relating to minors.

The information previously provided by the consent holder does not satisfy the requirements of informed consent, in accordance with Article 4 (11) and Article 7(3), p. 3, of the GDPR. It is true that, when a first level visa is issued, not all the information must be displayed in full. The interested party must first provide the person concerned with the following information, without having to open other windows:

- the specific purposes of the processing;
- where applicable, that individual profiles be designed and enriched by means of data from other websites to large-scale user profiles;
- where applicable, that data should also be processed outside the EEA; and
- the number of officials to be disclosed.

It also follows from Article 7(3), p. 3, of the GDPR that the operator is obliged to inform the data subjects of their right of withdrawal before giving their consent.

At the first level of the consensus on the Facebook internet sites, only the information to be taken from the pre-inserted screenshot is transmitted to users: The consent holder mentions three objectives:

We use cookies and similar technologies for the following purposes:

o: In order to provide and improve content from Facebook products,

In order to increase the safety of our users by means of information obtained through cookies on and outside Facebook,

For the purpose of supplying and improving Facebook products to people who already have an account

The latter do not have a sufficient degree of specificity. That conclusion is not called into question by the following additional information:

We will use on Facebook other undertakings for advertising purposes and measuring services other than Facebook products. Those undertakings also import cookies.
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In addition, no express reference is made to the establishment and accumulation of individual user profiles and data processing outside the European Economic Area (EEA). Furthermore, while it is true that the use of cookies is generally informed for meta-product products and through other undertakings, the fact remains that the number of meta-product products and the number of other undertakings use cookies. It should be added that the phrase 'dort [refers to the Cookie Directive] at any time when selecting the individual' cannot be regarded as a sufficiently explicit reference to the right to revoke at any time the consent provided for in Article 7(3) (1) of the GDPR.

The consent author does not satisfy the requirement of consent laid down in Article 4 (11) of the GDPR. Recital 42 of the GDPR states that it should be considered that the data subject 'has given his or her voluntary consent when he has a real or free choice and is thus able to refuse or withdraw his consent without prejudice'.

The consent ring is structured in such a way that it offers the user a choice which does not actually exist. The designation of the prefix 'to allow the necessary cookies' gives the impression that users may refuse to grant authorisation in that regard: users cannot authorise the required cookies or, in other words, refuse the agreement in that regard. It must be held that, by the required cookies, Meta Plaforms covers all cookies, with the exception of those of other undertakings, whereas, according to Metas, the cookies installed by Meta do not appear to require consent in accordance with Article 25(2) (2) of the TTDSG.

The designation of the cold areas merely permits the inference that Meta Platform does not give those users the opportunity to give their consent on a basis which is not strictly necessary and that, consequently, under Article 25 of the TTDSG, cookies must be refused — that is to say all cookies. The German supervisory authorities do not require rejection at first level generally, but only following concrete evidence of the consent announcements, which most often occur in practice

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[A first level recusal function is required whenever the user of the website must interact with the will-ons banner to continue the visit to the website. In so far as the user banker does not prevent internet sites and content is accessible, so that no action on the part of the users is necessary in order to be able to use the website with a willon tape, a refusal may be superfluous in the foreground. Moreover, a discharge function is not required at first instance where consent can be given only on another level. The claim therefore arises from the specific organisation of the instrument of consent and results from a case-by-case assessment.](#) [A first level recusal function is required whenever the user of the website must interact with the will-ons banner to continue the visit to the website. In so far as the user banker does not prevent internet sites and content is accessible, so that no action on the part of the users is necessary in order to be able to use the website with a willon tape, a refusal may be superfluous in the foreground. Moreover, a discharge function is not required at first instance where consent can be given only on another level. The claim therefore arises from the specific organisation of the instrument of consent and results from a case-by-case assessment.](#)

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The collectors' banner on the website www.facebook.com [relates to](#) essential parts of the website, those parts are also grey and a scroll and a click on the website, alongside the self-service banner, are not possible. Thus, quite simply, the [website \[www.facebook.com\]\(http://www.facebook.com\) cannot be used without users clicking: indoor, at least on the table 'make the cookies necessary' at least. The ground for consent on the website therefore presents the presentational features set out, with the result that a rejection function must be provided at first level.](#)

[Admittedly, if, in the context of a click on the 'Nur' cold surface, only cookies and other tracking mechanisms were legally authorised even after a legal assessment based on the OH Telemedien criteria in 2021, without the consent under Article 25\(2\) \(2\) of the TTDSG, the possibility of rejection would be given in practical terms. As a result of that name, it is not perceived as such by the user.](#)

[This corresponds to the findings already made in the summary report, in the 1.0 version, concerning the band of initial voluntary service in which the 'necessary cookies' area was located at the second level of the consent banner:](#)

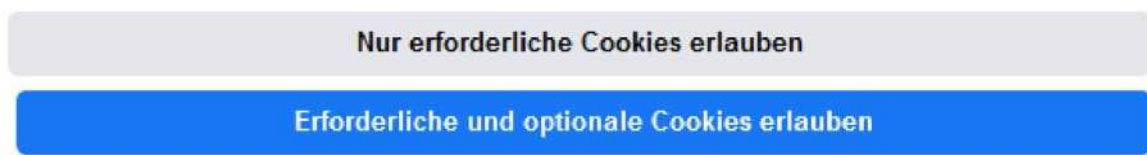
'First, the latter is legally misleading, given that the cookies required, within the meaning of Article 25(2) (2) of the TTDSG, do not require any authorisation and those cookies cannot be excluded by users. Second, users: because of the designation of the cold surface, cannot specifically conclude that they have not given consent.'¹⁶

[In so far as there are several underlying purposes for access and/or storage within the meaning of Article 25\(1\), p. 1, of the TTDSG, which differ substantially, the requirements relating to the granularity of consent must be implemented. This means that users must be able to choose themselves and actively the individual purposes for which consent must be obtained. It is only where objectives are closely linked that the grouping of purposes may be relevant. In that regard, an overall authorisation cannot validly be issued on various grounds.](#)

[There is no differentiation between the necessary cookies and optional cookies for the three objectives mentioned in the consent banner. It is therefore not already apparent which cookies are used for what purposes. Furthermore, cookies are not connected with the various services and their respective providers. Nor does that information appear in the cookie directive. Information concerning 'other companies' which present cookies is also completely lacking. As has already been pointed out, the author of the consent does not leave any possibility of not agreeing on voluntary cookies, for specific purposes or with regard to certain other undertakings. The requirements relating to the granularity of consent are not complied with in any way.](#)

[As regards statements of wills on internet sites, it should be noted that it is common for a 'cloud' to be carried out. This is a methodological approach designed to influence the behaviour of users intentionally: for the needs of their own interests. For example, in relation to the option of 'refusal', the option 'voillir' is more striking in colour and the colours are used on the basis of the meanings attributed to them, such as the 'consent' of green and the words in bold and 'antagonists' in red or in small characters.](#)

[It is precisely this claiming shape on the coloured designs which is visible in Facebook's mind. Whereas the 'necessary and optional cookies' draw the mind on account of the height colour of the blue background, the light grey grip 'allows necessary cookies' is rather discredited.](#)



DSK, guidance from the supervisory authorities of providers: launch telemedia from 1. December 2021 (OH Telemedien 2021), state: December 2021, p. 13 et seq.

16SummaryReport, version 1.0, p. 13 et seq.

Thus, it is possible to consider that the requirements of consent have not been met and, therefore, that actual consent, within the meaning of Article 25(1) of the TTDSG, is not sought through the consent holder.

II. The compatibility of the processing of personal data with the GDPR.

1. Personal link of processing by means of cookies

The purpose of the 'cookies' is to enable the interactions of registered users to be clearly identified: within a given profile already installed on Facebook. At the time of registration, users shall in particular give their first name and surname, the place of residence; Include, where applicable, contact details, such as a mobile telephone number and other personal data. There is therefore no doubt that the c_user-Cookie is a personal data within the meaning of Article 4 (1) of the GDPR, if only because of the combination of the clear marking with the user's registration data. Similarly, as regards cookies Dada and high-speed access, it must be held that there is a sufficient link with persons. Even though the information contained in the foregoing cookie is isolated and is not, in itself, sufficiently connected, the question whether the processing of a date, viewed in the context, is linked to persons, still depends on whether the processing of a date, viewed in the context, has a personal link. Under Article 4 (1) of the GDPR, it is sufficient *that a personal relationship can be established 'by reference to an identifier such as a name, identification number, location data, line code'*.

Recital 30 states that the legislature wished to include processing related to cookies in the context of the protection of the GDPR and even refers explicitly to cookies:

'Natural persons may be associated with online identifications, such as IP addresses and cookie, the identifications which provide their apparatus or its tools or protocols, or other identifications such as radio frequency marks. This may leave traces that can be used, in particular in combination with obvious identifications and other information on the server, to create and identify personal profiles.'

The very fact that the users' IP address is disseminated and processed in close conjunction with the display of a fan page and the recording or exit of cookies previously stored, for technical reasons, exists as regards c_user connections, cookies and cookies at a cost.

It is therefore a question, in the use of those cookies, of processes which form part of the preferential processing of personal data. Part of those processing operations, namely the storage of information in the end-user terminal or access to information already stored in the final mechanism, falls within the special provisions of Article 25 of the TTDSG 24.

2. Data protection responsibility

Under Article 26(1), p. 1, of the GDPR, there is joint responsibility where two or more controllers jointly define the purposes and means of data processing, that is to say, they must be able to exercise an effective influence over the decision. The essential elements of joint responsibility between fan and Facebook (now Meta) were brought together by the BVerwG as follows:

21. The EuGH relies decisively on the consideration that the administrator of a fan page hosted on Facebook gives Facebook, with the creation of such a page, the opportunity to place cookies on the computer or any other device of the person who visited its fan page, whether or not that person has a Facebook account (judgment of 5 June 2018 in Case C-210/16 Wirtschaftsakademie, known as "Wirtschaftsakademie", paragraph 35). Thus, the farmer must:

S. on the delimitation of DS-GVO and TTDSG, and OH Telemedien 2021. Contribution

relevant to the processing of the personal data of visitors to the fan page (EuGH, judgment of 5 June 2018, A.O. 36). It should be added that the anonymous viewing statistics compiled by Facebook on the basis of data enable the administrator, in general, to focus his information offer better (judgment of 5 June 2018, A.O. O., paragraph 37). In order to establish the existence of responsibility for data protection, it is not necessary that, in the case of the joint responsibility of several providers for the same processing, all access to the personal data in question should be granted (judgment of 5 June 2018, paragraph 38).¹⁷

In its decision, the OVG Schleswig confirms the joint responsibility of the fan page manager for the processing of personal data in connection with the use of cookies. As regards the subsequent processing in the form of the combination of user data with registered users: the data filed in the course of the registration process using c_user-tablets cookies are as follows:

As regards the purposes of the use of the relevant personal data in the present case, what matters is that the data processing for the purposes of drawing up statistics for the applicant's entries [Ann. Ultimately Wirtschaftsakademie = Fanpage-SPG makes it possible to know certain characteristics of visitors who assess their fan page or use their applications in order to provide them with more relevant content and to develop functions likely to be of greater interest to them (judgment of 5 June 2018 in Case C-210/16, paragraph 34, and judgment of, paragraph). In drawing up the fan page, which necessarily leads to insitons being prepared and made available when the frequency is adequate, the applicant has, in any event, implicitly taken a decision on the purpose of the processing of relevant data in that regard.'¹⁸

On the other hand, the OVG sees no responsibility for the retention of the link between that data and the fan page call for profiles and for advertising purposes

¹⁷Bundesverwaltungsgericht, Urt. v. 11.09.2019, No 6, p. 15.18 (1 C 28.14).

¹⁸OVG Schleswig, Urt. v. 25.11.2021, No 4 LB 20/13, p. 55.

profiles and, on that page, for the purposes of the (advertising) objective, in particular because that business model allows them to use the service without remuneration. The Facebook service is funded exclusively by advertising. That court itself states that data processing is carried out for filtered purposes and for advertising purposes with a view to making the teleéminary available. Thus, on page 38 of the Decision, the following is stated:

'The same is true of the data used, in addition to data relating to a Facebook member, which had already been collected for the purposes of training and advertising, and therefore ultimately for the purpose of making a teleprogramme available within the meaning of Article 12(1) of the TMG, in so far as it was previously used for the financing and implementation of the offer.'

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Keeping a fan page on the Facebook network is of great interest because a not inconsiderable number of people make the provision of information centrally via the Facebook network. Therefore, if the persons responsible do not retain a fan page in the network, they are invisible to some users: the internal circuits are not visible. In addition, the network makes it possible to address a closed large user: a selective and targeted internal circle. That possibility does not offer, or only conditional, the open internet. It is, in principle, necessary for users to: those who actively search for a member of staff's website (search for and then frequent) the officials' website to ensure the content of the persons responsible within those responsible. The possibility of actively targeted approaching users; on the other hand, they represent a strong added value which the persons responsible cannot obtain by their own presence. Therefore, given that the targeted consultation of users: in turn, it is possible only on the basis of sufficiently foilar profiles of the users: the persons responsible have a specific interest in achieving and continuing accumulation of profiles. In the case of the creation of a fan page, operators benefit from the profiles already developed and enriched and, from the creation of a fan page, contribute to ensuring that the profiles continue to be refined by means of the interactions of users: those of their fan page. Any interaction between users: interior of the network, and therefore any interaction on a fan page, has an impact on the respective profiles of users: The common interest of the operators: interior of fan pages and Methas therefore has an interest in contributing both to the network database being developed in order to benefit from the continuing improvement in targeted suction possibilities.

Those relationships are also described in part with what is known as the 'network effect' effect. That report states, first of all, that the utility of a network increases when the number of subscribers decreases. Both Facebook and administrators: to fan pages, they pursue complementary purposes, that is to say, as many users as possible: will indicate the content of the administrators: incoming and induce them to interact with them, in so far as those interactions and the resulting processing of personal data are of mutual benefit to both.²⁰

Even though, in its findings, the OVG falls short of the case-law of the Court of Justice and of the BVerwG, referred to above, the joint responsibility of the operator of facial pairs with Meta can always be established for significant parts of the processing operations within Facebook. As the BVerwG also makes reference, the EuGH justified a contribution to the processing of the personal data of visitors to the fan page, which determines the existence of joint responsibility, principally by the possibility of placing cookies by Meta, irrespective of whether or not that person has a Facebook account. To a large extent, in the judgment of the OVG Schleswig, the judgment of the OVG Schleswig maintained the space issue of unregistered users: fan pages. In that regard, it should be noted that EuGH had expressly stated that operators: fan page participants even assume increased responsibility in the present case because, at the fan page stage, personal data are collected directly by users: those who do not themselves have a user account on Facebook

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20Guidelines 07/2020 on the subject of controlling and processor in the GDPR, cited above, paragraph 61.

b) Consequences of deactivation of the Insights

Joint responsibility also exists where the statistics of operators of fan packages are deactivated in the internal market. Deactivation scarcely alters the processing of the relevant information in the operation of a fan page. Operators no longer receive statistics solely on the basis of always processed user data.

Whatever the extent of the joint responsibility of operators: Mrs and Meta in detail, it exists on fan pages, at least for the collection of data contained in the pre-displayed cookies. For the purposes of interpreting the concept of joint responsibility, the Court, in the 'Fashion ID' case, raises the question, inter alia, of whether the contributions of the controller are at the origin of the processing of the data and whether the two controllers benefit from the processing of the data.²²

As a result of the opening of the fan page, the administrators are responsible, on an individual basis, for the first cause, which then allows Facebook to collect personal data relating to visitors' interactions: those relating to the fan page concerned. The opening and operation of the fan page therefore constitutes a connecting factor with clear responsibility on the part of operators: those who knowingly are encouraged not only for its own purposes but also for those of Meta

EuGH, Urt.5.6.2018, RS C-210/16, 'Wirtschaftsakademie', paragraph 41.

21EuGH, Urt.29.7.2019, RS C-40/17, 'Fashion ID', paragraph 75 et seq.

22Judgment of the EuGHs of 29 July 2019, known as 'Fashion-ID', paragraphs 68 and 77f; To that effect, the guidelines adopted by the European Council

Committee for Data Protection on responsibility — 7/2020, paragraph 55.

the fan page. For its needs, it is important that both sides benefit from those transformation operations, For its needs, it is important that both sides benefit from those transformation operations

which is the case here: The administrators thus increase their scope, since they make use of Facebook's network possibilities and effect. To make use of fan pages because the interactions in that website make it possible to design and differentiate between profiles by visitors: fan pages thus make it possible to optimise targeted address and reading of advertising messages made available on the network. The objectives of operators, namely those of the fan page and Meta, therefore complement each other. That is sufficient to conclude that there is a common objective within the meaning of Article 26 of the GDPR. which is the case here: The administrators thus increase their scope, since they make use of Facebook's network possibilities and effect. To make use of fan pages because the interactions in that website make it possible to design and differentiate between profiles by visitors: fan

See the judgment of 29 July 2019 in Case C-40/17 EuGH ('Fashion-ID'), paragraphs 68 and 77.

For its needs, it is important that both sides benefit from those transformation operations, Judgment of 29 July 2019 in Case C-40/17 'Fashion-ID', paragraph 77.

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Article 6(1) (a) of the GDPR is envisaged to apply, the considerations set out in point C.I. 5. apply mutatis mutandis.

In turn, the priority legal basis of Article 6(1) (e) of the GDPR (read in conjunction with the relevant provisions of national law), which is, in principle, conceivable for the exercise of public relations, can only be as broad as personal data are actually processed, under their own or joint responsibility, exclusively for the purposes of public relations. By contrast, treatments for other purposes, such as the accumulation of advertising profiles, cannot be covered by that legal basis.

Operators, both public and non-public: they are currently unable, on the basis of the information available, to examine the conformity of the law which must necessarily be carried out before receiving a controller.

4. Additional obligations on the part of operators of Faniers lighters:

As responsible, fan page undertakings are required to comply with the principles set out in Article 5(1) of the GDPR and to demonstrate compliance with them. Among the principles set out in Article 5(1) of the GDPR is, inter alia, that personal data are processed lawfully, fairly and reasonably for the data subject [subparagraph (a)], that they are collected for specified, explicit and legitimate purposes and that they must not be processed subsequently in a manner incompatible with those purposes (subparagraph (b)).

The persons responsible are also required to define in a transparent manner, in an agreement, that of them who fulfil the obligation laid down by the GDPR. Such an agreement must, in accordance with Article 26(2), p. 1, of the GDPR, duly reflect the functions and real relations of the common responsible with regard to the persons concerned, that is to say, in particular, faithfully reflect^{since}.⁴²

The raison d'être of a convention under Article 26(2) of the GDPR is, first of all, to present in a transparent manner the respective functions in the processing operation or the contributions to the transformation of the various participants. In order to satisfy those requirements, a convention under Article 26 of the GDPR must provide clear information explaining the different stages and players in processing.⁴³

[In September 2018, Facebook published a 'top of pages about the person responsible' and 'information about the Seiten-Insights'.](#)

[The Conference of the Independent Supervisory Authorities for Data Protection of the Federal State and of the Länder adopted and published its position on the responsibility and responsibility of the Facebook pages by decision of 1 April 2019 \(table under: \[https:// www.datenschutzkonferenz ne.de/media/dskb/20190405_positionierung_facebook_fanpages.pdf\]\(https://www.datenschutzkonferenz.de/media/dskb/20190405_positionierung_facebook_fanpages.pdf\)\).](#)

[In](#)October 2019, Facebook published a non-substantial version of the 'Seiten-Insigh supplement relating to the person responsible' and 'information on the Seiten-Insights' and 'information on the Seiten-Insights' (table: https://www.facebook.com/legal/terms/page_controller_addendum).

[The information contained](#)therein merely reduces the scope of the services provided by Seiten-Insights. The information used therein does not make it possible to evaluate whether or not the IT processes carried out for that purpose comply with data protection. In that regard, a mere reference to that information is not sufficient for those responsible to respect their responsibility under Article 5(2) of the GDPR. The same is true of the Facebook Data Directive (consulted under: <https://de-de.facebook.com/privacy/explanation>). There are also only general and relatively imprecise information, in particular as to the (type) data processed and the purposes to which they are subject.

[The](#)information provided by the Addendum is also not sufficiently relevant in interaction with other publicly available information provided by Facebook, such as the information which can be consulted in the FacebookData Directive on the link <https://www.facebook.com/policy>, in order to be able to assess, on the basis of that annex, the possibility of processing compliant with the legal basis of Article 6 of the GDPR. That is due, inter alia, to the fact that the acts of users are not presented in full, but only by way of example. In addition, users' interactions are described, but not the data processing which follows from them. It is true that a convention under Article 26 of the GDPR does not necessarily have to contain that information when that information is otherwise provided to the persons responsible. As a general rule, the thin layer operators do not have information going beyond publicly available information enabling them to establish positively the legality of treatment subject to their liability.

Similarly, the aims pursued by the use of fan pages, such as the purpose of public relations, which cannot in themselves be perfectly understandable, do not alter the outcome of the assessment of the legal conformity of the use of a fan page. Of course, it is of great importance.

⁴² S. also on this subject Guidelines 8/2020 on the Targeting of Social media users, p. 36 et seq.

⁴³ Guidelines 07/2020 on the subject of control and production in the GDPR, version 2.0, p. 43 et seq.

The relevance of the fact that public authorities may engage in extensive public relations and directed towards a targeted group also in order to deal with false information in italics, for example. However, that objective cannot be pursued by unlawful means (data protection).

In the absence of sufficient information on the processing carried out in connection with the personal data

collected on Facebook Fanpages's call, the proper operation of a fan page by the administrators is precluded. It is also for that reason that obtaining effective consent under Article 6(1) (a) of the GDPR, assuming that that legal basis is conceivable, cannot be given either, since the necessary information which must be transmitted to the data subjects in the context of the informed consent cannot be provided (see above). The information provided up to that point by Facebook merely slowing users' interactions: those which follow the processing of personal data, including for the purposes of Insights. However, the information is so superficial and incomplete that an assessment as responsible on the basis of that information is not possible (see also above).

For the same reasons, the page operators cannot fulfil their obligations under Article 13 of the GDPR either. In that regard, the OVG Schleswig also held that the lateral operators had infringed the transparency obligations arising from Article 13 of the TMG then in force. That may be said today.

D. Transfers of funds to third parties

Any transfer of personal data already processed or processed after its transfer to a third country or an international organisation shall be authorised only if the requirements of Article 44 et seq. of the GDPR are complied with.

According to the judgment of the Court of Justice in Case C-311/18, 'Schrems II', where there is no adequacy decision for a third country, Article 45 of the GDPR requires careful verification of whether the appropriate safeguards (Article 46 of the GDPR) ensure the level of EU protection. In order to supplement the appropriate safeguards (Article 46 of the GDPR), any additional measures adopted to ensure compliance with the level of protection of personal data of the European Union must be specified by data exporters on a case-by-case basis, in so far as appropriate, in cooperation with data importers and, where appropriate, in the context of your responsibility.

The guidelines given by Facebook state as follows:

'We share the information we have gathered throughout the world, both between our establishments and IT centres and outside our partner, suppliers, service providers and third parties. Since Meta operates worldwide and has users, partner partners and employees throughout the world, it is necessary, for many reasons, to make transfers...'²⁴

'The information controlled by Meta platform Ireland Limited shall be transferred, transmitted or stored and processed in the following countries:

- *Sites where we have infrastructure or data centres such as, in particular, the United States of America, Ireland, Denmark and Sweden*
- *Countries in which meta-product products are available*

²⁴<https://www.facebook.com/privacy/policy/?subpage=9.subpage.1-WhyIsInformationTransferred>.

Other countries outside the country in which the applicant lives, in which our partners, suppliers, Service providers and others for the purposes set out in this Directive...'²⁵

As regards transport services from third countries, Meta states as follows:

Mechanisms which I take into account for the overall transfer of data

We base us on adequate mechanisms for international data transmission, for example: For the [information which we collect](#):

- relying on the decisions of the European Commission according to which they recognise that certain countries and territories outside the European Economic Area ensure an [adequate level of protection of personal data](#), those decisions are described as 'decisions on adequacy', provide us with the [information we have taken from](#) the European Economic Area in Argentina, Israel, New Zealand and Switzerland and, if the decision is applicable, to Canada, on the basis of an adequacy decision. [Furthermore](#), Commission adequacy decisions for each country are identified.
- In other cases, I refer, when data are transferred to a third country, [to standard standard B contractual clauses](#) approved by the European Commission (and to standard contractual clauses in the United Kingdom, if applicable) or to the derogations provided for by the applicable law. By way of example, we are not currently dealing with an adequacy decision in the United States of America, that is to say, we will leave when data are transferred to Meta platforms, Inc., to standard contractual clauses.
- In addition to the standard contractual clauses, I [shall also take additional measures](#) to ensure equivalent protection in the event of incorrect data being transferred.

When issues relating to international data flows and standard contractual clauses of Meta have been [contacted by E](#).

²⁵<https://www.facebook.com/privacy/policy/?subpage=9.subpage.2-WhereIsInformationTransferred>.

The data directive states that Meta relies on standard data protection clauses of the European Commission and takes additional measures:

We use a number of additional measures to protect your data. Including the following:

- Encryption and Security: We take a number of measures to protect your data. We implement a security program, including measures such as encryption where data is in transit, to protect data at all stages. We adapt and improve our security to keep head of the evolving risks and security which we face.
 - No 'back door' governmental access: We do not come from any government with design or encryption 'back doors.' We oppose that intentionally weakening our Services in this way would undermine the security that is necessary to protect the people who use our global service.
- Robust policies: For a long time, we have had a number of cooperation policies in place where we have stated that we have done and respond to government demands for use of data. We review each request for information in response to requests that we are sure only information that is personally tailored to meet to that end.
- Status for our users: Where government requests are beneficiaries (e.g. overbroad or legally deficient use, we push back and undertake to address any deficiency). Where necessary, we will challenge or reject unlawful government requirements. We would get a challenge order given to require users to redesign our Systems in a way that would undermine the security we provide to protect people's data, or that it attempted to gag us from disclosing the existence of such an order and our efforts to last it.
 - Providing transparency: We strive to be open and proactive the way we safeguard people's privacy, security and access to information online. For this reason, it is our policy to notify users of demand for information prior to any disclosure, unless we are prohibited by law from giving so or in exceptional circumstances in which there is a danger of harm. Since 2013, we've input [biannual transparency reports](#) concerning the nature and extent of government requests we receive data, including as we can provide the number of requests received from the United States Foreign Intelligence Surveillance Act (FISA) during the report in response to US. Arguments give our community visibility into how many demands we receive, and how we apply our policies and responsibilities to data demands.

You can learn more about [Standard contractual terms](#). For more information on the safety and measures we have in place to protect your data if it is transferred to the US, please see [our FAQs](#).

Market Share <https://about.fb.com/news/2021/03/steps-we-take-to-transfer-data-securely/>

The link entitled 'our FAQs' gives rise to a page on which a transparency report is published. Other information is in the present case: <https://transparency.fb.com/data/government-data-requests/further-asked-questions/>

However, for operators, even after reading the information published by Meta, even after reading the information published by Meta, the additional measures are indeed likely to avoid specific risks of user access: internal data.

In so far as the data of the use of visitors are in fact transferred: those from Meta Platforming Ireland Limited's fan pages to Meta LLC are subject to the requirements of the article. 44 et seq. of the GDPR by fan page operators, in so far as joint responsibility is sufficient. If a transmission is not actually designed per se, but only the risk of access to:

Personal information processed by the European Union under the FISA, in particular United States legislation, must be examined having regard, at the very least, to the lawfulness of such access in relation to data protection.

E. COULON Conclusion

As a result of the provision of a fan page, the fan cockle or operators are in the role of a telemedia service provider within the meaning of Article 2(2) (1) of the TTDSG. Thus, under Article 25(1) of the TTDSG, the obligation to obtain effective consent for the retention of information in final users' terminal equipment, as well as access to information already stored in the final mechanism, entails the obligation to obtain effective consent for cookies that are not strictly necessary within the meaning of Article 25(2) (2) of the TTDSG. Such consent is not required when a fan page is being used.

Furthermore, the fishing pair managers have a complementary interest: rans and Methas joint responsibility, at least for the processing of personal data collected on the basis of announced cookies. In that regard, there are no valid legal bases.

Lastly, the information obligations under Article 13 of the GDPR are not sufficiently fulfilled.