

Use of spy pixels in connection with sending out the newsletter

Date: 20-12-2022

Decision

Private companies

Serious criticism

Supervision / self-management case

Basis of treatment

Obligation to provide information

The Danish Data Protection Authority seriously criticizes the fact that Vækstfonden has neither obtained valid consents nor fulfilled the obligation to provide information through the use of spy pixels in the fund's newsletters.

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Summary

In connection with a specific complaint, the Norwegian Data Protection Authority was made aware that Vækstfonden used spy pixels in its newsletters. The supervisory authority assessed that the foundation's use of spy pixels must concern more people than just the complainant in question, and the supervisory authority therefore initiated a closer investigation of the relationship on its own initiative.

What are spy pixels?

Spy pixels are files that are placed in e-mails and where, by opening the e-mail, the recipient allows the sender to collect a number of information about the recipient, e.g. by tracking the recipient's online behavior.

As with the processing of personal data using cookies on websites, the use of spy pixels requires a processing basis according to the GDPR.

The growth fund's use of spy pixels

The growth fund used i.a. spy pixels to analyze which articles the recipients clicked on in order to optimize the organization and sending of the newsletters.

Vækstfonden acknowledged that they had not obtained consent from the recipients of their newsletter for the processing of information through the use of spy pixels, and that they had not observed the obligation to provide information regarding the

processing.

Based on this, the Danish Data Protection Authority expressed serious criticism.

Vækstfonden has stated that they have changed suppliers for sending out newsletters and that the fund has updated its privacy policy. In the decision, the Data Protection Authority has not dealt with these new circumstances.

## Decision

The Danish Data Protection Authority hereby returns to the case, which the Danish Data Protection Authority launched on its own initiative on 17 February 2022 regarding the Growth Fund's use of spy pixels in its newsletters when collecting information in connection with sending to the growth fund's subscribers.

### 1. Decision

After a review of the case, the Danish Data Protection Authority finds that there are grounds for expressing serious criticism that the Growth Foundation's processing of personal data using spy pixels in its newsletters has been in breach of the data protection regulation[1] article 6, subsection 1, and article 13. Below follows a closer review of the case and a justification for the Data Protection Authority's decision.

### 2. Case presentation

In connection with processing a specific complaint, the Danish Data Protection Authority was made aware that the Growth Fund used spy pixels in its newsletters, which were sent to the Growth Fund's subscribers.

Spy pixels are small files that are placed in e-mails, and where the recipient, by opening the e-mail, gives the sender the opportunity to collect a number of information about the recipient, e.g. by tracking the recipient's online behavior.

On the basis of the complaint, the Danish Data Protection Authority has assessed that Vækstfonden's use of spy pixels in its newsletters must be assumed to concern more registered persons than just the complainant in question. The Danish Data Protection Authority therefore chose to put the processing of the specific complaint on hold and instead investigate the situation more closely on its own initiative.

In continuation of this, by letter of 17 February 2022, the Norwegian Data Protection Authority requested the Growth Foundation for an opinion for use in processing the Norwegian Data Protection Authority's self-operation case.

The growth fund appeared on 15 March 2022 with a statement in the matter.

Vækstfonden has stated that the fund is about to change the supplier of the newsletter system. From February 2022, the

Vækstfonden has ceased to send newsletters via the system used until now.

The growth fund's answer to the Danish Data Protection Authority's question is thus based on the fund's previous use of spy pixels in its newsletters.

## 2.1. The growth fund's comments

The Growth Foundation has stated that only ordinary, non-sensitive and non-confidential personal data is collected and processed. Thus, neither sensitive information, information about CPR numbers nor information about criminal offenses is collected and processed.

It has also been disclosed to the case that the Growth Fund acts as a private actor for the treatment in question.

Vækstfonden has stated that a subscriber must provide an e-mail address when signing up for Vækstfonden's newsletters. In addition, the newsletter system pulls certain non-sensitive personal data via spy pixels, which the Growth Fund can access via reports. These are listed as:

e-mail of the newsletter recipients,

information about which country the newsletters are opened from,

how many people open the newsletter and how many times this has happened,

which articles are opened,

how the newsletter's audience is divided by gender (judging from any name in e-mail),

which recipients open more newsletters and

about how they sign up for newsletters.

Vækstfonden obtains consent from the newsletter recipients prior to sending the newsletter in accordance with the data protection regulation, article 6, subsection 1, letter a, cf. Article 7.

Vækstfonden has informed the Data Protection Authority that they consider consent to be the most suitable processing basis for the collection of personal data that takes place in connection with sending out the newsletters.

Vækstfonden uses information from spy pixels to analyze which articles news readers click on and organizes future newsletters on that basis, e.g. in relation to the order in which the stories are to be presented. Spy pixels are also used to optimize the sending of the newsletters so that they do not end up in spam filters.

In May 2021, the Growth Foundation was contacted by a newsletter recipient who asked about the Growth Foundation's use of

spy pixels in newsletters. On the basis of the inquiry, Vækstfonden initiated an investigation into the use of spy pixels in Vækstfonden's newsletters. On the basis of this study, the Growth Foundation stopped using spy pixels in newsletters from June 2021. Following this, the foundation updated its consent text when signing up for the newsletters.

At the same time, it was planned that a new consent should be obtained from existing newsletter recipients for the collection of data using spy pixels. Due to human error and several resignations in the Growth Fund's communications department, the "new" consent was not obtained from the existing newsletter recipients who had previously given consent to receive before the planned changes. The Growth Fund first became aware that no renewed consent had been obtained from newsletter recipients when the Danish Data Protection Authority contacted it on 17 February 2022.

At the same time that Vækstfonden ascertained this, the fund also became aware that spy pixels had not been deactivated by mistake when Vækstfonden sent out newsletters in the period September 2021 – January 2022.

The Norwegian Data Protection Authority's investigation into the case has given Vækstfonden the opportunity to:

to ensure that all newsletter recipients consent to the use of spy pixels,

that the new supplier of the newsletter system contains the necessary built-in functions, so that in the future it is avoided that human errors occur when sending out newsletters, etc.,

that the Growth Fund's DPO regularly informs the Growth Fund's Risk Committee about the status of the progress of the agreed recommendations, and

to ensure measures to ensure that errors such as the one referred to in the case do not happen again, i.a. by involving the Growth Fund's Risk Department.

In addition, Vækstfonden has put the sending of newsletters on hold until the transition to a new supplier. Vækstfonden plans to obtain new consent from all existing newsletter recipients as soon as the new system is implemented.

With regard to the Vækstfonden's duty to provide information in connection with the use of spy pixels, the Vækstfonden chose as part of the investigation in May 2021 to update its privacy policy, which is on the Vækstfonden's website, so that it also described the use of spy pixels. The Growth Foundation intended to insert a reference to the privacy policy in the consent text when signing up for the foundation's newsletter. However, in continuation of the Danish Data Protection Authority's investigation, Vækstfonden has become aware that the reference has not been inserted.

The Growth Fund thus intended to insert a new reference to the privacy policy in accordance with Article 13 of the Data

Protection Regulation, but has had to admit that due to human error this has not been fully implemented. The consent text will be updated with a reference to the privacy policy in connection with the new system being implemented.

In conclusion, the Growth Fund has stated that the fund has established a deletion procedure for the information stored in the Growth Fund's digital systems. In addition, follow-up procedures have been established for whether deletion has actually been carried out in the systems. However, the deletion procedure for the Growth Fund's newsletter system has not included information from spy pixels.

The Growth Fund has also deleted all data collected before 30 June 2021.

### 3. Reason for the Data Protection Authority's decision

Of the data protection regulation, article 6, subsection 1, letter a, it follows that the processing of personal data is lawful if the data subject has given consent to the processing of information about him.

It also follows from Article 13 of the Data Protection Regulation that, in cases where personal data has been collected from the data subject, the data controller must, at the time the data is collected, notify the data subject of a series of information.

The Danish Data Protection Authority then assumes that the Growth Foundation, by using spy pixels in its newsletters, has processed personal data referred to in Article 6 of the Data Protection Regulation about its newsletter recipients, and that the Growth Foundation has processed this information with a view to being able to analyze which articles the newsletter recipients clicked on to and on that basis organize the presentation of news articles. Spy pixels have also been used to optimize the sending of the newsletters.

The Danish Data Protection Authority also assumes that the Growth Fund by mistake during the summer of 2021 did not collect renewed consent from its newsletter recipients for the processing of personal data by using spy pixels in its newsletters, and that the Growth Fund by mistake during the period September 2021 - January 2022 had not deactivated the use of spy pixels when sending newsletters.

Vækstfonden has acknowledged that it has not obtained consent from its newsletter recipients for the processing of information using spy pixels and has not observed its obligation to provide information according to Article 13 of the Data Protection Regulation.

The Danish Data Protection Authority therefore finds overall grounds for expressing serious criticism that the Growth Fund's processing of personal data has been in breach of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter a and

article 13.

The Danish Data Protection Authority has also noted that the Growth Foundation is about to switch to a new supplier for sending newsletters, and is in the process of updating the foundation's consent text so that it will in future contain a reference to the privacy policy, where you can read more about the Growth Foundation's processing of personal data. The Danish Data Protection Authority's decision in the present case did not relate to this.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free exchange of such data and on the repeal of Directive 95/46/EC (general regulation on data protection).