

Friday, June 8, 2018 2: Press releases Facebook fan page operators need to take action, Facebook need to take action The judgment of the Court of Justice of the European Union (ECJ) on June 5, 2018 made it clear: Facebook fan page operators are jointly responsible with Facebook for data protection . Now the question arises: what to do? Marit Hansen, the Schleswig-Holstein State Commissioner for Data Protection, makes it clear: "The judgment originally relates to a case from 2011 and must therefore take into account the European legal situation applicable at the time. However, this clarification of the basic question should by no means be dismissed as backward-looking. On the contrary: The requirements of the European Court of Justice also apply to the present, which is shaped by the legal framework of the General Data Protection Regulation." will comply with the Basic Regulation. However, it has recently become known that from May 18 to 27, 2018, all newly provided user content was set to "public" due to an error. This means: Once again, data from Facebook members was visible to third parties, even if users wanted to restrict access to their close friends. After the error was found, it took several days to fix the problem. It took even longer for the affected Facebook members to be notified of this data breach. In view of the ECJ judgment, the conference of the independent data protection authorities of the federal and state governments has described the urgent need for action in a resolution: Whoever visits a fan page must be informed transparently and in an understandable form about which data is used for which purposes by Facebook and the fan page operators are processed. This applies both to people who are registered on Facebook and to non-registered visitors to the network. Fan page operators should ensure themselves that Facebook provides them with the information they need to fulfill the information obligations mentioned. Insofar as Facebook tracks visitors to a fan page by collecting personal data, whether through the use of cookies or comparable techniques or by storing the IP address, the consent of the user is required, which fulfills the requirements of the General Data Protection Regulation. For the areas of joint responsibility between Facebook and fan page operators, an agreement must be established as to which of them fulfills which obligation of the General Data Protection Regulation. Essential points of this agreement must be made available to the data subjects so that they can exercise their rights as data subjects. The agreement between Facebook and Facebook fan page operators is required by Article 26 of the General Data Protection Regulation to clarify who has to fulfill which obligations. Hansen points out that Facebook has apparently not yet reacted to the ECJ ruling and has not yet offered the fan page operators the conclusion of the legally mandatory agreement under Article 26 of the General Data Protection Regulation - a clear violation of the law with regard to all parties involved joint responsibility, i.e. for the fan page operators and Facebook. The same applies to obtaining proper declarations of consent for data processing when

using mechanisms for tracking users. Some fan page operators, on the other hand, contact the Schleswig-Holstein State Commissioner for Data Protection because they are trying to contact Facebook in order to be able to assume their data protection responsibility. Hansen makes it clear: "Doing nothing is not an option! It's not about each individual fan page operator negotiating their own conditions directly with Facebook. However, fan page operators have their own responsibility to only maintain websites that comply with data protection regulations. Facebook, on the other hand, claims that the offer is data protection compliant. Then it should be easy for the necessary measures to be taken immediately so that both Facebook and the Facebook fan page operators fulfill their responsibilities. Facebook must finally put butter in the fish." Further information on the case and the judgment can be found here: <https://www.datenschutzzentrum.de/facebook/> Resolution of the conference of independent data protection authorities of the federal and state governments on the ECJ judgment of 05.06 .2018: "The time of irresponsibility is over!" If you have any questions, please contact: Independent State Center for Data Protection Schleswig-Holstein

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