

Summary Final Decision Art 60

Own volition

Administrative fine

EDPBI:BE:OSS:D:2020:200

Background information

Date of final decision:	14 May 2020
Date of broadcast:	02 April 2021
LSA:	BE
CSAs:	AT, CY, DE-BB, DE-BE, DE-BW, DE-BY, DE-NI, DE-NW, DE-RP, DK, ES, FR, HU, IE, IT, LV, NL, NO, PT, SE, SI, SK.
Legal Reference(s):	Lawfulness of processing (Article 6), Consent (Article 7)
Decision:	Administrative fine
Key words:	Social media, Lawfulness of processing, Consent, Legitimate interest

Summary of the Decision

Origin of the case

As part of an own volition enquiry, the LSA assessed the compliance of a social media platform in relation to processing of contact information relating to members and non-members of the platform for the purposes of sending invitations.

In this regard, the LSA found that the social media platform collected and stored non-user contact details on its servers after requesting from its existing users the permission to access their contacts' address book, which included name, phone numbers and "other information on third-party platforms". The non-users' contact details were then used by the social media platform to send invitation messages to these non-users via the member-user's profile.

As regards the procedure for sending emails to existing members, the LSA noted that the list of recipients for sending these invitations was pre-ticked by default.

In addition, the social media platform retained the personal data for a period of three months after closure of the account by the users, unless a user decided to end the synchronization of its contacts.

Findings

Firstly, the LSA found that the so-called “household exemption” did not apply to the storage of contact details by the platform and the sending of invitations in the name and on behalf of the platform, considering that the social media platform controlled both the means and purposes of this processing.

Regarding the legal basis for the collection of non-users’ personal data, the LSA found that this processing could not rely on the legal basis of the consent as users giving access to their contact list cannot give valid consent on behalf of non-users. The LSA also considered that whereas the controller could not legally invoke a “legitimate interest” as a legal basis for this processing, contact details of non-users can however be used to check whether or not they are already members of the platform (“compare and forget” action), under the condition that appropriate technical and organisational measures are implemented.

As to the processing relating to the sending of invitation emails to non-users, the LSA also considered, in light of the circumstances of the processing, that neither consent of non-users, nor the legitimate interest of the controller could apply as legal basis.

Concerning the processing relating to the sending of invitation emails to existing users, the LSA concluded that this processing could not rely on a valid consent to the extent that the list of recipients was pre-ticked. However, the LSA stressed that this processing was not necessarily unlawful as it may rely on the legal basis under Article 6.1.b GDPR or Article 6.1.f GDPR, depending on the circumstances of the processing. In this respect, the LSA pointed out that pre-ticked lists of recipients would be also problematic in case of reliance on one of these legal bases.

Decision

The LSA imposed an administrative fine of 50,000 euros to the controller for the unlawful processing of non-users’ personal data, as well as for the processing of existing users’ personal data during the period when the list of recipients of invitation emails were pre-ticked in advance.