



## Recommendation no. 03/2017 of 12 April 2017

**Subject:** Update of own-initiative recommendation no. 04/2015 concerning 1) Facebook 2) Internet and/or Facebook users as well as 3) users and providers of Facebook services, particularly social “plug-ins” (CO-AR-2017-004)

The Commission for the Protection of Privacy (hereinafter “the Privacy Commission”);

Having regard to the Act of 8 December 1992 *on the protection of privacy relating to the processing of personal data* (hereinafter the “Privacy Act”), particularly Article 30;

Having regard to the own-initiative recommendation no. 04/2015 concerning 1) Facebook 2) Internet and/or Facebook users as well as 3) users and providers of Facebook services, particularly social “plug-ins”;

Having regard to the Order of 9 November 2015 of the Dutch-speaking Court of First Instance of Brussels, In Chambers;

Having regard to the Judgment of 29 June 2016 of the Brussels Court of Appeal, in civil proceedings, 18<sup>th</sup> chamber;

Having regard to the Facebook Group’s attendance of the hearing of 12 April 2017, as represented by its counsel;

Having regard to the attendance of De Persgroep, the RTBF and Gezondheid NV of the hearing of 12 April 2017;

Having regard to the report by Mr Willem Debeuckelaere and Mr Stefan Verschuere;

Issues the following recommendation on 12 April 2017:

1. Introduction.....	3
2. Proceedings .....	4
A) Summary proceedings.....	5
B) Ordinary proceedings .....	5
C) European cooperation .....	6
3. Changes in the cookie practices and policy of Facebook.....	7
A) First modification: summary proceedings in first instance (September 2015) .....	7
B) Second modification: after formal notification (December 2015) .....	8
C) Third modification: summary proceedings upon appeal (May 2016) .....	10
4. Facebook's current cookies policy and practices .....	11
A) Background and technical description.....	11
B) Main findings with regard to Facebook users .....	11
C) Main findings with regard to non-users of Facebook.....	13
D) Legal analysis: Privacy Act and the Act on Electronic Communication .....	15
(1) The information provided .....	16
(2) How consent is inferred .....	18
(3) Freedom of consent .....	18
(4) Specificity of consent .....	19
(5) The choices offered by Facebook.....	19
(6) Cookies placed on third party websites .....	21
(7) Proportionality assessment .....	22

## 1. Introduction

1. On 13 May 2015, the Privacy Commission adopted an own-initiative recommendation concerning the processing of personal data through Facebook social plug-ins ('recommendation no. 04/2015')<sup>1</sup>. The recommendation was addressed to three recipients: (1) the Facebook Group; (2) Internet users in general (both Facebook users and non-users); and (3) website owners who, in one way or another, use and offer Facebook services or products on web pages, including Facebook social plug-ins.

2. As regards the Facebook Group, the following recommendations were made:

- *"Facebook must provide full transparency about the use of cookies. For each cookie separately, Facebook must specify its content (such as unique identifiers, language settings, etc.) and its purpose (such as advertising, security etc.). These descriptions must always be kept up-to-date and be offered to users of Facebook services in an readily accessible way.*
- *Facebook must refrain from systematically placing long-life and unique identifier cookies with non-users of Facebook, as well as from collecting and using data by means of social plug-ins unless it obtains the data subjects' unambiguous and specific consent through an opt-in and to the extent that this is strictly necessary for legitimate purposes. Both deactivated users and users who have logged out must be treated like non-users in this context.*
- *Facebook must refrain from collecting and using the data of Facebook users by means of cookies and social plug-ins, except when (and only to the extent that) this is strictly necessary for a service explicitly requested by the user or unless it obtains the data subjects' unambiguous and specific consent through an opt-in since working with an opt-out does not result in unambiguous consent.*
- *Facebook must limit its range of integration possibilities for social plug-ins to privacy-friendly versions meeting data protection requirements. More particularly, for the design of social plug-ins the Privacy Commission recommends that:*
  - *The mere presence of a social plug-in on an external website does not lead to the transmission of data to Facebook. By way of example the Privacy Commission refers to the concept of the "Social Share Privacy" tool, where data are not sent to the involved social network until users have signified unambiguously by means of a mouse click that they want to use the social network button. Other solutions,*

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<sup>1</sup> Privacy Commission, Own-initiative recommendation no. 04/2015 of 13 May 2015 relating to 1) Facebook, 2) Internet and/or Facebook users as well as 3) users and service providers of Facebook services, particularly plug-ins, available at [https://www.privacycommission.be/sites/privacycommission/files/documents/recommendation\\_04\\_2015\\_0.pdf](https://www.privacycommission.be/sites/privacycommission/files/documents/recommendation_04_2015_0.pdf).

*such as the integration of a URL/link offered by Facebook as an integration possibility until March 2015, are nevertheless not excluded.*

- *If loading (non-personalised) content from Facebook servers is required, no cookies are sent to Facebook.*
- *If personalisation is necessary, only session cookies are used.*
- *The transmission of cookies used by Facebook in the context of security (such as the "datr" cookie) is limited to logging in to Facebook or to pages that are part of the facebook.com domain (but not on web pages of third parties with social plug-ins).*
- *Facebook must adapt its user interface in such a way that it obtains its users' unambiguous and specific consent through an opt-in for any further collection and use of information obtained by means of cookies, particularly for advertising purposes."*

3. At the time, the Privacy Commission indicated that its recommendations could always be supplemented, changed or adapted, in particular if the factual situation were to change or if changes to Facebook's "terms of use" and practices and services were to justify this.<sup>2</sup>

4. Since the publication of recommendation 04/2015, Facebook has made substantial changes to its cookie practices and policy. The purpose of the current recommendation is to update recommendation 04/2015 in the light of the changes that took place. The current recommendation concerns new elements that require further analysis. As regards the other elements, such as the competence of the Privacy Commission and the applicability of the Privacy Act, the Privacy Commission refers to its findings as set out in recommendation 04/2015.<sup>3</sup>

## **2. Proceedings**

5. After sending recommendation 04/2015, the Privacy Commission sent a formal notice of default to Facebook on 18 May 2015 for violations of the Privacy Act and Article 129 of the Act on Electronic Communications (AEC). In the correspondence that followed, Facebook showed no firm intention of putting an end to the violations that were cited.

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<sup>2</sup> Recommendation 04/2015, paragraph 3.

<sup>3</sup> See Recommendation 04/2015, paragraphs 23 et seq.

A) Summary proceedings

6. On 10 June 2015, the Privacy Commission summoned Facebook Inc., Facebook Belgium SPRL and Facebook Ireland Limited before the President of the Dutch-speaking Court of First Instance of Brussels, sitting in chambers to deal with urgent matters. The subject-matter of the summary proceedings was limited to the registration the browsing behaviour of Belgian residents who are not Facebook users through social plug-ins and cookies, in particular through the so-called "datr" cookie.

7. In a decision of 9 November 2015, the President of the Court of First Instance of Brussels, sitting in chambers to deal with urgent matters, ordered Facebook Inc., Facebook Ireland Limited and Facebook Belgium SPRL to refrain from the following, in respect of any Internet user on Belgian territory who is not a registered member of Facebook's online social network:

- *"to cease placing a "datr" cookie when they land on a web page of the facebook.com domain without providing them with prior sufficient and adequate information about the fact that Facebook places the "datr" cookie with them and about the way Facebook uses that "datr" cookie through social plug-ins; and*
- *to cease collecting the "datr" cookie through social plug-ins placed on third-party websites."*<sup>4</sup>

The order was issued subject to a penalty payment of EUR 250,000 for every 24-hour period during which the order was not complied with.

8. On 4 January 2016, Facebook lodged an appeal against the decision of the judge in chambers.

9. On 29 June 2016, the Court of Appeal of Brussels quashed the decision of the first judge in chambers on grounds that (1) Belgian courts and tribunals do not have international jurisdiction vis-à-vis Facebook Inc. and Facebook Ireland; and (2) the application was not considered urgent.<sup>5</sup> The Court of Appeal did not rule on the Privacy Commission's competence or on the applicability of the Privacy Act to Facebook Inc. and Facebook Ireland. It also did not rule on the *prima facie* merits of the application.

B) Ordinary proceedings

10. On 11 September 2015, the Privacy Commission summoned Facebook Inc., Facebook Belgium SPRL and Facebook Ireland Limited on the merits before the Dutch-speaking Court of First Instance of Brussels. The subject matter of the proceedings on the merits concerns the processing of personal

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<sup>4</sup> See the Decision of the Dutch-speaking Court of First Instance of Brussels, Division of Summary Proceedings, Temporary measures, 15/54/C, 9 November 2015, available at <https://www.privacycommission.be/sites/privacycommission/files/documents/Judgement%20Belgian%20Privacy%20Commission%20v.%20Facebook%20-%2009-11-2015.pdf>.

<sup>5</sup> Brussels Court of Appeal, Ruling of the 18<sup>th</sup> chamber, civil cases division, roll number 2016/KR/2, 29 June 2016, available at <https://www.privacycommission.be/sites/privacycommission/files/documents/arrest%20Facebook.pdf>.

data through Facebook social plug-ins as regards both users and non-users of Facebook. The introductory hearing took place on 15 January 2016 and the pleadings are expected to take place in October 2017.

C) European cooperation

11. The Privacy Commission is part of a Contact Group set up at the European level, together with the data protection authorities of France, the Netherlands, Spain and Hamburg. The members of the Contact Group regularly exchange information. At the same time, every member of the Contact Group conducts its own investigations in complete independence.

12. Following the decision of the President of the Court of First Instance of Brussels, the Contact Group's data protection authorities issued a common statement on 4 December 2015 calling on Facebook to comply with the ruling of the judge in chambers not only in Belgium but throughout the European Union:

*"The Contact Group has taken note of the judgement in summary proceedings of the President of the Dutch-Speaking Court of First Instance of Brussel, Belgium, of 9 November 2015 in the case of the President of the Belgian Data Protection Authority v. Facebook as well as the recommendations of the Belgian Data Protection Authority.*

*[...]*

*While recognizing the right of Facebook to appeal the aforementioned judgment, the contact group expects Facebook to comply with these orders in all territories of the EU as a means of contributing to ensure consistency with the requirements of the European Directive 95/46/EC and Directive 2002/58/EC, as amended by Directive 2009/136/EC."*<sup>6</sup>

13. On 26 January 2016, the French data protection authority (CNIL) issued a formal notice of default to Facebook, concerning among others the registration of personal data of non-Facebook users through cookies and social plug-ins<sup>7</sup>.

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<sup>6</sup> Common Statement by the Contact Group of the Data Protection Authorities of The Netherlands, France, Spain, Hamburg and Belgium, 4 December 2015, available at <https://www.privacycommission.be/sites/privacycommission/files/documents/Common%20Statement%20Facebook%20-%20final%20-withOUT%20signatures.pdf>.

<sup>7</sup> Decision no. 2016-007 of the French Data Protection Authority (CNIL) dated 26 January 2016 calling FACEBOOK INC. and FACEBOOK IRELAND, available at [https://www.cnil.fr/sites/default/files/atoms/files/d2016-007\\_med\\_facebook-inc-ireland.pdf](https://www.cnil.fr/sites/default/files/atoms/files/d2016-007_med_facebook-inc-ireland.pdf).

### 3. Changes in the cookie practices and policy of Facebook

14. Since the publication of recommendation 04/2015, Facebook has modified its cookie policy and practices several times. A first modification took place during the summary proceedings before the President of the Court of First Instance. A second modification was made after the order of that President was served. A third modification took place between the service of the order and the ruling of the Court of Appeal of Brussels, sitting in chambers to deal with urgent matters.

#### A) First modification: summary proceedings in first instance (September 2015)

15. During the summary proceedings before the President of the Court of First Instance, Facebook introduced, for the first time, a so-called “cookie banner”. The cookie banner consisted of a small banner at the top of the Facebook website, stating the following:

*“Cookies help us provide, protect and improve Facebook’s services. By continuing to use our site, you agree to our <cookie policy>.”*

The “cookie banner” was displayed to non-users on European territory who visited (for the first time<sup>8</sup>) a web page belonging the facebook.com domain. When the user clicked on the words “cookie policy” in this text, he or she was redirected to a page titled *“Cookies, pixels and similar technologies”*, which included the full version of the cookie policy at the time (concerning both users and non-users).

16. The introduction of the “cookie banner” was accompanied by several changes in Facebook’s practices with regard to the placement of cookies. Facebook no longer immediately placed the “datr” cookie as soon as an Internet user visited a web page belonging to the facebook.com domain. Instead, the “datr” cookie was placed as soon as the non-user clicked further anywhere on the web page<sup>9</sup>. The only exception to this rule were the words “cookie policy” in the cookie banner. However, when the non-user subsequently clicked on a link in this cookie policy to get more information (for example a link to the general terms and conditions or Facebook’s data policy), the “datr” cookie was immediately placed.

17. The changes implemented by Facebook were considered insufficient by the President of the Court of First Instance on the grounds that:

- (1) Facebook cannot consider these actions as granting informed consent<sup>10</sup>;
- (2) a non-Facebook user who has once visited the facebook.com domain (and consequently already received the Facebook “datr” cookie on his hard drive) cannot be qualified as a

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<sup>8</sup> Or after manually deleting the Facebook cookies in question from their browser.

<sup>9</sup> For example, clicking on a photo or link to change the language.

<sup>10</sup> Ruling of the Dutch-speaking Court of First Instance of Brussels, In Chambers, 15/54/C, 9 November 2015, p. 24.

“user” within the meaning of Article 129 of the Act on Electronic Communications, who explicitly requests a Facebook service every time he visits a third-party website on which a social plug-in has been implemented<sup>11</sup>; and

- (3) Facebook cannot rely on any of the other legitimate grounds of article 5 of the Privacy Act<sup>12</sup>.

B) Second modification: after formal notification (December 2015)

18. The order of the President of the Court of First Instance of Brussels was served to Facebook on 2 December 2015<sup>13</sup>. Following this formal notification, Facebook decided to deny access to Internet users in Belgium who do not have a Facebook account. When a non-user tried to visit a web page that is part of the facebook.com domain (except for certain pages such as Facebook's sign-up page), the following message would appear on the screen:

***'Permission denied***

*Sorry, this content isn't available right now. We have implemented additional security features that require you to log into Facebook to view this page from Belgium. <Learn why>.'*

A visitor who clicked on “learn why”, received the following information:

***'Why did my experience on Facebook change in Belgium?***

*Keeping your account secure is extremely important to us. Over the years we've developed a number of sophisticated security tools that help protect your account without interrupting your experience on Facebook.*

*Because of demands made by the Belgian Privacy Commission, we recently had to limit our use of one important security tool, the datr cookie. Please read on to learn how this tool works and why we're no longer showing public Facebook pages and other content in Belgium to people who don't have Facebook accounts.*

***'What is the datr cookie and how does it help keep Facebook secure?***

*This cookie is a security tool we've used for more than 5 years around the world to help us tell the difference between legitimate visits to Facebook by real people and illegitimate ones (by spammers, hackers trying to access other people's accounts, or other bad actors).*

*This cookie can help us secure Facebook by providing statistical information about a web browser's activities, such as the volume and frequency of requests. Our security systems*

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<sup>11</sup> *Ibid*, p. 25.

<sup>12</sup> *Ibid*, p. 27-29.

<sup>13</sup> The notice was served to Facebook Inc. on 7 and 8 December 2015 and to Facebook Ireland Limited on 10 December 2015.

*analyze this browser data to help us tell the difference between regular people logging into their accounts and potential attackers.*

*For example, if the datr cookie shows that a browser has been visiting multiple pages on Facebook in a very short time frame, it's probably being used by an automated computer program called a "bot" to do something improper like steal people's content. If the datr cookie shows normal patterns of visiting sites over multiple days, our systems understand that the browser is being used by a regular person who should be able to access Facebook normally.*

*The cookie helps us maintain the security of the site in a number of other ways. For example, we use it to:*

- *Prevent hackers from creating fake accounts that can be used to send you spam.*
- *Reduce the risk that your account could be taken over by someone else.*
- *Protect your photos, posts and other content from being stolen.*
- *Stop technical attacks that could make our site inaccessible to you and others—and help prevent future attacks.*
- *Help you log in faster so you can get to the people, photos and messages you care about—without putting your info at risk.*

*For people who do not have Facebook accounts, we log and retain the information from the datr cookie that we receive from other sites for only 10 days. Those 10 days give our systems enough time to analyze the data and help guard against the harmful actions described above.*

*Almost all sites use cookies. For example, all of the top 25 Belgian websites use cookies when people visit. These websites use cookies for analytics and many other reasons. A majority of these websites do not tell people about their cookies practices through clear notices at the top of their screens. Facebook does provide this type of notice, and we also explain how we use cookies (like datr) for security purposes in our cookies policy.*

*The Belgian Privacy Commission, however, has required that we stop using the datr cookie when people without Facebook accounts in Belgium interact with Facebook. In the absence of this tool, we have to treat any visit to our service from an unrecognized browser in Belgium as potentially dangerous and take additional steps to help keep you and other people secure on Facebook. To protect people's accounts and our service, we also need to require people without Facebook accounts to log in to see content on public pages and other content that is available to everyone else on the Internet outside of Belgium (where we are able to use the cookie).*

*We recognize that these measures unfortunately may limit and interrupt your experience on Facebook. Thanks for helping us continue to provide a secure Facebook experience for our Belgian community.*

By way of a letter dated 9 December 2015, Facebook informed the Privacy Commission that it had implemented the order in its entirety.

19. For the sake of completeness, the Privacy Commission notes that it did not recommend Facebook to render its public pages inaccessible to non-users residing on Belgian territory. Nor did it recommend Facebook to stop the use of cookies for security purposes entirely. In recommendation 04/2015, Facebook was recommended (1) to comply with legal requirements concerning transparency; (2) to obtain the informed consent of the data subject before placing or collecting persistent and uniquely identifying cookies (except where strictly necessary for a service explicitly requested by the user); and (3) that the transmission of cookies used by Facebook in the context of security (such as the “datr” cookie) be limited to logging into Facebook or to pages that are part of the facebook.com domain (but not on web pages of third parties with social plug-ins)<sup>14</sup>.

C) Third modification: summary proceedings upon appeal (May 2016)

20. By way of a letter dated 31 March 2016, Facebook indicated that it would again modify its cookies policy, cookie banner and technical approach regarding its cookies (including the moment at which it places cookies).

21. One of the main changes to Facebook’s *cookies policy* concerns non-users of Facebook. From that moment onwards, Facebook would use information on the browsing behaviour of both users and non-users to carry out profiling for advertising purposes. Both users and non-users of Facebook would be assimilated in that respect. Facebook also indicated that the new cookies policy would provide increased transparency, especially with regard to the name, content, purpose and lifespan of the cookies used by Facebook.

22. In its letter dated 31 March 2016, Facebook also made clear that it would adapt its “*cookie banner*” in accordance with changes made to the content of its cookies policy. The cookie banner would now include the following text:

*‘We use cookies to help personalise content, tailor and measure ads, and provide a safer experience. By clicking or navigating the site, you agree to allow our collection of information on and off Facebook through cookies. Learn more, including about available controls: <cookies policy>’.*<sup>15</sup>

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<sup>14</sup> See also paragraph 2 above.

<sup>15</sup> Letter of 31 March 2016 addressed by Facebook to the President of the Privacy Commission, p. 2.

23. As far as the *placement* of cookies was concerned, Facebook indicated that certain actions would no longer result in the placement of cookies. For example, changing the site language setting would no longer be considered by Facebook as “consent” on the user’s part.

24. Facebook introduced its new cookie banner and new policy in May 2016. For non-Facebook users in Belgium, Facebook’s public web pages remained inaccessible until November 2016. However, the new cookie banner and the new policy were already introduced in other European countries.

#### **4. Facebook’s current cookies policy and practices**

##### **A) Background and technical description**

25. Facebook offers owners of external websites various social plug-ins, including the “Like” and “Share” buttons. These social plug-ins allow Facebook users to share content from an external website via the social network. At the same time, they also enable Facebook to monitor the browsing behaviour of both users and non-users of Facebook on these external websites (known as “third-party tracking”)<sup>16</sup>.

26. Facebook’s tracking practices using cookies and social plug-ins vary depending on the circumstances. Therefore, a distinction is made in the technical findings below between, on the one hand, the persons concerned, i.e. users and non-users of Facebook and, on the one hand, the different scenarios (logged in, logged out, deactivated or opted out)<sup>17</sup>.

##### **B) Main findings with regard to Facebook users**

###### *- Logged in users*

27. If a user is logged into Facebook and visits a web page with a social plug-in, Facebook receives up to 12 cookies together with a.o. the URL of the visited page. The cookies received include the following 5 uniquely identifying cookies:

- c\_user (contains the Facebook user ID);
- datr (timestamp and browser identifier);
- fr (user and browser ID, timestamp, miscellaneous other data);
- lu (user ID and miscellaneous log in information); and

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<sup>16</sup> “Monitoring” or “tracking” is understood here as the collection of information on the browsing behaviour of Internet users on different websites. See also recommendation 04/2015, paragraphs 57-61.

<sup>17</sup> The technical findings summarised below were conducted between 29 November 2016 and 23 February 2017. The full technical report titled “Facebook tracking through social plug-ins” can be found at [https://www.privacycommission.be/sites/privacycommission/files/documents/technical\\_report\\_03\\_2017.pdf](https://www.privacycommission.be/sites/privacycommission/files/documents/technical_report_03_2017.pdf).

- sb (timestamp and browser identifier)<sup>18</sup>.

28. These findings confirm that Facebook tracks the browsing behaviour of logged in users through social plug-ins outside the domain of the Facebook social network. According to the "Browser Cookies" table, which can now be accessed via a hyperlink in the Facebook cookies policy, the aforementioned cookies serve the following purposes:

- c\_user: is used to authenticate the identity of Facebook users;
- datr: is used for site security and integrity purposes, for account recovery and the identification of potentially compromised accounts;
- fr: is used to deliver, measure and improve the relevance of advertisements;
- lu: is used to record whether the user has chosen to remain logged in;
- sb: is used for login authentication purposes.

- *Logged out users*

29. If a user has logged out from Facebook and visits a web page with a social plug-in, Facebook receives a total of 6 cookies together with a.o. the URL of the page visited. The cookies received include the 4 uniquely identifying cookies "fr", "datr", "lu" and "sb".

30. These findings confirm that Facebook tracks the browsing behaviour of logged out users through social plug-ins outside the domain of the Facebook social network.

- *Deactivated users<sup>19</sup>*

31. If a user has deactivated his account and visits a web page with a social plug-in, Facebook receives a total of 5 cookies together with a.o. the URL of the page visited. The cookies received include the 4 uniquely identifying cookies "fr", "datr", "lu" and "sb".

32. These findings confirm that Facebook tracks the browsing behaviour of deactivated users through social plug-ins outside domain of the Facebook social network.

- *Users who have opted out*

33. The opt-out mechanism for targeted advertisements that Facebook offers its users has been amended somewhat since recommendation 04/2015. While users could previously opt out only by

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<sup>18</sup> According to the "Browser cookies" table that Facebook makes available via a hyperlink in its cookie use policy (Facebook, "Cookies and other storage technologies" <https://www.facebook.com/policies/cookies>), page last accessed on 18 December 2016.

<sup>19</sup> "Deactivated users" are those who have temporarily deactivated their account but have not permanently deleted it.

visiting the external website of the European Interactive Digital Advertising Alliance ([www.youronlinechoices.eu](http://www.youronlinechoices.eu)), users can now also opt out from targeted advertisements via their Facebook account's advertisement settings. Facebook however still advises users to also opt out via the external website of the European Interactive Digital Advertising Alliance.

34. If a user opts out of Facebook's targeted advertisements via his Facebook account's advertisement settings and/or the opt-out mechanism on the European Interactive Digital Advertising Alliance website suggested by Facebook and visits a web page with a social plug-in, Facebook receives the uniquely identifying cookies "c\_user" (if the user is logged in), "datr", "lu", "fr" and "sb". According to Facebook, one of these cookies, namely the "fr" cookie, is specifically used for advertising purposes.<sup>20</sup>

35. These findings confirm that Facebook tracks the browsing behaviour of users through social plug-ins outside the domain of the Facebook social network, regardless of whether or not they have opted out of targeted advertisements.

- *Main changes*

36. In comparison to recommendation no. 04/2015, the technical findings with regard to users are virtually identical. The most important changes are, on the one hand, the use of an additional uniquely identifying cookie, called "sb", and on the other hand the possibility for users to opt out of targeted advertisements via the Facebook interface (although the technical findings in relation to third-party tracking remained unchanged).

C) Main findings with regard to non-users of Facebook

37. When a non-user visits a web page that is part of the facebook.com domain<sup>21</sup> for the first time, Facebook displays a cookie banner at the top of the page including a link to the cookies policy. Facebook does not place a cookie when loading this page.

38. Facebook places a uniquely identifying "datr" cookie with a 2-year lifespan as soon as a non-user interacts with a web page that is part of the facebook.com domain, for example, if he clicks in an empty text field or opens a photo. Exceptions to interactions that do not result in the placement of the "datr" cookie include opening a link to the cookies policy (also including links within that page) or changing the language<sup>22</sup>.

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<sup>20</sup> See Facebook, "Cookies and other storage technologies", <https://www.facebook.com/policies/cookies>.

<sup>21</sup> This does not refer only to the Facebook home page, but also a Facebook fan page, Facebook page of a store, Facebook page of an event (party, flea market, etc.).

<sup>22</sup> When a non-user changes the language settings, Facebook places the "local" cookie that retains the language preference and the "x-src" session cookie that is used for statistics and surveys.

39. When the data subject (browser) subsequently visits a web page with a Facebook social plug-in, Facebook again in principle receives this uniquely identifying “datr” cookie each time together with the URL of the visited page.

40. These findings confirm that Facebook tracks the browsing behaviour of non-Facebook users through social plug-ins outside the domain of the Facebook social network.

41. In addition, the Privacy Commission found that in certain circumstances, Facebook also places cookies for non-users even when they have not previously visited a web page belonging to the facebook.com domain. The Privacy Commission was able to observe, for example, that Facebook places an “fr” cookie with non-users of Facebook when they visit the sites hln.be, rtbf.be and gezondheid.be, even if the data subject has never previously visited any Facebook website. In the cases observed, the “fr” cookie was placed each time during the loading of a so-called “Facebook pixel”<sup>23</sup>. Further research conducted by the Privacy Commission shows that since 1 August 2016, Facebook places an “fr” cookie on at least 10,000 websites from a third party position.

- *Main changes*

42. In comparison to recommendation 04/2015, Facebook no longer immediately places the uniquely identifying “datr” cookie with non-users when loading a web page belonging to the facebook.com domain or on external websites (like the opt-out website of the European Interactive Digital Advertising Alliance) where Facebook is in a third party position<sup>24</sup>. Facebook now postpones the placement of cookies until the non-user interacts with the Facebook page and after displaying the cookie banner.

43. It should be noted that in Belgium, in contrast to what happens in other countries such as France, at the time of the technical findings, Facebook does not place the “fr” cookie when a non-user interacts with a web page that is part of the facebook.com domain, despite Facebook’s intention to also offer targeted advertising to non-users<sup>25</sup>. On the other hand, Facebook places the “fr” cookie when non-users in Belgium visit certain websites of third parties, including hln.be, rtbf.be and gezondheid.be.

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<sup>23</sup> Such Facebook pixels are again a technology that Facebook makes available to operators of external websites. However, this technology does not appear in this case as a button or icon on the external website, but as a dot invisible to the naked eye: a pixel. Just like Facebook’s social plug-ins, the Facebook pixel is a piece of software code developed by Facebook. This piece of code triggers an automatic connection between the web browser of a user and the Facebook servers, when the user loads a web page on which this pixel is located. See, for example, Facebook, “Facebook Pixel Implementation Guide”, <https://en-gb.facebook.com/business/help/952192354843755>.

<sup>24</sup> See paragraph 72 of Recommendation no. 01/2015.

<sup>25</sup> See Facebook, “Bringing people better ads”, 26 May 2016, available at <https://newsroom.fb.com/news/2016/05/bringing-people-better-ads>.

D) Legal analysis: Privacy Act and the Act on Electronic Communication<sup>26</sup>

44. As already explained in recommendation 04/2015, the receipt of information through cookies and social plug-ins by Facebook constitutes “processing of personal data” within the meaning of Article 1, § 1 and § 2 of the Privacy Act.<sup>27</sup> In this regard, the Privacy Commission additionally refers to the judgment in *Breyer* (C-582/14), where the Court of justice ruled that dynamic IP addresses must be considered as personal data when the website operator (“online media services provider”) has the legal means which enable it to identify the data subject with additional data which the internet service provider has about that person.<sup>28</sup> Given that Facebook also systematically collects, in addition to certain uniquely identifying cookies, the IP address of the data subject, there is no doubt possible that processing of personal data takes place.

45. In accordance with Article 5 of the Privacy Act, processing of personal data is admissible only if there is a legitimate basis. In practice, Facebook can only seek to avail itself of Article 5 a) of the Privacy Act (consent of the data subject) to justify the collection of personal data via social plug-ins<sup>29</sup>. Facebook must also comply with Article 129 of the Act on Electronic Communication (LCE) which requires obtaining consent of the data subject when we use cookies that are not *strictly* needed for “*a service explicitly requested by the subscriber or the end user*”.

46. To be legally valid, the consent of the data subject must be (1) informed; (2) unambiguous; (3) freely given and (4) specific<sup>30</sup>. Despite the latest amendments to Facebook’s cookies policy and practices, the Privacy Commission considers that Facebook has still not obtained legally valid consent due to:

- (1) the shortcomings in the information that Facebook communicates to data subjects;
- (2) the action from which Facebook infers “consent”;
- (3) the fact that data subjects do not have the option to refuse or withdraw consent without adverse consequences;
- (4) the inadequacy of the choices that Facebook offers data subjects.

and

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<sup>26</sup> Law of 13 June 2005 on electronic communications.

<sup>27</sup> Article 1, § 1 and § 2 : “§ 1. For the purposes of this Act, “personal data” refers to any information concerning an identified or identifiable individual, hereinafter referred to as the “data subject”; a person is deemed to be identifiable when he can be identified, directly or indirectly, in particular by reference to an identification number or to one or more elements specific to his physical, physiological, psychological, economic, cultural or social identity.”

<sup>28</sup> Judgment of the Court of Justice in the *Breyer* case, C-582/14, ECLI:EU:C:2016:779, paragraph 49.

<sup>29</sup> See also Recommendation 04/2015, paragraphs 76 e.s.

<sup>30</sup> Article 29 Working Party , Opinion no. 15/2011 on the definition of “consent”, WP 187, 25 November 2011.

- (5) the finding that Facebook places cookies on third party websites without the prior consent of the data subject.

The Privacy Commission further considers that the collection of personal data by Facebook using cookies and social plug-ins is excessive in several circumstances.

*(1) The information provided*

47. The current cookie banner provides as follows:

*"To help personalize content, tailor and measure ads, and provide a safer experience, we use cookies. By clicking or navigating the site, you agree to allow our collection of information on and off Facebook through cookies. Learn more, including about available controls: <Cookies Policy>."*

48. The Privacy Commission considers that the words "*collect information on and off Facebook using cookies*" are in themselves insufficiently specific and clear to properly inform the individuals concerned that Facebook systematically collects personal data every time that they visit a third-party website containing Facebook social plug-ins (or other "Facebook services").

49. In the full version of the Facebook cookies policy, Facebook further clarifies as follows:

*"We use cookies if you have a Facebook account, use the Facebook Services, including our website and apps (whether or not you are registered or logged in), or visit other websites and apps that use the Facebook Services (including the Like button or our advertising tools)."*

and

*"Where do we use cookies?"*

*We may place cookies on your computer or device, and receive information stored in cookies, when you use or visit:*

- *The Facebook Services;*
- *Services provided by other members of the Facebook family of companies; and*
- *Services provided by other companies that use the Facebook Services (such as companies that incorporate the Like button or Facebook's advertising services into their websites and apps).*

50. The Privacy Commission considers that notwithstanding the additional explanation provided in the full version of the cookies policy, the data subject is still insufficiently informed of the fact that Facebook *systematically, without any action whatsoever by the data subject, collects* cookies and other data whenever the data subject visits a website of a third party that uses Facebook social plug-ins. The Privacy Commission considers, however, that it is necessary to provide this information in

order to ensure informed consent. The Privacy Commission also considers that, in order to consider the processing as “fair” and “lawful” within the meaning of Article 4 § 1, 1° of the Privacy Act, communication of such information is necessary.

51. According to the Privacy Commission, Facebook also does not provide clear information regarding *the categories of data collected by Facebook* when a user or non-user of Facebook visits a website containing a Facebook social plug-in. For example, Facebook’s cookies policy does not specify that, in addition to the cookies in question, Facebook also receives the URL of the web page visited, whereas it is precisely this information that enables it to track the browsing behaviour of the data subject on third party websites. The Privacy Commission considers, however, that it is necessary to provide this information in order to ensure informed consent. Article 9, § 2 of the Privacy Act also requires this information to be communicated.<sup>31</sup>

52. In its cookies policy, Facebook offers no description whatsoever of the *recipients or categories of recipients* of the information collected. However, it is necessary to provide this information in order to ensure informed consent. Providing this information is additionally required pursuant to article 9, § 2 of the Privacy Act.<sup>32</sup>

53. In its cookies policy, Facebook does not mention the existence of a *right of access and rectification* of data subjects as regards their data, even though the provision of such information is mandatory under article 9, § 2 of the Privacy Act.

54. Facebook does not provide any information as to the *retention period* of information collected through cookies and social plug-ins, whereas the provision of such information is necessary in this case in order to ensure informed consent and to be able to consider the processing as fair and lawful.

55. Even though Facebook still refers to a “cookies policy”, the scope of this policy goes far beyond the mere use of cookies. This cookies policy states that:

*“Other technologies, including data we store on your web browser or device, identifiers associated with your device, and other software, are used for similar purposes.”*

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<sup>31</sup> The Privacy Commission notes that Facebook does provide some explanation regarding the categories of data collected by Facebook in its general data policy, but not in its cookies policy. To obtain this information, the non-user of Facebook would need to undertake the following five steps: in the cookie use policy, click on “Learn more about the information we receive, how we decide which ads to show you on and off the Facebook Services, and the controls available to you.” > “How does Facebook decide which ads to show me and how can I control the ads I see?” > “For more information on the information Facebook receives and how we use it, visit our [Data Policy](#) and [Cookies Policy](#).” > “What kinds of information do we collect?” > “Information from websites and apps that use our Services.”

<sup>32</sup> Idem.

As this provision does not contain any limitation (any technique that can be used to collect information on a user's computer is envisaged by Facebook), the data subject is not in a position to provide properly informed consent.

56. Finally, the Privacy Commission further notes that Facebook's cookies policy does not clearly distinguish between users and non-users of Facebook. In its new cookies policy, Facebook describes the circumstances in which it uses cookies as follows:

*"We use cookies if you have a Facebook account, use the Facebook Services, including our website and apps (whether or not you are registered or logged in), or visit other websites and apps that use the Facebook Services (including the Like button or our advertising tools).*

Because Facebook starts with the words "if you have a Facebook account", there is a risk of confusion for non-users of Facebook. Put differently, it is not immediately clear for whom the cookies policy is intended: the user or non-user of Facebook. Although a non-user of Facebook could infer from the text ("*whether or not you are registered or logged in*") that the cookies policy is also intended for him, the text that follows again creates confusion. For instance, the first specific example of the use of cookies ("authentication") concerns only those who have a Facebook account.

### *(2) How consent is inferred*

57. According to the current cookie banner, Facebook infers data subject consent on the basis of "further browsing" of its website (clicking or navigating the site). The consent apparently relates to all the possible forms of processing involving cookies at once. In Recommendation 01/2015 concerning the use of cookies, the Privacy Commission defends the position that "further browsing" may be considered under certain conditions as active behaviour by which the user signifies his consent.<sup>33</sup> Before taking this position, however, the Privacy Commission stresses that the user should be free to choose between the option of accepting certain cookies or all cookies or refusing certain cookies and retaining the option of modifying the cookie settings at a later date (see points 60 e.s. below)<sup>34</sup>.

### *(3) Freedom of consent*

58. The only possibility for a non-user of Facebook not to withhold consent is to leave the Facebook website and not visit it again. Such an approach does not lead to "freely given" consent. The data subject clearly experiences negative consequences when refusing all cookies, particularly in view of the dominant position that Facebook occupies as a social network and the fact that it hosts a large number of web pages of companies and other entities that do not have their own web page.

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<sup>33</sup> Recommendation no. 01/2015, paragraph 265.

<sup>34</sup> Recommendation no. 01/2015, paragraph 262.

#### *(4) Specificity of consent*

59. The data subject is expected to agree the processing of all cookies simultaneously. The lack of granularity and real choice in this respect implies that for the moment one cannot consider the consent to be specific. In this respect, the Privacy Commission has already considered in recommendation no. 01/2015 concerning the use of cookies as follows:

*'It is therefore recommended to refrain from using mechanisms that provide only an unconditional consent option without offering a choice regarding different cookies or at least some of them. In any case, users should be offered a real choice in relation to advertising cookies.'*

Although Facebook provides for a (limited) opt-out option for cookies that are used for advertising purposes, this opt-out only applies to the use (and not the placement and collection) of cookies for advertising purposes.<sup>35</sup> Facebook's current practice also gives rise to additional legal issues that are detailed below.

#### *(5) The choices offered by Facebook*

60. Facebook provides a number of ("opt-out"<sup>36</sup>) options in relation to the use of cookies by Facebook to display advertisements. In this regard, a distinction is made based on whether or not the person has a Facebook account.

61. According to Facebook's new cookies policy, people who have a Facebook account can manage the use of cookies by Facebook for advertising purposes in 3 ways:

- by managing "interests" in the "ad preferences" section;
- by disabling "online interest-based adverts" using the "ad settings" that are linked to their account;
- by disabling the use of "ad preferences" by Facebook's "Audience Network" using the "ad settings" linked to their account.

The third option was not provided for in the previous version of Facebook's cookies policy<sup>37</sup>. In addition, Facebook also refers to the possibility of opting out of seeing "online interest-based ads from

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<sup>35</sup> Recommendation no. 01/2015, paragraph 262.

<sup>36</sup> The Privacy Commission considers that this is a question of an "opt-out" because the default configuration of the relevant advertising settings is set to "yes" and the data subject must therefore take steps on his or her own initiative to indicate that he or she does not want information that Facebook collects via cookies to be used for advertising purposes.

<sup>37</sup> See also A. Bosworth, "Bringing People Better Ads", 26 May 2016, available at <http://newsroom.fb.com/news/2016/05/bringing-people-better-ads>. (*"Starting today, you can opt out of seeing ads on apps and websites not offered by Facebook based on your ad preferences. You can do this by visiting your Facebook settings or tapping the AdChoices icon next to an Audience Network ad."*).

Facebook”, via the European Interactive Digital Advertising Alliance website, “your mobile device settings” and “browser cookie controls”.

62. People who do not have a Facebook account are informed of the possibility of opting out via the European Interactive Digital Advertising Alliance website or by using their mobile device settings and/or browser cookie controls.

63. The Privacy Commission considers that the choices offered by Facebook to data subjects for the use of cookies for advertising purposes are insufficient to lead to valid consent.

64. As far as the reference to browser settings is concerned, the Privacy Commission has previously taken the position that existing browsers do not generally provide the data subject with the option of making sufficiently granular choices.<sup>38</sup>

65. Furthermore, the Privacy Commission does not understand why Facebook refers data subjects to a third party website to indicate their preferences regarding the use of cookies for advertising purposes by Facebook. In order to lead to valid specific consent, the options available to the data subjects should be directly accessible in a simple manner either via the cookie banner or via a link in the cookie banner. However, the website of the European Digital Advertising Alliance requires that the data subject follow a considerable number steps before being able to indicate his choice (selection of the location, selection “on/off - your ad choices”, wait until the statuses of all participating companies is loaded and then uncheck all or some companies). It is also possible that certain firewall settings may limit access to the opt-out site, as a result of which the data subject may be further restricted from indicating his choice.

66. The Privacy Commission is moreover of the opinion that the information provided by Facebook about the choices available to users is misleading. Facebook refers to ways to *control Facebook's use of cookies* for advertising purposes.<sup>39</sup> However, it is clear from the technical findings that Facebook still collects information about the user's browsing behaviour using cookies, even when the data subject makes use of one of the choices provided. As indicated earlier, the data subject should be able

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<sup>38</sup> See Privacy Commission, own-initiative recommendation no. 01/2015 of 4 February 2015 concerning the use of cookies (CO-AR-2012-004), paragraph 268 (“*The Privacy Commission adds that existing browsers do not offer users the possibility to express their agreement regarding the cookie policy that the latter wish to adopt, except when the user has decided to block all cookies. These settings obviously do not allow the user to make nuanced choices choice according to his purposes.*”) and paragraph 142 (“*The common browsers have features allowing the user to accept or reject the standard cookies. Nevertheless, it must be observed that there is room for exceptions: some browsers still accept some cookies despite the user's refusal or do not erase all cookies on demand (e.g. by preserving unexpired cookies). In addition, the options for cookies - refusal, on request or general consent - offer very little possibility of making fine distinctions according to the types of cookies. In some browsers, it is possible to refuse the storage of some cookies, for example, third-party cookies, while other browsers do not make this distinction: accepting cookies for authentication results in automatic acceptance of the storage of other cookies, which serve entirely different purposes.*”)

<sup>39</sup> The heading describing the choices available to data subjects reads as follows: “How can you control Facebook's use of cookies to show you ads?”

to decide freely between the possibility of accepting or refusing certain or all cookies. A mere promise as to the further use information collected through cookies is not sufficient to obtain valid consent for the use of cookies. Providing misleading information in this respect also constitutes a violation of the fairness principle.

67. The Privacy Commission also notes that the third option that Facebook offers the users (i.e. with regard to the use of advert preferences by Facebook's "Audience Network") has been set to "yes" by default, even when the data subject had indicated previously that he did not want to receive advertisements on the basis of the "use of websites and apps". This approach violates article 4, §1, 2° of the Privacy Act, which provides that personal data may not be further processed in a manner incompatible with these purposes, taking into account all relevant factors, in particular the reasonable expectations of the person concerned and the applicable legal and regulatory provisions. A Facebook user who has already specifically indicated that he does not want to receive "interest-based" ads on Facebook, may reasonably expect Facebook to extend this choice and thus no longer use his "ad preferences" when displaying advertisements in applications and on websites outside Facebook. The approach followed by Facebook also goes against the principle of fairness, since Facebook has introduced the new advertisement settings without actively informing the users.

#### *(6) Cookies placed on third party websites*

68. It appears from technical findings that Facebook also places cookies on certain websites of third parties ("as a third party"), even when the data subject has previously not visited any Facebook website<sup>40</sup>. It goes without saying that in such circumstances, Facebook cannot rely on the information it communicates in its cookies policy, let alone on the so-called "consent" that it considers can be inferred from the further browsing of a Facebook website. The Privacy Commission emphasises in this regard that, besides Facebook, website owners are also obliged to obtain the consent of data subjects before allowing the placement of cookies. This is a joint responsibility, for which the two entities may be held (separately or jointly) accountable<sup>41</sup>.

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<sup>40</sup> See above, paragraph 41.

<sup>41</sup> See also Privacy Commission, "Initiative recommendation no. 01/2015 of 4 February 2015 concerning the use of cookies (CO-AR-2012-004), p. 41, paragraph 187 (*"The advertising network provider may be considered responsible for processing because it determines the purposes or essential means of the processing of data in the context of the use of cookies for advertising purposes. Since the placement of or access to cookies for advertising purposes occurs at the time of visiting the site owner's website, the Privacy Commission considers these players as jointly responsible for processing for all the processing operations leading to advertising."*) and Article 29 Working Party, Opinion 2/2010 on online behavioural advertising, 22 June 2010, WP 171, pp. 10-12.

### *(7) Proportionality assessment*

69. According to article 4, §1, 3° of the Privacy Act, personal data must be adequate, relevant and not excessive in relation to the purposes for which they are obtained and for which they are subsequently processed. As in recommendation 04/2015, the Privacy Commission does not wish to provide a detailed description of the purposes pursued by Facebook. However, the Privacy Commission does wish to articulate two additional recommendations, in particular as regards the cookies that Facebook uses for advertising and security purposes respectively.

70. With respect to the cookies that Facebook uses for *advertising purposes*, the Privacy Commission considers that as long as Facebook does not have valid consent for the use of cookies for advertising purposes, it must also refrain from the placement and collection of cookies which serve these purposes.<sup>42</sup> Otherwise, the processing is excessive in view of the purposes for which the data are processed. The same applies where the data subject withdraws his consent or otherwise indicates that he does not wish to receive advertising on the basis of his browsing behaviour.

71. With respect to the cookies that Facebook uses *for security purposes*, the Privacy Commission refers to its previous recommendation according to which the transmission of cookies used by Facebook in the context of security (such as the “datr” and “sb” cookies) must in principle be limited to logging in to Facebook or to pages within the facebook.com domain (but not to third party web pages containing social plug-ins). The Privacy Commission again reiterates that it does not recommend Facebook to simply stop using cookies for security purposes altogether, but to limit their collection to pages within the facebook.com domain.

72. Finally, the Privacy Commission further notes that the excessive nature of the systematic collection of the “datr” cookie via social plug-ins on third-party web pages with respect to non-Facebook users was expressly confirmed by the President of the Chamber of the Dutch-speaking court of first instance of Brussels, in chambers<sup>43</sup>.

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<sup>42</sup> The Privacy Commission considers here, firstly, the “fr” cookie which, according to the table attached to the cookie use policy, is used “to deliver, measure, and improve the relevancy of ads.”; and the “ddid” cookie, which is used by Facebook “to open a specific location in an advertiser’s app upon installation”.

<sup>43</sup> Court of First Instance of Brussels, In Chambers, 9 November 2015, roll no. 15/57/C, p. 28-29 (“It is not very credible that requesting the datr cookie every time a social plug-in is loading on a website visited by a non-user of Facebook, is actually necessary to ensure the security of Facebook services. The defendants [Facebook Inc., Ireland and Belgium] state that the datr cookie helps in case of attacks targeting the Facebook platform, essentially in case of attempted fraudulent access. It can be assumed that this is true to a certain extent when contact is made with a Facebook page, but in the situation at hand, non-users of Facebook do not wish to connect with the Facebook-platform but only to visit an entirely different website. The defendants do not make it plausible that an attack of the Facebook platform would be possible through plug-ins which are not actually used by users who access a page outside the Facebook domain”)

**FOR THESE REASONS,****The Privacy Commission,****On the basis of the competence and tasks attributed to it and Belgian and European law,****Recommends:****To Facebook**

- Facebook must provide full transparency as regards the use of cookies. For each separate cookie, Facebook should specify its content (such as unique identifiers, language settings, etc.) and its purpose (such as advertising, security etc.). These descriptions must always be kept up-to-date and be easily accessible to users of its services. In case of modifications, it is recommended to retain the possibility of consulting previous versions.
- Facebook must refrain from placing cookies (such as "c\_user", "xs", "datr", "sb", "fr" and "lu" cookies) when a data subject visits a web page of the facebook.com domain or a third party website, without the data subject:
  - being informed fully and accurately and in a clear and comprehensive manner about:
    - the circumstances in which Facebook places these cookies and subsequently collects them;
    - the purposes for which Facebook uses these cookies;
    - the nature of the data that Facebook collects when he visits a website containing a Facebook social plug-in, such as the web address (URL) of this site;
    - the recipients or categories of recipients of the data collected;
    - the existence of his/her right to object, access and rectification;
    - the retention period of the data that is collected via cookies and social plug-ins;
  - having consented freely, specifically and unambiguously to both the placement and use of these cookies insofar as they are not strictly necessary for the service explicitly requested by the data subject and that, if he has logged out from Facebook or has deactivated his account, he has not consented freely, specifically and unambiguously to the prolonged use of these cookies;
  - having had the option to refuse the placement of these cookies, insofar as they are not strictly necessary for a service explicitly requested by the data subject, without limiting or hindering access to the facebook.com domain;
- Facebook must refrain from collecting cookies (such as "c\_user", "xs", "datr", "sb", "fr" and "lu" cookies) via Facebook social plug-ins, Facebook pixels or similar technological means on third party websites in a manner that is excessive with respect to the purposes of the cookies in question, it being understood that:

- the systematic collection of cookies for *security purposes* when visiting web pages that are not part of the facebook.com domain is excessive if the data subject (1) does not have a Facebook account or is not logged in, and (2) does not attempt to use the social plug-ins (e.g. by clicking on them);
- the systematic collection of cookies for *advertising purposes* when visiting web pages that are not part of the facebook.com domain is excessive when the data subject has indicated that he did not want information about his browsing behaviour to be used for advertising purposes;
- the systematic collection of cookies used to verify the *identity of the Facebook user* or to register whether he has chosen to remain logged in when visiting web pages that are not part of the facebook.com is excessive when he is not logged in and does not attempt to use the social plug-ins (for example by clicking on them);
- Facebook must refrain from providing information that might reasonably mislead data subjects as regards the actual scope of the mechanisms provided by Facebook to manage the use of cookies by Facebook;
- Facebook must obtain unambiguous and specific consent via opt-in of users before using their “advertising preferences” in the context of Facebook’s “Audience Network”.

### **To website owners**

- Relating to website owners or webmasters who wish to use the social plug-ins offered by Facebook, the Privacy Commission refers to its own-initiative recommendation on the use of cookies<sup>44</sup>, in which it stipulates that owners must properly inform visitors of their website and obtain the latter's consent for cookies and other meta files of which they may not control their re-use. In this context, the Privacy Commission refers to social networks, among others, and recommends that social network buttons are not activated until users have given their consent. The current integration possibilities of social plug-ins offered by Facebook, however, do not meet these criteria yet. For the time being, the Privacy Commission therefore recommends to use tools such as "Social Share Privacy" (<http://panzi.github.io/SocialSharePrivacy/>) as a way to obtain user consent. By using a tool such as "Social Share Privacy", third-party plug-ins do not connect to third-party servers (and consequently data are not sent to third parties) until users have clicked on the social plug-in.
  - The website owners who display advertisements from Facebook’s Audience Network must properly inform their visitors and obtain their consent for the use of cookies that accompany the display of such advertisements.
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- The website owners who use other Facebook services (such as pixels) that result in Facebook placing cookies in the data subject's browser when their site is visited must provide the data subject with sufficient information and obtain their consent.

### To end users

- Internet users who wish to protect themselves against tracking by Facebook through social plug-ins are advised to use browser add-ons that block tracking. Examples of such browser add-ons are:
  - Privacy Badger (<https://www.eff.org/privacybadger>)
  - Ghostery (<https://www.ghostery.com>)
  - Disconnect (<https://disconnect.me/disconnect>)
- Internet users can also protect themselves by using the incognito or "private navigation" mode offered as a functionality in recent versions of most frequently-used browsers (Internet Explorer, Firefox, Chrome, Safari, etc.). This functionality forces the browser to delete traces of surfing behaviour (cookies, history, etc.) after the window is closed and thus protects Internet users from being tracked by Facebook or others.<sup>45</sup>
- Facebook users can opt-out of tracking in the context of targeted Facebook advertisements on the European Interactive Digital Advertising Alliance website ([www.youronlinechoices.eu](http://www.youronlinechoices.eu)). It must be noted, however, that Facebook currently continues to collect the same information about visits of users to external websites, even after they have opted out from targeted advertisements. Nevertheless, Facebook has promised to no longer use this information for advertising purposes. Users who wish to protect themselves against the collection of this information are therefore advised to also use their browser's incognito mode or use one of the abovementioned add-ons.
- Users who do not want Facebook to use their "advertising preferences" when displaying ads on applications and websites off of the Facebook Companies can use the advertisement settings of their Facebook account.

The Acting Administrator,

The Chairman,

(sgd.) An Machtens

(sgd.) Willem Debeuckelaere

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<sup>45</sup> There are also special privacy-protecting browsers, e.g. Epic Privacy Browser ([www.epicbrowser.com](http://www.epicbrowser.com)).