

## Minutes of the meeting of the Digital Freedom Committee

10:00, 14 July 2020

Subject: data protection in social media

### **Participants:**

- **Ministry of Justice:**
  - Dr. Judit Varga, Minister of Justice
  - Dr. László Péter Salgó, chairman of the Committee, deputy state secretary for the coordination of draft legislation and public law
- **Ministry of Innovation and Technology (ITM):**
  - Dr. László Kollár, head of department
  - Dr. Zsuzsanna Dakos, data protection officer
- **National Office for the Judiciary (OBH):**
  - Dr. György Senyei, chairman
- **University of Public Service (NKE):**
  - Dr. Balázs Bartóki-Gönczi, expert
- **Ministry of Finance (PM):**
  - Milán Farkas, head of department
  - Dr. Péter Zoltán Jármái, deputy state secretary for legal and coordination affairs
- **Cabinet Office of the Prime Minister (MK):**
  - Anikó Kárdási, head of department
  - Balázs Szabó, head of unit
- **National Media and Infocommunications Authority (NMHH):**
  - Dr. János Tamás Papp, officer of the Media Science Institute
- **Office of the Ombudsman for Fundamental Rights (AJBH):**
  - Dr. Gergely Szabó, public law expert
- **National Authority for Data Protection and Freedom of Information (NAIH):**
  - Dr. Attila Péterfalvi, chairman
- **Hungarian Competition Authority (GVH):**
  - Csaba Rigó, chairman
  - Dr. Andrea Zenisek, office manager
  - Dr. Márk Pánczél, office manager
- **National Council for Infocommunications and Information Technology (NHIT):**
  - Dr. Ádám Németh, legal expert
  - Ferenc Vágújhelyi, chairman
  - Zoltán Fauszt, council member

### **Meeting minutes:**

**1. Justice Minister Judit Varga opens the meeting by welcoming the participants** and thanks the Committee members for their efforts and cooperation as a result of which the “Guide to the most frequently used platforms of the on-line space” has been uploaded to the Committee’s website. The guide assists citizens in personal data protection activities related to the use of various social media services.

In the first part of the meeting, the Justice Minister noted recent social media issues that have caused public outcry. In one example, Facebook deleted the video of a Holy Mass commemorating the 100<sup>th</sup> anniversary of the Trianon peace treaty, celebrated by Franciscan

monk Csaba Böjte. Also, Facebook banned the advertising account of the Szekler National Council due to a statement requesting the prolongation of a European civil petition for national regions.

Furthermore, Facebook's response to the Justice Ministry's questions about setting up an Oversight Board was just received in the morning of the meeting. It will be sent to Committee members after the meeting. According to the response, Facebook's Oversight Board is not intended to infringe upon the competence or jurisdiction of national or international courts; instead, it issues independent opinions and recommendations. It has been set up because Facebook cannot make important decisions on the freedom of opinion alone; therefore, it is justified to establish an unbiased body of experts. Facebook emphasises that a user may, as always, take their case to a national court before or after the Oversight Board's decision. The independent members decide impartially and without external influence, which is guaranteed by a Code of Conduct that all of them must sign as part of their contract. Any member who violates the Code of Conduct may be removed from the Oversight Board. Each member's vote is of equal weight. The decision-making panels are compiled randomly; the Oversight Board may overrule their decisions or convene a new panel to reassess the case at hand. According to Facebook, the selection of Oversight Board members was the result of a long process: having consulted over 2,200 stakeholders in 88 countries, the company involved experts in the selection. The Oversight Board's Membership Committee will be responsible for filling in any vacancy in the 40-member board.

The Justice Minister notes that Facebook will have to be contacted again about the Oversight Board because the letter raises further questions. The independence of the Board is questionable as its members will be selected within Facebook's own organisation; and the current membership is not representative as the members have been selected after limited consultation. Also, the Oversight Board's structure is similar to international arbitration forums, and its decisions will be reviewed within the Board itself.

## **2. Committee chairman Dr. László Péter Salgó:**

Following the Justice Minister's opening address, the chairman of the Committee welcomes the participants and points out issues to be examined concerning Facebook's Oversight Board, such as potential conflicts of interest, and jurisdiction. These issues raise the possibility of a second legal system and "forum shopping". Thus, Facebook's response requires a detailed analysis.

According to **Ferenc Vágújhelyi**, online media has gained ground because it is deemed "trendy". So, users should be made conscious of the reality behind online media, and its dangers. Also, the state should be represented in the online media in a manner that users consider "trendy". Mr. Vágújhelyi also touches upon the issue of "cancel culture". Originally meaning an online boycott due to unfortunate statements by famous persons, this term now extends beyond the digital space. For example, university students sharing content that is deemed improper have been dismissed in order to avoid criticism or boycotts of the institutions concerned.

**László Péter Salgó** asks the organisations that apply the relevant legal regulations what experiences they have gathered concerning advertisements and messages to users in social media. As data protection is a major issue in social media providers' business policies, it is indispensable for legislators to collect and evaluate the relevant experience. New statutes will definitely need to be drafted if that is necessary based on the feedback and experience.

**Dr. Attila Péterfalvi** calls the Committee's attention to NAIH's information booklet about content shared in social media, which is also available on the Committee's website. He emphasises the inseparable and connected nature of the freedom of opinion and social media. He adds that, since the introduction of the GDPR, Ireland's data protection authority has been acting as the main authority responsible for issues related to the handling of personal data by large social media providers such as Facebook, WhatsApp, Instagram, etc. Even though it is the entity authorised by the GDPR to conduct data protection procedures against most social media providers, the Irish authority is not quite willing to levy stringent sanctions.

Dr. Péterfalvi points out that Hungary's Civil Code should be harmonised with the GDPR; as this work has still not been performed. He adds that the national data protection authority has so far been unable to take effective action against social media providers because it is the Irish data protection authority that has the relevant competence.

To protect the freedom of opinion, Dr. Péterfalvi considers it possible to prepare legally regulated procedures with short deadlines, or take cases to national courts when online content is removed in a manner that violates the freedom of opinion. A so-called "open clause" in section 85 of the GDPR allows a Member State to introduce legal regulations in order to harmonise the right to protect personal data with the freedom of opinion and information. Journalism is an activity subject to GDPR; in this case, public interest may constitute the legal basis for data control, provided that the activity is aimed at informing the general public. However, this is an exceptional case. Usually, the legal basis for the data control is a legitimate interest, which must be tested by the data controller by assessing the interest of both the data subject and the public. The test results must be documented, and the data subject must be informed. Any objection by the data subject to the data control may only be disregarded if the data subject's interests are proven to be overridden by higher legitimate interests.

The chairman notes the importance of close cooperation between NAIH and the Hungarian Competition Authority, as a violation of data protection regulations is usually coupled with the infringement of competition laws.

**Dr. György Senyei: the document on forum shopping and the issue of jurisdiction will be sent to the Ministry of Justice.** As the National Office for the Judiciary belongs to a network of European legal consultants, it has an opportunity to raise research questions within the network, and compile technical documents.

**Csaba Rigó** also emphasises the significance of cooperation with the National Authority for Data Protection and Freedom of Information. While that authority is not competent to conduct

data protection procedures against social media providers, the Competition Authority may carry out consumer protection procedures.

The consumers using social media services face an informational asymmetry, and the data they disclose are valuable from a business perspective. The so-called “zero price model” that is at the core of social media providers’ business means that, even though a user does not pay, the service is still not free; the user pays in the form of personal data disclosed to the provider. It should be examined if consumers in fact get the services free of charge, whether they know the business model, and whether they have been duly informed. In most cases, it is not the lack of information that is problematic but the unmanageable amount of data dumped on consumers by the service providers.

The chairman points out that the potential methods of taking action against digital market players are being reviewed by the European Commission, as well. **The legislation proposed by the Competition Authority will be sent to the Ministry of Justice.**

**Dr. Andrea Zenisek:** it is important to incorporate the approach of behavioural economics in legislation. Similarly, knowledge of artificial intelligence should be obtained in the relevant public sector entities as well.

**Ferenc Vágújhelyi:** personal data are not marketable goods, even though companies do consider them as such. The European Data Protection Board should play an important role in this regard, and should define the circumstances and limitations of treating personal data as goods.

Speaking about the profiling activities of social media providers, **Zoltán Fauszt** explains the problem that providers are unwilling to disclose information on profiling and the algorithms used. Therefore, they should be enforced by legal means to publish such information.

**Dr. Balázs Bartóki-Gönczi** outlines German, French and British regulations on the removal of illegal content, and **promises to send a relevant background document to the Ministry of Justice.**

Before closing the meeting, the Chairman of the Committee proposes that the freedom of opinion should be the topic of the next meeting, as several related questions were raised at this meeting. **The participants as organisations applying the law are requested to submit written information by 19 August 2020 on their experiences of social media measures that limit the freedom of opinion.** The deputy state secretary adds that the Committee is expected to next convene in September.

The chairman of the Committee thanks for the comments and participation, and closes the meeting.