

# Privacy & Data Protection in IoT and Smart Cities

and something on the ECJ case on Facebook fan pages

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Data Protection Commissioner  
Schleswig-Holstein, Germany

## DATAETHICS

Copenhagen, 28 September 2018



[www.datenschutzzentrum.de](http://www.datenschutzzentrum.de)

### *Setting of ULD*

- Data Protection Authority (DPA) for both the public and private sector
- Also responsible for freedom of information

| Schleswig-Holstein                                                                  |                                                                                     |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| State of Germany                                                                    |                                                                                     |
|  |  |
| Flag                                                                                | Coat of arms                                                                        |
|  |                                                                                     |
| Coordinates: 54°28'12"N 9°30'50"E                                                   |                                                                                     |
| Country                                                                             | Germany                                                                             |
| Capital                                                                             | Kiel                                                                                |
| Government                                                                          |                                                                                     |
| • Body                                                                              | Landtag of Schleswig-Holstein                                                       |
| • Minister-President                                                                | Daniel Günther (CDU)                                                                |
| • Governing parties                                                                 | CDU / Greens / FDP                                                                  |
| • Bundesrat votes                                                                   | 4 (of 69)                                                                           |
| Area                                                                                |                                                                                     |
| • Total                                                                             | 15,763.18 km <sup>2</sup><br>(6,086.20 sq mi)                                       |
| Population (2016-12-31) <sup>[1]</sup>                                              |                                                                                     |
| • Total                                                                             | 2,881,926                                                                           |
| • Density                                                                           | 180/km <sup>2</sup> (470/sq mi)                                                     |

Source: [en.wikipedia.org/wiki/Schleswig-Holstein](http://en.wikipedia.org/wiki/Schleswig-Holstein)

Privacy and Data Protection in



Source: [www.maps-for-free.com](http://www.maps-for-free.com)

## Overview



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1. Privacy and data protection
2. Risk according to the GDPR
3. Protection goals
4. For IoT, for Smart Cities, for XYZ
5. And a remark on the ECJ case of FB fan pages

Privacy and Data Protection in IoT and Smart Cities

Imbalance  
in power  
⇒  
data protection  
necessary

Important:  
Perspective of  
the individual



Photo: beludise via Pixabay

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## ***Data protection: rights of individuals***

### Article 1

#### Subject-matter and objectives

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.
3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

## ***Rights and freedoms of natural persons***

### EU Charter of Fundamental Rights

- Art. 7 Respect for private and family life (privacy)
- Art. 8 **Protection of personal data** (data protection)

Processing of data is interference:

- Must be justified
- Interference must be as minimal as possible

- Article 11: Freedom of speech
- Article 12: Freedom of assembly
- Article 21: **Non-discrimination**
- And others

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## Not just any risk

### Recital 75 of the GDPR

- (75) The **risk to the rights and freedoms of natural persons**, of varying likelihood and severity, may result from personal data processing which could lead to physical, material or **non-material damage**, in particular: where the processing may give rise to **discrimination**, identity theft or fraud, financial loss, damage to the reputation, loss of confidentiality of personal data protected by professional secrecy, unauthorised reversal of pseudonymisation, or any other significant economic or social disadvantage; where data subjects might be **deprived of their rights and freedoms or prevented from exercising control over their personal data**; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, and the processing of genetic data, data concerning health or data concerning sex life or criminal convictions and offences or related security measures; where personal aspects are evaluated, **in particular analysing or predicting aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements**, in order to create or use personal profiles; where personal data of vulnerable natural persons, in particular of children, are processed; or where processing involves a large amount of personal data and affects a large number of data subjects.

## GDPR risk framework

- Risk sources
  - processor/  
controller
  - third parties  
(IT security)
  - adverse events  
(safety)

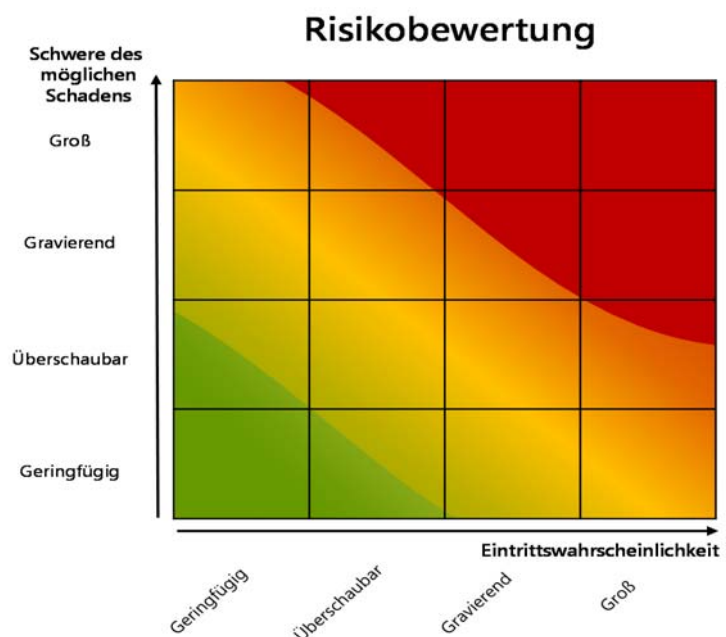


Photo: beludise via Pixabay

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## GDPR risk framework

- Risk = severity of potential damage x likelihood
  - But cannot be quantified
  - Can be approximated objectively
  - Risk for rights must be mitigated with technical and organisational measures, etc. to protect rights
- Arts 24, 25, 32, 35 GDPR



Risikobereiche nach DS-GVO



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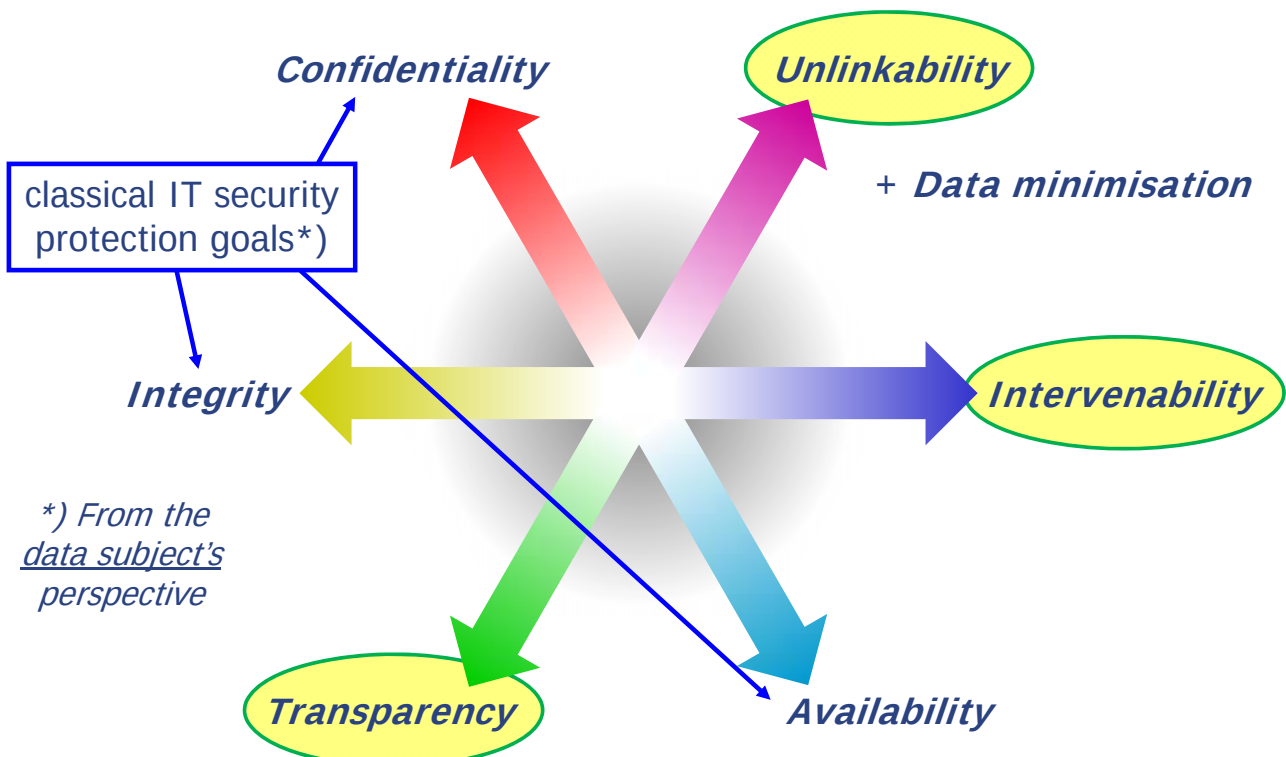
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## Protection goals: more than IT security



## Unlinkability



Photo: ivanacoi via Pixabay

Separation of domains, separation of power, purpose binding

Please, help me!

Photo: geralt via Pixabay

E.g. opt-out, complaints, judicial relief, reversing decisions ...  
deactivating sensors and data processing, defined help desk ...

## How to implement?

### Transparency



Photo: geralt via Pixabay

Objective: awareness, understanding and control; different media, support by technology

Objective: **risk mitigation** –  
i.e. of the risk for the rights and freedoms of natural persons

## Intervenability

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## IoT + Big Data (+ AI)

- Everything can communicate with everything
- Everything produces **data trails**
- Naïve implementation: everything is linkable
- Range of key questions:
  - Personal data or **non-personal data**?
  - Accumulation** of non-personal data still non-personal data?
  - Risks? (**more** than indiv. privacy)
  - Who is in control?**



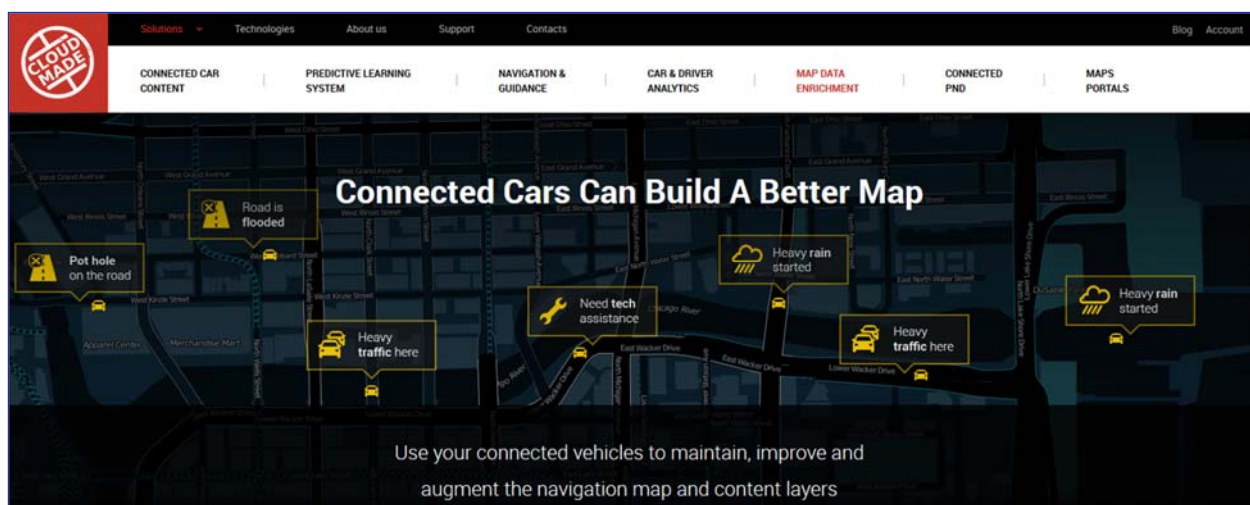
Image: jeferrb via Pixabay

Art. 25 GDPR:  
Data Protection by Design  
and by Default

Anonymisation,  
pseudonymisation  
(e.g. attribute-based  
credentials), early  
erasure, encryption,  
access control ...

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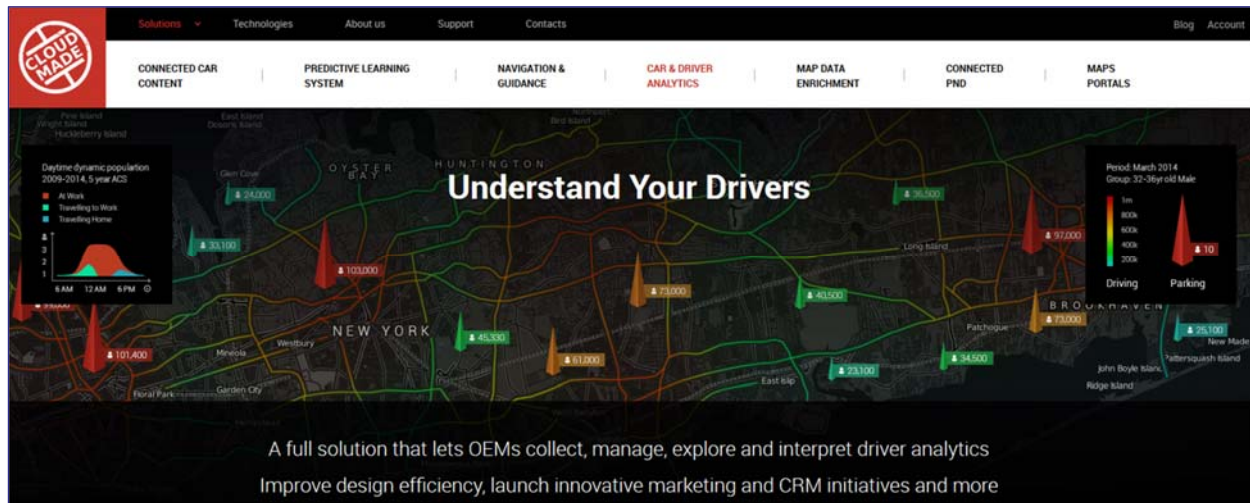
## Smart Cities – personal data?



<http://cloudmade.com/solutions/map-data-enrichment>

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## Smart Cities – personal data?



<http://cloudmade.com/solutions/car-driver-analytics>

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## Smart Home: Who is in control?



 Image: geralt via Pixabay

Best starting point:  
Unlinkability



 Photo: ivanacoi via Pixabay

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## Smart Cities: Who is in control?



Photo: geralt via Pixabay

Best starting point:  
Unlinkability

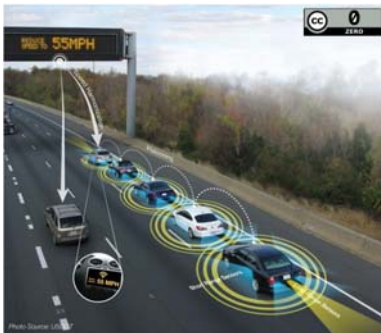


Photo: ivanacoi via Pixabay

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## Future: ubiquitous sensors

"Asking the user" wouldn't work;  
consequences when deactivating sensors?



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## ECJ case on Facebook fan pages



Photo: kalhh via Pixabay

### Question:

Is a company (co-)responsible for Facebook's data processing when administrating a fan page?

- ☐ No, never?
- ☐ In a controller-processor relationship?
- ☐ Joint controllership?

Original Schleswig-Holstein case in 2011

## ***ECJ ruling: Joint controllership***

- **Broad definition** of the controller to protect individuals: alone or jointly with others determines purposes and means of the processing
  - **Primarily Facebook controller** (No. 30)
  - **And the fan page administrator?**
  - Processing enables advertising business model
  - Processing enables fan page administrator to obtain statistics:
    - Definition of **parameter** for producing statistics (No. 36)
    - In particular demographic data (No. 37)
    - Opportunity to place cookies (No. 35)
- ⇒ Fan page administrator **takes part in determination** of purposes and means (Rn. 39)

ECJ Ruling  
5 June 2018, Case C-210/16  
Wirtschaftsakademie

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## ***ECJ case on Facebook fan pages***

Different degrees of responsibility  
per phase in data processing,

but clearly **no gap in  
responsibility chain!**

### Question:

Is a company (co-)responsible  
for Facebook's data processing  
when administering a fan  
page?

- ☐ No, never
- ☐ In a controller-processor relationship
- ☒ **Joint controllership!** (Art. 26 GDPR)

Note: **own purposes** of FB  
Transposition to **other  
providers?!**

## Conclusion



Source: congerdesign via Pixabay

- Data protection by design and by default
  - Demanded by the GDPR
  - Thereby to be demanded by controllers
  - Rights and freedoms
- GDPR as game changer?
  - Promise of a level playing field
  - Innovation with data protection should conquer ignorant or even privacy-invasive services
  - Good solutions have to be made visible!