



# PRIVACY TICKER

## 1. Legislative Developments

### +++ EPRIVACY REGULATION POSTPONED INDEFINITELY +++

The EU Commission intends to prepare a new draft for the so-called ePrivacy Regulation which will complement the DSGVO, among other things, on cookies and analysis tools in order to revive the stagnating negotiations on the ePrivacy Regulation. This will, however, put the negotiations on the ePrivacy Regulation back in their initial position and postpone the adoption of clarifying regulations in the field of electronic communications to a period that is not yet foreseeable.

The press release with further information can be found [here](#).

### +++ AMENDMENTS TO THE GERMAN FEDERAL DATA PROTECTION ACT HAVE COME INTO FORCE +++

On 26 November 2019, various amendments to the German Federal Data Protection Act (BDSG) and other laws aimed at simplifying individual areas of data protection came into force. Now, a Data Protection Officer must be appointed only for at least 20 employees who are permanently responsible for the processing of personal data. Moreover, non-public data processors may also process special categories of data (such as health data) for reasons of substantial public interest. Also, an employee's consent to data processing is no longer limited to being given in writing, but can also be given electronically.

You can view the amending law in full [here](#).

## 2. Case Law

### +++ HIGHER REGIONAL COURT OF COLOGNE: FEEDBACK PROFILE OF A PHYSICIAN IS INADMISSIBLE AS FAR AS IT INCLUDES ADVERTISING FOR COMPETITORS +++

The Higher Regional Court of Cologne (Oberlandesgericht) has granted the action of a physician for deletion of his profile at the evaluation platform "Jameda" (judgment of 14 November 2019 –

15 U 89/19). The profile created without the consent of the physician is inadmissible since Jameda does not provide the profile as neutral information but refers in the profile to other physicians who are premium customers and pay for this form of advertising. Due to these concealed advantages, Jameda no longer acts as a neutral platform operator.

The full decision is available [here](#).

## 3. Regulatory investigations and enforcement actions

### +++ SUPERVISORY AUTHORITY OF LOWER SAXONY TAKES STOCK OF GDPR HORIZONTAL REVIEW +++

The data protection supervisory authority of Lower Saxony has published the final report of its cross-sectional review of a total of 50 companies. The authority identified considerable shortcomings, particularly in the areas of technical and organisational protective measures and data protection impact assessments. The authority announced that it would carry out further inspections and, if necessary, fine proceedings on the basis of the shortcomings identified.

You can find the official press release [here](#).

### +++ FINES AGAINST RHINELAND-PALATINATE HOSPITAL FOR PATIENT MISIDENTIFICATION ON INVOICING +++

A hospital operator has accepted a fine of EUR 105,000 by the data protection supervisory authority of Rhineland-Palatinate. With the fine, the authority sanctions technical and organizational deficits of the data processing in the hospital. Due to these deficits, two

patients were incorrectly identified and invoices with patient data were subsequently sent to the wrong recipient. The authority, though, positively considered the hospital operator's verifiable efforts to improve processes.

You will find the official press release [here](#).

#### +++ POLISH SUPERVISORY AUTHORITY IMPOSES FINE FOR LACK OF EASY POSSIBILITY TO WITHDRAW CONSENT +++

The Polish supervisory authority imposed a fine of approximately EUR 47,000 on a company that accepted the withdrawal of a consent in data processing only if it stated a reason and, moreover, the company provided misleading, insufficiently clear information on the possibility of withdrawal for the data subjects so that the withdrawal was not as easily possible as giving the consent.

Detailed information can be found in the press release [here](#).

## 4. Opinions

#### +++ GERMAN SUPERVISORY AUTHORITIES: GOOGLE ANALYTICS ONLY PERMITTED WITH CONSENT +++

In recent opinions, the German data protection supervisory authorities have expressly considered the use of Google Analytics in websites to be impermissible unless the user's prior consent has been obtained. A justification by other means, for instance via legitimate interests, is excluded. The reason for this being that Google now reserves the right in its terms of use to process the data collected by the service for its own purposes so that Google is no longer a processor under the GDPR. The supervisory authorities made it clear that they will increasingly review whether the integration of Google Analytics complies with data protection laws.

The exemplary statement of the Berlin supervisory authority can be found [here](#).

#### +++ GERMAN DSK PUBLISHES GUIDELINES FOR ASSESSING THE USE OF WINDOWS 10 +++

The conference of the German data protection authorities (DSK) has provided an abstract reviewing scheme designed to help those responsible for running Windows 10 to conduct individual legal reviews of their compliance with data protection requirements when operating Windows 10. Controllers must, in particular, check whether updates and new features in Windows 10 result in a change in the legal assessment.

The DSK guidelines are available for download [here](#).

#### +++ DSK EMPHASISES THE NEED FOR CONSENT WHEN HEALTH APPS AND WEBSITES PASS ON HEALTH RELATED DATA +++

The DSK points out in a statement that the supervisory authorities are increasingly critical of the data transmissions in apps and websites with health topics – in particular transmissions via analysis and tracking tools. The authorities stress that health data, which may also be deduced from the use of certain contents of a website or app, may only be passed on with the user's consent.

The opinion can be found [here](#).

#### +++ FRENCH SUPERVISORY AUTHORITY PUBLISHES RECORDS OF ITS OWN DATA PROCESSING ACTIVITIES AND NOTES ON THE CHOICE OF LEGAL BASIS FOR PROCESSING +++

The French data protection supervisory authority CNIL has published a document which lists the data processing operations carried out by the authority in order to provide guidance to those responsible for drawing up records of processing activities. In addition, CNIL provides guidance on choosing the correct legal basis for the processing of personal data. For this, CNIL used individual processing activities of their own published records as examples.

The press release and the records of the processing activities (in French) are available [here](#).

The information on the choice of legal basis (in French) is provided [here](#).

SEASON'S GREETINGS  
AND A HAPPY  
NEW YEAR!



Even shortly before the Christmas holidays, there are numerous, sometimes surprising developments in data protection that should be kept in mind. Yet, these are certainly not the only surprises of the current month after all, as the pre-Christmas season has already begun.

So we wish you a peaceful and merry Christmas without any data protection complaints or other unpleasant surprises.

If you have any questions, please address the BEITEN BURKHARDT lawyer of your choice or contact the BEITEN BURKHARDT Privacy Team directly:

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