

Privacy Ticker

April 2022



+++ EU Parliament Adopts Data Governance Act +++ Key Questions to the ECJ on the GDPR Damages Claim +++ GDPR Information on Video Recording in Commuter Train Unreasonable +++ Permanent Video Surveillance in Gym Unlawful +++ Million Dollar Fine Imposed on Danish Bank +++ Operation of Facebook Fanpages Unlawful +++ Corona Data of Employees No Longer Needed to Be Deleted Immediately +++

1. Changes in Legislation

+++ DATA GOVERNANCE ACT PASSED +++

The EU Parliament passed the so-called Data Governance Act (DGA) with a large majority. The DGA aims to foster data-driven innovation in the European area by facilitating the availability and further use of data (see [AB Privacy Ticker December 2021](#)). For this purpose, the DGA provides, among other things, a framework for the provision of proprietary data held by public sector bodies. Neutral "data brokering services" are to act as an interface between data holders and data users and enable access to data pools. In addition, so-called "data altruistic organisations" are to be given earmarked access to data that has been voluntarily provided for objectives of general interest (e.g. improving healthcare or mobility, fighting climate change). Now, the DGA still has to be confirmed by the Council.

[To the Data Governance Act \(dated 6 April 2022\)](#)

2. Case Law

+++ HAGEN LOCAL COURT SUBMITS KEY QUESTIONS ON THE GDPR DAMAGES CLAIM TO THE ECJ +++

The Local Court of Hagen has submitted several fundamental questions to the European Court of Justice on the claim for damages under Article 82 GDPR. The reason for this is the lawsuit filed by the customer of a consumer electronics store whose customer data

had been handed over to another customer after a mix-up. However, it is undisputed that the consumer electronics store was able to retrieve the customer data before the other customer had taken note of the plaintiff's personal data. The court wants the ECJ to clarify whether Article 82 GDPR is effective at all or whether the legal consequences are not too vague. It is also questionable whether the claim for damages can be triggered by a mere violation of the GDPR or whether a concrete damage must be established. In this context, it also had to be clarified whether the data subject's mere unease that his data could be disseminated to an unknown number of persons was sufficient for damage or whether an unauthorised third party at least had to have knowledge of the data.

[To the court's request for a preliminary ruling \(dated 7 February 2022, file ref. C-687/21\)](#)

+++ PANKOW LOCAL COURT: GDPR INFORMATION ON VIDEO RECORDING IN COMMUTER TRAIN UNREASONABLE +++

The Local Court of Pankow has dismissed the claim of a passenger who demanded compensation from the operator of the Berlin commuter train because of a failure to provide GDPR-information. The data subject had requested the information pursuant to Article 15 GDPR after boarding a commuter train and being recorded by the surveillance camera. The controller did not provide the information and deleted the recording after 48 hours. According to the court, this procedure did not constitute a data protection violation. Providing the information would have meant a disproportionate effort in terms of time, costs and manpower, whereby the interest in transparency of the data subject was to be classified as very low. This was because the data subject was already aware of the "whether, how and what of the data processing".

[To the ruling of the Pankow Local Court \(dated 28 March 2022, 4 C 199/21, in German\)](#)

+++ NUREMBERG HIGHER REGIONAL COURT: REQUEST FOR INFORMATION NOT PRIMARILY FOR DATA PROTECTION PURPOSES ABUSIVE +++

The Nuremberg Higher Regional Court dismissed the action of a customer of a private health insurance company who demanded information from the insurance company pursuant to Article 15 (1) GDPR. This was in the context of a dispute about premium adjustments. In view of the protective purpose of the GDPR, the court considered the assertion of the claim to be an abuse of rights and found that the defendant insurance company was entitled to a right of refusal (Article 12 (5) sentence 2 lit. b) GDPR). The purpose of Article 15 GDPR is to enable the data subject to be aware of the processing of personal data concerning him or her and to be able to verify the

lawfulness of that processing (Recital 63). However, the court saw the purpose of the plaintiff's request for information exclusively in the verification of the lawfulness of the premium adjustment.

[To the judgment of the Nuremberg Higher Regional Court \(dated 14 March 2022, file ref. 8 U 2907/21, in German\)](#)

+++ ANSBACH ADMINISTRATIVE COURT: CONSTANT VIDEO SURVEILLANCE OF THE TRAINING AREA OF A FITNESS STUDIO UNLAWFUL +++

The Administrative Court of Ansbach has predominantly dismissed the complaint of a fitness studio operator who objected to a decision of the Bavarian Data Protection Authority (BayLDA). The plaintiff had installed video surveillance of the entire training area in her fitness studio, which was also pointed out to the trainees by corresponding signposts. The plaintiff stated that the video surveillance was for the prevention and investigation of criminal offences, which could not be ensured by the staff, as they could not have a constant view of the training area. The BayLDA prohibited the comprehensive video surveillance and was confirmed by the court. The balancing of interests was in favour of the gym users, as their fundamental right to informational self-determination outweighed the plaintiff's interest in continuous video surveillance of the entire training area. In contrast to the gym users, the plaintiff had alternatives to video surveillance. The plaintiff could, for instance, increase her staff in order to pursue the corresponding purposes. This might not be equally effective, but it would be sufficiently effective. The plaintiff could not rely on the fact that video surveillance made more economic sense.

[To the judgment of the Ansbach Administrative Court \(dated 23 February 2022, file ref. AN 14 K 20.00083, in German\)](#)

3. Regulatory Investigations and Enforcement Actions

+++ DANISH SUPERVISORY AUTHORITY IMPOSES MILLION DOLLAR FINE ON BANK FOR INADEQUATE DOCUMENTATION +++

The Danish Data Protection Authority (Datatilsynet) has imposed a fine of some EUR 1.3 million against Danske Bank. The bank could not prove for more than 400 systems that it had defined rules for the deletion and storage of personal data or that manual deletion of personal data actually took place. This constituted a breach of the accountability principle (Article 5 (2) and Article 24 (1) GDPR), according to which data controllers must be able to demonstrate that data processing operations (and thus also

deletion) are carried out in compliance with the GDPR. For instance, deletion concepts and logs should be kept for the erasure of data.

[To the press release of the authority \(dated 5 April 2022, in Danish\)](#)

+++ SWEDISH DATA PROTECTION AUTHORITY FINES PAYMENT SERVICE PROVIDER FOR FAILURE TO SPECIFY LEGAL BASIS +++

The Swedish data protection authority Integritetsskyddsmyndigheten (IMY) has imposed a fine in the equivalent of EUR 719,597 on Klarna Bank. The company is a financial service provider that, for instance, makes it possible to offer purchases on account in e-commerce. The authority objected to the fact that the information on the processing of personal data provided via the company's website did not meet the requirements of the GDPR. There was no information on the purpose of the processing and the legal basis on which data processing was based, as well as on data transfers to countries outside the EU/EEA area. Furthermore, the information on the transfer of personal data to domestic and foreign credit agencies and on the rights of data subjects was also incomplete.

[To the press release of the European Data Protection Board \(edpb\) \(dated 5 April 2022\)](#)

+++ IRISH DATA PROTECTION AUTHORITY FINES FOR INCORRECT DATA BREACH NOTIFICATION AND INADEQUATE DATA PROCESSING SYSTEMS +++

The Irish Data Protection Commission (DPC) has imposed a fine of EUR 463,000 on the Bank of Ireland. The bank had reported a total of 22 data breaches to the data protection authority, involving the transmission of false details of 47,000 customers to the Central Credit Register. The Central Credit Register, which is administered by the Central Bank of Ireland, provides information on the creditworthiness of individuals. The data protection authority accused the bank of insufficient technical and organisational measures pursuant to Article 32 (1) GDPR to effectively prevent such data protection incidents. In addition, the notifications of the data protection incidents themselves had also been partially incorrect or late, which constituted a violation of Article 33 GDPR. Finally, the bank had also failed to inform the affected customers about the data incidents in a timely manner, even though they could pose a high risk to their rights, as their creditworthiness had been incorrectly assessed by the Central Credit Register. This was sanctioned as a violation of Article 34 GDPR.

[To the administrative fine notice of the authority \(dated 14 March 2022\)](#)

4. Opinions

+++ DATA PROTECTION CONFERENCE: OPERATION OF FACEBOOK FANPAGES UNLAWFUL +++

The task force on the operation of Facebook fan pages set up by the Data Protection Conference (DSK) has determined in a brief expert opinion that currently there can be no effective legal basis for access to end devices and data processing triggered when visiting Facebook company pages (so-called "fan pages"). Meta Platforms (provider of Facebook) simply provides too little information about the data processing occurring on the fan page, so that fan page operators can neither obtain consent (Article 6 (1) lit. a) GDPR) nor carry out a balancing of interests (Article 6 (1) lit. f) GDPR). Accordingly, it would *de facto* not be possible to operate fan pages in a legally compliant manner. This is bad news for fan page operators. Jointly with Meta Platforms, they are responsible for data processing on the fan page (Article 26 GDPR). The DSK agreed with the assessment of the task force and announced corresponding controls, which, however, should initially focus on public bodies.

[To the brief expert opinion of the task force Facebook-Fanpages \(dated 18 March 2022, in German\)](#)

[To the resolution of the DSK \(dated 23 March 2022, in German\)](#)

+++ LOWER SAXONY STATE DATA PROTECTION AUTHORITY: DELETE CORONA DATA OF EMPLOYEES "NOW AT THE LATEST" +++

The Data Protection Commissioner of Lower Saxony has called on companies and public bodies to immediately delete Corona data of employees (e.g. data from access controls to workplaces with 3G rules) that are no longer needed. Data collected and stored in connection with the fight against the pandemic may only be processed for a specific purpose. With the end of the respective legal obligations, this data should be deleted immediately in order not to create illegal "*data graveyards*". In the health sector, however, certain processing of Corona data (e.g. within the framework of the institution-related vaccination obligation) is still permissible due to special regulations. The deletion of data is to be checked in unannounced inspections.

[To the press release of the LfD Lower Saxony \(dated 19 April 2022, in German\)](#)

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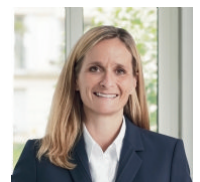
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