



PRIVACY TICKER

1. Legislative Changes

+++ NEW STANDARD CONTRACTUAL CLAUSES OF THE EU COMMISSION +++

The European Commission has published new standard contractual clauses (SCCs) for data transfers to third countries as a draft for public consultation. The clauses in the draft are modular and can also cover transfers from a processor to other processors and to controllers. The clauses also take into account the requirements of the "Schrems II" decision of the European Court of Justice (ECJ) and the recent recommendations of the EU data protection authorities (on these recommendations see Sect. 4 below). Comments on the draft can be submitted until 10 December 2020.

[To the draft of the EU Commission](#)

+++ UPDATED DRAFT FOR THE E-PRIVACY REGULATION +++

The Council of the EU under German Council Presidency has submitted another proposal for the ePrivacy Regulation. This new proposal sets high requirements for processing of cookies and other data stored on the user device. Processing without the user's consent would only be allowed in specific cases, without regard to the general "legitimate interests" of companies. Yet, according to press reports, this proposal is highly controversial, so it seems unlikely that a version is adopted soon.

[To the recent proposal of the ePrivacy Regulation](#)

+++ BILLS ON CONSUMER PROTECTION REGARDING DIGITAL CONTENT AND ONLINE MARKETPLACES +++

The German Federal Government has prepared two draft bills to transpose the EU Directive on digital content and the so-called EU Enforcement and Modernisation Directive into German law. The former broadens the warranty rights for consumers when purchasing digital contents. Also affected are digital services for which only personal data is provided instead of a monetary remuneration ("paying by data").

The second draft bill imposes new transparency obligations on providers of digital marketplaces where third parties make offers

for consumers. Among other things, a notice is mandatory if the price is personalised based on algorithms.

[To the draft bill on purchases of digital content](#)

[To the draft bill concerning online marketplaces](#)

2. Case Law

+++ ECJ: NO CONSENT VIA PRE-CHECKED CHECKBOXES EVEN FOR "OFFLINE" SIGNING +++

The ECJ has reinforced in a judgment that consent to data processing, even if given face-to-face in a shop, requires active action by the data subject alone. The defendant company had used contract forms with a checkbox for customer's consent to the data processing. However, the company's employees had already pre-ticked the checkbox and then handed the contract as a whole to the customers for signing. Moreover, customers had to sign a separate document in order to refuse the data processing, which, according to the ECJ, may raise doubts on whether the consent is freely given.

[To the ECJ's judgment \(from 11 November 2020, case no. C-61/19\)](#)

+++ REGIONAL COURT BONN CONSIDERS RECORD FINE BY FEDERAL DPA EXCESSIVE +++

The Regional Court of Bonn has ruled on the first multi-million euro fine imposed by the German Federal Data Protection Commissioner. The data protection authority (DPA) had imposed the fine amounting to EUR 9.55 million in 2019 on a telecommunications service provider who failed to sufficiently verify the identity of phone callers requesting data on "their" contracts. According to the court the fine was unreasonably high in light of the relatively minor fault of the service provider. It therefore substantially revised the fine down to EUR 900,000.

[To the press release on the judgment \(from 11 November 2020, file ref. 29 OWi 1/20\)](#)

+++ REGIONAL COURT FRANKFURT: DATA SUBJECT CAN SEEK INJUNCTIVE RELIEF AGAINST PRIVACY VIOLATIONS +++

The Regional Court of Frankfurt decided that in the case of data protection violations a data subject can not only assert the rights under the GDPR, but also make claims based on national law for violation of their personal rights, including seeking injunctive relief.

[To the decision \(from 15 October 2020, file ref. 2-03 O 356/20\)](#)

+++ ADMINISTRATIVE COURT MAINZ: DPA CANNOT ORDER CAMERAS VIOLATING GDPR TO BE REMOVED ENTIRELY +++

The Administrative Court of Mainz ruled that the DPA cannot order an operator of video cameras to fully dismantle them, even if the camera recording violated the GDPR. The GDPR only authorises the DPA to prohibit the specific, unlawful data processing. The authority has no power to order additional steps such as fully dismantling the cameras. Third parties who feel unsettled by the cameras remaining would need to bring the case to the civil courts.

[To the judgment \(from 24 September 2020, file ref. 1 K 584/19.MZ\)](#)

+++ HIGHER ADMINISTRATIVE COURT HAMBURG: NO RESPONSIBILITY UNDER GDPR FOR MERE POSSIBILITY TO ACCESS PATIENT FILES +++

The Higher Administrative Court of Hamburg has ruled that a property owner is not responsible for the data in patient files which were left behind by a former tenant. The tenant, a limited liability company, had filed for insolvency. Following this, the owner received the keys to the building back. The room with the files has remained unsecured and unused since. According to the court, the fact that the owner had de facto the possibility to access the files did not result in him being controller of the data. Only if the owner would actively handle the data, he would be responsible for the data.

[To the decision \(from 15 October 2020, file ref. 5 Bs 152/20\)](#)

3. Regulatory Investigations and Enforcement Actions

+++ ICO IMPOSES FINES FOR LACKING DATA SECURITY MEASURES +++

UK's DPA, the ICO, has imposed a fine equalling EUR 20.5 million on the hotel operator Marriott for failing to sufficiently secure customer data. The authority had initially announced a fine of approximately EUR 108 million (see the [BB Privacy Ticker of August 2019](#)). As reasoning for reducing the fine the authority referred to the comprehensive cooperation of Marriott and newly implemented technical measures.

The ICO has also imposed a fine equivalent to EUR 1.4 million on the ticket seller Ticketmaster UK. Here, too, the authority sanc-

tioned the inadequate security of customer data. Due to security gaps in the chatbot of the company's website, which was maintained by a service provider, third parties were able to steal payment data of customers in 2018.

[To the press release on Marriott](#)

[To the press release on Ticketmaster](#)

+++ MILLION FINE OF ITALIAN DPA ON VODAFONE +++

The DPA of Italy has imposed a fine of EUR 12.25 million on Vodafone Italia. The authority started investigations due to numerous customer complaints and found that the company initiated a large number of advertising calls and messages without recipients' consent. With regard to the amount of the fine the authority pointed out that various related violations of Vodafone's accountability duties showed fundamental organisational shortcomings of the company.

[To the press release of the DPA](#)

4. Opinions

+++ EDPB RELEASE RECOMMENDATIONS ON INTERNATIONAL DATA TRANSFERS +++

The European Data Protection Board (EDPB) has published guidance for companies that transfer data to or have data processed in third countries outside the EU. The authorities focus on the additional safeguards that companies need to put in place in along with the EU SCCs, in order to ensure an adequate level of data protection. The authorities also detail the criteria which companies must take into account when assessing the level of data protection in a third country as basis for required safeguards, in particular with regard to official access rights to data. These recommendations concern the data transfer to the US as well as any other international data transfers, e.g. to India, Russia or China.

[To the recommendation on handling international data transfers](#)

[To the supplemental guide on assessing surveillance measures](#)

+++ GUIDE OF THE GERMAN DPAs FOR USING VIDEO CONFERENCE TOOLS +++

The Data Protection Conference (DSK), where the German DPAs coordinate their approaches, has compiled remarks on using video conference systems. Besides the general data protection framework to be adhered to, the authorities also compiled a checklist with the important privacy-related obligations regarding use and set-up of such systems.

[To the guidelines for video conference tools](#)

[To the supplemental checklist](#)

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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