



PRIVACY TICKER

1. Case Law

+++ REGIONAL COURT HAMBURG: NO DAMAGES FOR PAIN AND SUFFERING BECAUSE OF DATA BREACH WITHOUT NAMEABLE DAMAGE +++

The Regional Court of Hamburg has concluded that a data subject whose data has been breached is not automatically entitled to pain and suffering damages. This entitlement requires at least a nameable, concrete “humiliation” of the data subject or another actual violation of their right of personality, although such violation need not to be serious. Yet, the mere fear is not sufficient.

[To the court's judgement \(of 4 September 2020, file ref. 324 S 9/19\)](#)

+++ LABOUR COURT BONN RESTRICTS OBLIGATION TO GIVE INFORMATION UPON GENERAL DEMANDS +++

The Labour Court of Bonn has ruled on the extent of information to be provided upon a general demand of an employee for information under the GDPR. Since the employer processes a large amount of data relating to the employee in the course of the employment relationship, the court deems that they can fulfil a general request for information, in a first step, by providing the information specified in Art. 15 (1) (a) to (h) of the GDPR. Only after the employee has further specified their request (e.g. regarding the time period or types of data), the employer is obligated to provide further information accordingly.

[To the court's judgement \(of 16 July 2020, file. ref 3 Ca 2026/19\)](#)

+++ BGH CONFIRMS HEIR'S ENTITLEMENT TO FULLY ACCESS THE FACEBOOK ACCOUNT OF THE DECEASED +++

The German Federal Court of Justice (BGH) has ruled that the heirs can claim direct access to the Facebook account of the deceased. This access must be provided in the same way as it has been offered to the deceased, because the heirs inherit the exact rights granted to the deceased in the user agreement with Facebook. For fulfilling this access right it was not sufficient that Facebook only transmitted the raw data, which were stored in the account, as a pdf file.

[To the court decision \(of 27 August 2020, file ref. III ZB30/20\)](#)

2. Regulatory Investigations and Enforcement Actions

+++ TASKFORCE OF EUROPEAN DPAS TO REVIEW GOOGLE UND FACEBOOK SERVICES ON WEBSITES +++

The European Data Protection Board (EDPB) has set up a new taskforce to examine the legality of Google and Facebook services used on many websites. This step is in the wake of complaints about the transfer of user data to the US through these services lodged following the decision of the European Court of Justice (ECJ) on the EU-US Privacy Shield being invalid (on this ruling see [BB Privacy Ticker from July 2020](#)).

[To the official press release](#)

+++ IRISH DPA CONSIDERS FACEBOOK'S MEASURES FOR US-DATA TRANSFER INSUFFICIENT +++

Facebook has noted that the DPC, the Irish data protection authority (DPA), considers the safeguards of Facebook for data transfers to the USA to not satisfy the requirements of the ECJ decision on the EU-US Privacy Shield mentioned above. However, according to press reports Facebook has appealed against the DPC's conduct and interim orders.

[To Facebook's statement](#)

3. Opinions

+++ UPDATED GUIDELINES OF EDPB ON DISTINGUISHING BETWEEN CONTROLLER AND PROCESSOR +++

The EDPB has supplemented their guidelines on the roles of controllers and processors. According to the amendments, being data controller requires influence on essential parts of the means for data processing. A processor can therefore decide on “non-essential” details of the implementation, e.g. the exact type of hardware and software used, without becoming controller. In addition, the authorities make recommendations on the content of the arrangement between joint controllers, even beyond the minimum content required by law.

[To the updated guidelines](#)

+++ EDPB'S OPINION ON TARGETED ADVERTISING IN SOCIAL MEDIA +++

Furthermore, the EDPB has published detailed guidance on the obligations of advertisers and operators of social media platforms when targeting users with personalised content on these platforms. In particular, the authorities define the different roles and responsibilities of the entities involved and outline the legal admissibility and limits for such measures.

[To the opinion of the DPAs](#)

+++ GERMAN DPAS DETAIL ADMISSIBLE TEMPERATURE MEASURING AS PART OF THE CORONA PREVENTION MEASURES +++

The German Data Protection Conference (DSK) published a statement on the permissible framework for temperature measurements, in particular remote measurements e.g. via thermographic cameras, which may be carried out in order to detect people potentially infected with the coronavirus when entering workplaces, shops and offices.

[To the statement of the DPAs](#)

+++ GERMAN DPAS ANNOUNCE REVIEWS OF CREDIT AGENCY'S DATABASES FOR CUSTOMERS OF ENERGY SUPPLIERS +++

The DSK has also announced to investigate the legality of databases and credit agencies regarding energy supply contracts. These could also record and include information on contractually admissible conduct of customers such as frequent changes of the energy supplier in the past.

[To the press release](#)

+++ FRENCH DPA PUBLISHES OVERVIEW ON THE PROCEDURE OF ITS INSPECTIONS +++

The CNIL, the DPA of France, has compiled notes on the general conduct of its inspections in companies. Therein the authority describes on an abstract level the typical procedure and purpose of its inspections and the duties of the addressees to cooperate, in order to enable the addressees an appropriate preparation.

[To the overview of the CNIL \(in French\)](#)

+++ ICO ISSUES GUIDELINES ON FRAMEWORK FOR ACCOUNTABILITY UNDER THE GDPR +++

The ICO, the DPA of UK, has published a detailed guidance on companies' accountability under the GDPR. The guidance summarises the various obligations regarding organisation, verification and documentation under the GDPR and the authority's general expectations on how companies can fulfil these obligations.

[To the guidelines of the ICO](#)

+++ SWISS DPA CONSIDERS PRIVACY SHIELD BETWEEN SWITZERLAND AND USA NOT SUFFICIENT +++

The Swiss DPA has informed that the Swiss-US Privacy Shield does not provide an adequate level of protection for data transfers. As reasoning, the authority refers to the arguments of the ECJ for declaring the counterpart between the EU and the USA invalid. So far, however, the Swiss-US Privacy Shield remains intact, as the ECJ ruling does not apply to Switzerland and no Swiss court issued a decision yet.

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

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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