



1. Case Law

+++ BERLIN REGIONAL COURT: NO GDPR FINE OF MORE THAN EUR 14.5 MILLION +++

The Berlin Regional Court (Landgericht, LG) has discontinued the fine proceedings against Deutsche Wohnen SE due to procedural obstacles. The Berlin Commissioner for Data Protection and Freedom of Information (Berliner Beauftragter für Datenschutz und Informationsfreiheit, BlnBDI) had previously issued a fine notice in the record amount of around EUR 14.5 million (see [BB Privacy Ticker November 2019](#)). The Berlin Regional Court considered the decision to be invalid, as it had not been proven that the management staff of Deutsche Wohnen SE had acted in breach of their duties. Yet, such proof was required because the German Administrative Offences Act (Gesetz über Ordnungswidrigkeiten, OWiG) does not provide for direct liability of legal entities. The public prosecutor's office has appealed against the decision.

[To the judgment of the LG Berlin](#) (of 18 February 2021, file ref. 526 OWi LG)

To the blog post

+++ KARLSRUHE HIGHER REGIONAL COURT: STORAGE OF PERSONAL DATA IN "FRAUD POOL" ALSO PERMISSIBLE AFTER DISCONTINUATION OF INVESTIGATION PROCEEDINGS +++

The Karlsruhe Higher Regional Court (Oberlandesgericht, OLG) has ruled that the continued storage of personal data in a so-called "Schufa fraud pool" by a credit institution is permissible even after the public prosecutor's office has

discontinued the related investigation proceedings against the person concerned in return for a monetary payment (Section 153 a German Criminal Procedure Code (Strafprozessordnung, StPO)). Despite the presumption of innocence, the legitimate interest in fraud prevention (Article 6 (1) sentence 1 lit. f) GDPR) continues to prevail in the relationship between the data subject and the credit institution. When balancing the interests, the reasonable expectation of the person concerned must be taken into account. The data subject must expect to be included in such a file if he/she submits false salary documents when applying for a loan.

[To the judgment of OLG Karlsruhe](#) (of 23 February 2021, file ref. 14 U 3/19)

+++ SAARLAND HIGHER ADMINISTRATIVE COURT: "DOUBLE OPT-IN" VIA E-MAIL DOES NOT CONSTITUTE PROOF OF CONSENT TO TELEPHONE ADVERTISING +++

The Higher Administrative Court (Oberverwaltungsgericht, OVG) of Saarland has ruled that a telephone number obtained when registering for an online competition and verified only by email via the so-called "double opt-in" procedure is not suitable to document the consent of the holder of the telephone number to telephone advertising by the organiser of the competition. According to the court, there is "no necessary connection" between the telephone number deposited in the registration form and the email address of the participant in the competition used for verification. A participant could enter a false telephone number, for example to register other people for the competition. In this case, recourse to the legitimate interests of the controller (Article 6 (1) sentence 1 lit. f) GDPR) was also not possible, as this would circumvent the principles of German competition law (Sec. 7 (2) No. 2 Act against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb, UWG)).

[To the judgment of the OVG Saarland](#) (of 16 February 2021, file ref. 2 A 355/19)

+++ SCHLESWIG-HOLSTEIN HIGHER ADMINISTRATIVE COURT: VIDEO PROCTORING OF ELECTRONIC EXAMINATIONS AT UNIVERSITIES IS PERMISSIBLE +++

The Higher Administrative Court (Oberverwaltungsgericht, OVG) of Schleswig-Holstein has ruled in summary proceedings that a regulation in the statutes of Kiel University on electronic examination proctoring, which obliges students to activate the camera and microphone function during an online examination, does not violate the right to privacy, the right to inviolability of the home or the provisions of the GDPR. The OVG based its decision on the fact that the regulation prohibits the storage and automated evaluation of image and sound data and that the examination proctoring is carried out exclusively by the University staff. Such video proctoring is suitable for the prevention of attempts to cheat and adequately takes into account the rights of the students.

[To the decision of the OVG Schleswig-Holstein](#) (of 3 March 2021 – file ref. 3 MR 7/21)

+++ LEHRTE LOCAL COURT: ENTITLEMENT TO NEGATIVE INFORMATION +++

The Lehrte Local Court (Amtsgericht, AG) has ruled that a data subject is entitled to information from the controller to the effect that the controller does not process the data subject's personal data (so-called negative information). In these proceedings, the data controller only provided this information after the data subject had filed a lawsuit. Although the parties then unanimously declared the action to be settled, the costs of the proceedings (with a value in dispute of EUR 5,000) were imposed on the controller.

[To the decision of the AG Lehrte](#) (of 3 February 2021 – file ref. 9 C 139/20)

2. Regulatory Investigations and Enforcement Actions

+++ FINE IMPOSED ON GERMAN PREMIER LEAGUE FOOTBALL CLUB VfB STUTTGART +++

The State Commissioner for Data Protection and Freedom of Information of Baden Wuerttemberg (Landesbeauftragter für Datenschutz und Informationsfreiheit, LfDI) has imposed a fine of EUR 300,000 on VfB Stuttgart 1893 AG for negligent breach of data protection accountability under Article 5 (2) GDPR. With the administrative order imposing the fine, the investigations against VfB Stuttgart e.V. and VfB Stuttgart 1893 AG (see [BB Privacy Ticker February 2021](#)) have been concluded. The LfDI emphasised that VfB Stuttgart had "supported the clarification and investigation measures, promoted them through its own initiative" and "cooperated extensively".

[To the LfDI's press release](#) (of 3 February 2021)

3. Opinions

+++ SUPERVISORY AUTHORITIES ON REPORTING AND NOTIFICATION OBLIGATIONS IN THE EVENT OF A MICROSOFT EXCHANGE SERVER COMPROMISE +++

Various supervisory authorities of the German federal states have issued statements (some of which differ) on the reporting and notification obligations of those responsible in the event of an on-premise Microsoft Exchange server being compromised (including by the hacker group "Hafnium"). In the view of most supervisory authorities, the exploitation of a vulnerability and the leakage or manipulation of personal data generally triggers the notification obligation under Article 33 GDPR (vis-à-vis the authorities). In individual cases, notification obligations under Article 34 GDPR (vis-à-vis the data subjects) or other laws (e.g. German Act on the Federal Office for Information Security (Gesetz über das Bundesamt für Sicherheit in der Informationstechnik, BSI),

Telecommunications Act (Telekommunikationsgesetz, TKG)) may also apply. In any case, controllers should take into account the opinion of their competent authority when considering notification obligations.

[Joint support by the Bavarian data protection supervisory authorities on security vulnerabilities in Microsoft Exchange servers](#)

[To the press release of the LfDI Baden-Württemberg](#) of 18 March 2021

[To the press release of the LDA Bavaria](#) of 9 March 2021

[To the press release of the Hessian BDI](#) of 12 March 2021

[To the press release of the Hamburg BfDI](#) of 10 March 2021

[To the press release of the LfD Lower Saxony](#) of 16 March 2021

[To the press release of the LDI North Rhine-Westphalia](#)

[To the press release of the LfDI Rhineland-Palatinate](#) of 11 March 2021

[To the press release of the LfDI Mecklenburg-Western-Pomerania](#) of 10 March 2021

[To the press release of the LfD Saxony-Anhalt](#) of 11 March 2021

[To the information of the Saxon Data Protection Commissioner](#) of 12 March 2021

+++ EDPB ADVISES EU COMMISSION ON DATA PROCESSING IN MEDICAL RESEARCH PROJECTS +++

The European Data Protection Board has answered a total of 21 questions from the EU Commission on the processing of personal data in connection with medical research purposes. Among other things, the EDPB comments on possible legal bases, the anonymisation and pseudonymisation of health data, transparency requirements and the processing of patient data once collected for further research purposes that differ from the original project. The EDPB announces that it will publish an in-depth statement on specific questions.

[To the EDPB's Q&A](#) (englisch)

+++ LfDI MECKLENBURG-WESTERN POMERANIA: AUTHORITIES SHOULD REFRAIN FROM USING "MICROSOFT PRODUCTS" +++

The State Commissioner for Data Protection and Freedom of Information (Landesbeauftragter für Datenschutz und Informationsfreiheit, LfDI) of Mecklenburg-Western Pomerania has stated that a "large number of the operating systems, office applications or even video conferencing solutions" used in this state transmitted personal data to third parties based in the USA in violation of the law. Among others, products of the company Microsoft are affected. Insofar as this

data cannot be anonymised or sufficiently encrypted before transmission, the LfDI calls on the state government to use alternative products (such as open source products).

[To the press release of the LfDI Mecklenburg-Western Pomerania](#) of 17 March 2021

+++ HBDI HESSEN: ADVICE FOR SAFE TEACHING WITH VIDEOCONFERENCING SYSTEMS +++

The Hessian Commissioner for Data Protection and Freedom of Information (Hessischer Beauftragter für Datenschutz und Informationsfreiheit, HBDI) has given general advice on the safe use of video conferencing systems in the classroom. Video conferencing should always be secured with access controls (setting up passwords and a waiting room) and access should only be possible with the permission of the moderator. Invitation links should also not be published on a school's homepage or shared on social media. The advice provided is meant to prevent unauthorised third parties from gaining access to video conferences and disturbing lessons.

[To the HBDI's advice](#) of 27 February 2021

Your contact

Editor in charge

Dr Andreas Lober

[Update Preferences](#) | [Forward](#)



Please note

This publication cannot replace consultation with a trained legal professional. If you no longer wish to receive information, you can [unsubscribe](#) at any time.

© BEITEN BURKHARDT Rechtsanwaltsgesellschaft mbH

All rights reserved 2021

Imprint

This publication is issued by BEITEN BURKHARDT Rechtsanwaltsgesellschaft mbH Ganghoferstrasse 33, D-80339 Munich

Registered under HR B 155350 at the Regional Court Munich / VAT Reg. No.: DE811218811

For more information see: www.beiten-burkhardt.com/en/imprint